

**SUBSTITUTE FOR
HOUSE BILL NO. 5746**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 ARTICLE 1
2 GENERAL PROVISIONS

3
4 Sec. 101. This act shall be known and may be cited as the
5 "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
4 insurance services of the department of labor and economic
5 growth.

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,
11 officer, or director of a broker-dealer or issuer, or an
12 individual having a similar status or performing similar
13 functions, unless the individual otherwise comes within the
14 term. The term does not include an individual excluded by rule
15 or order under this act. The term does not include a person
16 acting solely as a finder and registered as a broker-dealer under
17 this act or acting as a finder in a transaction exempt under
18 section 202(1)(r).

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

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

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

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

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

27 (B) A substantial portion of its business consists of

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1 receiving deposits or exercising fiduciary powers similar to
2 those permitted to be exercised by national banks under the
3 authority of the comptroller of the currency pursuant to section
4 1 of Public Law 87-722, 12 USC 92a.

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

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

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

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

15 (i) An agent.

16 (ii) An issuer.

17 (iii) [Beginning on the effective date of this act and until December
18 31, 2006, a] depository institution.

19 [(iv) Beginning January 1, 2007, a bank, trust company organized or
20 chartered under the laws of this state, or savings institution if its
21 activities as a broker-dealer are limited to those specified in section
22 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to
23 unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities
24 exchange act of 1934, 15 USC 78c, or a bank that satisfies the conditions
25 described in section 3(a)(4)(E) of the securities exchange act of 1934,
26 15 USC 78c.

18 (v)] An international banking institution.

19 [(vi)] A person excluded by rule or order under this act.

20 (e) "Depository institution" means a bank; or a savings
21 institution, trust company, credit union, or similar institution
22 that is organized or chartered under the laws of a state or of
23 the United States, authorized to receive deposits, and supervised
24 and examined by an official or agency of a state or the United
25 States if its deposits or share accounts are insured by the
26 federal deposit insurance corporation, the national credit union
27 share insurance fund, or a successor authorized by federal law.

1 The term does not include any of the following:

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

4 (ii) A Morris Plan bank.

5 (iii) An industrial loan company.

6 (f) "Federal covered investment adviser" means a person
7 registered under the investment advisers act of 1940.

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

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

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

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

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

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

27 (a) "Institutional investor" means any of the following,

1 whether acting for itself or for others in a fiduciary capacity:

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

4 (ii) An insurance company.

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

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

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

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

19 (vii) A plan established and maintained by a state, a
20 political subdivision of a state, or an agency or instrumentality
21 of a state or a political subdivision of a state for the benefit
22 of its employees, if the plan has total assets in excess of
23 \$10,000,000.00 or its investment decisions are made by a duly
24 designated public official or by a named fiduciary, as defined in
25 the employee retirement income security act of 1974, that is a
26 broker-dealer registered under the securities exchange act of
27 1934, an investment adviser registered or exempt from

1 registration under the investment advisers act of 1940, an
2 investment adviser registered under this act, a depository
3 institution, or an insurance company.

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

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

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

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

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

25 (xiii) A "qualified institutional buyer" as defined in rule
26 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the
27 securities act of 1933, 17 CFR 230.144A.

1 (xiv) A "major U.S. institutional investor" as defined in
2 rule 15a-6(b)(4)(i) adopted under the securities exchange act of
3 1934, 17 CFR 240.15a-6(b)(4)(i).

4 (xv) Any other person, other than an individual, of
5 institutional character with total assets in excess of
6 \$10,000,000.00 not organized for the specific purpose of evading
7 this act.

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

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

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

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

21 (e) "Investment adviser" means a person that, for
22 compensation, engages in the business of advising others, either
23 directly or through publications or writings, as to the value of
24 securities or the advisability of investing in, purchasing, or
25 selling securities or that, for compensation and as a part of a
26 regular business, issues or promulgates analyses or reports
27 concerning securities. The term includes a financial planner or

1 other person that, as an integral component of other financially
2 related services, provides investment advice to others for
3 compensation as part of a business or that holds itself out as
4 providing investment advice to others for compensation. The term
5 does not include any of the following:

6 (i) An investment adviser representative.

7 (ii) A lawyer, accountant, engineer, or teacher whose
8 performance of investment advice is solely incidental to the
9 practice of the person's profession.

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

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

17 (v) A federal covered investment adviser.

18 (vi) A depository institution.

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

21 (viii) Any other person excluded by rule or order under this
22 act.

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

24 (f) "Investment adviser representative" means an individual
25 employed by or associated with an investment adviser or federal
26 covered investment adviser and who makes any recommendations or
27 otherwise gives investment advice regarding securities, manages

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

9 (i) Performs only clerical or ministerial acts.

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

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

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

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

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

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

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

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

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

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

25 (a) "Nonissuer transaction" or "nonissuer distribution" means
26 a transaction or distribution not directly or indirectly for the
27 benefit of the issuer.

1 (b) "Offer to purchase" includes an attempt or offer to
2 obtain, or solicitation of an offer to sell, a security or
3 interest in a security for value. The term does not include a
4 tender offer that is subject to section 14(d) of title I of the
5 securities exchange act of 1934, 15 USC 78n.

6 (c) "Person" means an individual, corporation, business
7 trust, estate, trust, partnership, limited liability company,
8 limited liability partnership, association, joint venture, or
9 government; a governmental subdivision, agency, or
10 instrumentality; a public corporation; or any other legal or
11 commercial entity.

12 (d) "Place of business" of a broker-dealer, an investment
13 adviser, or a federal covered investment adviser means any of the
14 following:

15 (i) An office at which the broker-dealer, investment adviser,
16 or federal covered investment adviser regularly provides
17 brokerage or investment advice, or solicits, meets with, or
18 otherwise communicates with customers or clients.

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

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

25 (f) "Price amendment" means the amendment to a registration
26 statement filed under the securities act of 1933 or, if an
27 amendment is not filed, the prospectus or prospectus supplement

1 filed under the securities act of 1933 that includes a statement
2 of the offering price, underwriting and selling discounts or
3 commissions, amount of proceeds, conversion rates, call prices,
4 and other matters dependent upon the offering price.

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

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

15 Sec. 102c. As used in this act, unless the context otherwise
16 requires:

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

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

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

1 (iii) A sale or offer of a warrant or right to purchase or
2 subscribe to another security of the same or another issuer, and
3 a sale or offer of a security that gives the holder a present or
4 future right or privilege to convert the security into another
5 security of the same or another issuer, including an offer of the
6 other security.

7 (b) "Securities and exchange commission" means the United
8 States securities and exchange commission.

9 (c) "Security" means a note; stock; treasury stock; security
10 future; bond; debenture; evidence of indebtedness; certificate of
11 interest or participation in a profit-sharing agreement;
12 collateral trust certificate; preorganization certificate or
13 subscription; transferable share; investment contract; voting
14 trust certificate; certificate of deposit for a security;
15 fractional undivided interest in oil, gas, or other mineral
16 rights; put, call, straddle, option, or privilege on a security,
17 certificate of deposit, or group or index of securities,
18 including an interest in or based on the value of that put, call,
19 straddle, option, or privilege on that security, certificate of
20 deposit, or group or index of securities; put, call, straddle,
21 option, or privilege entered into on a national securities
22 exchange relating to foreign currency; an investment in a
23 viatical or life settlement agreement; or, in general, an
24 interest or instrument commonly known as a "security"; or a
25 certificate of interest or participation in, temporary or interim
26 certificate for, receipt for, guarantee of, or warrant or right
27 to subscribe to or purchase, any of the foregoing. All of the

1 following apply to the term security:

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

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

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

8 (C) The furnishing of capital under sub-subparagraph (A) is
9 induced by representations made by an issuer, promoter, or the
10 issuer's or promoter's affiliates which give rise to a reasonable
11 understanding that a valuable tangible benefit will accrue to the
12 person furnishing the capital as a result of the operation of the
13 enterprise.

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

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

20 (ii) The term includes both a certificated and an
21 uncertificated security.

22 (iii) The term does not include an insurance or endowment
23 policy or annuity contract under which an insurance company
24 promises to pay a fixed or variable sum of money either in a lump
25 sum or periodically for life or other specified period.

26 (iv) The term does not include an interest in a contributory
27 or noncontributory pension or welfare plan subject to the

1 employee retirement income security act of 1974.

2 (v) The term includes an investment in a common enterprise
3 with the expectation of profits to be derived primarily from the
4 efforts of a person other than the investor. As used in this
5 subparagraph, a "common enterprise" means an enterprise in which
6 the fortunes of the investor are interwoven with those of either
7 the person offering the investment, a third party, or other
8 investors.

9 (vi) The term may include, as an investment contract, an
10 interest in a limited partnership, a limited liability company,
11 or a limited liability partnership.

12 (d) "Self-regulatory organization" means a national
13 securities exchange registered under the securities exchange act
14 of 1934, a national securities association of broker-dealers
15 registered under the securities exchange act of 1934, a clearing
16 agency registered under the securities exchange act of 1934, or
17 the municipal securities rule-making board established under the
18 securities exchange act of 1934.

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

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

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

24 (f) "State" means a state of the United States, the District
25 of Columbia, the Commonwealth of Puerto Rico, the United States
26 Virgin Islands, or any territory or insular possession subject to
27 the jurisdiction of the United States.

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

3 (a) "Commodity exchange act" means the commodity exchange
4 act, 7 USC 1 to 25.

5 (b) "Electronic signatures in global and national commerce
6 act" means the electronic signatures in global and national
7 commerce act, Public Law 106-229, 114 Stat. 464.

8 (c) "Employee retirement income security act of 1974" means
9 the employee retirement income security act of 1974, Public Law
10 93-406, 88 Stat. 829.

11 (d) "Internal revenue code" means the United States internal
12 revenue code of 1986.

13 (e) "Investment advisers act of 1940" means the investment
14 advisers act of 1940, 15 USC 80b-1 to 80b-21.

15 (f) "Investment company act of 1940" means the investment
16 company act of 1940, 15 USC 80a-1 to 80a-64.

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

19 (h) "Public utility holding company act of 1935" means the
20 public utility holding company act of 1935, 15 USC 79 to 79z-6.

21 (i) "Securities act of 1933" means the securities act of
22 1933, 15 USC 77a to 77aa.

23 (j) "Securities exchange act of 1934" means the securities
24 exchange act of 1934, 15 USC 78a to 78mm.

25 (k) "Securities investor protection act of 1970" means the
26 securities investor protection act of 1970, Public Law 91-598, 84
27 Stat. 1636.

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

4 (m) "Small business investment act of 1958" means the small
5 business investment act of 1958, Public Law 85-699, 72
6 Stat. 689.

7 (2) A reference in this act to a federal statute defined in
8 subsection (1) includes that statute and the rules and
9 regulations adopted under that statute. The administrator may,
10 by rule or order, adopt an amendment or successor to a federal
11 statute defined in subsection (1) or rules and regulations
12 adopted under a federal statute defined in subsection (1), a
13 federal statute that is similar to a federal statute defined in
14 subsection (1), or a rule or regulation that is similar to a rule
15 or regulation adopted under a federal statute defined in
16 subsection (1).

17 Sec. 104. Any reference in this act to an agency or
18 department of the United States is also a reference to any
19 successor agency, department, or entity of that agency or
20 department.

21 Sec. 105. This act modifies, limits, and supersedes the
22 electronic signatures in global and national commerce act, but
23 does not modify, limit, or supersede section 101(c) of that act,
24 15 USC 7001, or authorize electronic delivery of any of the
25 notices described in section 103(b) of that act, 15 USC 7003.
26 This act authorizes the filing of records and signatures, when
27 specified by provisions of this act or by a rule or order under

1 this act, in a manner consistent with section 104(a) of that act,
2 15 USC 7004.

3 ARTICLE 2

4 EXEMPTIONS FROM REGISTRATION OF SECURITIES

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

7 (a) A security, including a revenue obligation or a separate
8 security as defined in rule 131 adopted under the securities act
9 of 1933, 17 CFR 230.131, issued, insured, or guaranteed by the
10 United States; by a state; by a political subdivision of a state;
11 by a public authority, agency, or instrumentality of 1 or more
12 states; by a political subdivision of 1 or more states; or by a
13 person controlled or supervised by and acting as an
14 instrumentality of the United States under authority granted by
15 the Congress; or a certificate of deposit for any of the
16 foregoing.

17 (b) A security issued, insured, or guaranteed by a foreign
18 government with which the United States maintains diplomatic
19 relations, or any of its political subdivisions, if the security
20 is recognized as a valid obligation by the issuer, insurer, or
21 guarantor.

22 (c) A security issued by and representing, or that will
23 represent an interest in or a direct obligation of, or be
24 guaranteed by, any of the following:

25 (i) An international banking institution.

26 (ii) A banking institution organized under the laws of the
27 United States; a member bank of the federal reserve system; or a

1 depository institution a substantial portion of the business of
2 which consists or will consist of either receiving deposits or
3 share accounts that are insured to the maximum amount authorized
4 by statute by the federal deposit insurance corporation, the
5 national credit union share insurance fund, or a successor
6 authorized by federal law or exercising fiduciary powers that are
7 similar to those permitted for national banks under the authority
8 of the comptroller of currency pursuant to section 1 of Public
9 Law 87-722, 12 USC 92a.

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

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

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

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

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

23 (iii) A public utility holding company registered under the
24 public utility holding company act of 1935 or a subsidiary of a
25 registered holding company within the meaning of that act.

26 (f) A federal covered security specified in section 18(b)(1)
27 of the securities act of 1933, 15 USC 77r, or a security listed

1 or approved for listing on another securities market specified by
2 rule under this act; a put or a call option contract; warrant; a
3 subscription right on or with respect to those securities; or an
4 option or similar derivative security on a security or an index
5 of securities or foreign currencies issued by a clearing agency
6 registered under the securities exchange act of 1934 and listed
7 or designated for trading on a national securities exchange, a
8 facility of a national securities exchange, or a facility of a
9 national securities association registered under the securities
10 exchange act of 1934 or an offer or sale, of the underlying
11 security in connection with the offer, sale, or exercise of an
12 option or other security that was exempt when the option or other
13 security was written or issued; or an option or a derivative
14 security designated by the securities and exchange commission
15 under section 9(b) of the securities exchange act of 1934, 15 USC
16 78i.

17 (g) A security issued by a person organized and operated
18 exclusively for religious, educational, benevolent, fraternal,
19 charitable, social, athletic, or reformatory purposes, or as a
20 chamber of commerce, and not for pecuniary profit, no part of the
21 net earnings of which inures to the benefit of a private
22 stockholder or other person, or a security of a company that is
23 excluded from the definition of an investment company under
24 section 3(c)(10)(B) of the investment company act of 1940, 15 USC
25 80a-3. With respect to the offer or sale of a note, bond,
26 debenture, or other evidence of indebtedness by a person
27 described in this subdivision, the administrator by rule may

1 limit the availability of this exemption by classifying
2 securities, persons, and transactions, imposing different
3 requirements for different classes, specifying with respect to
4 subparagraph (ii) the scope of the exemption and the grounds for
5 denial or suspension, and requiring an issuer to meet 1 or more
6 of the following:

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

12 (ii) To file a request for exemption authorization for which
13 a rule under this act may specify the scope of the exemption; the
14 requirement of an offering statement; the filing of sales and
15 advertising literature; the filing of consent to service of
16 process complying with section 611; and grounds for denial or
17 suspension of the exemption.

18 (iii) To register under section 304.

19 (h) A member's or owner's interest in, or a retention
20 certificate or like security given in lieu of a cash patronage
21 dividend issued by, a cooperative organized and operated as a
22 nonprofit membership cooperative under the cooperative laws of a
23 state, but not a member's or owner's interest, retention
24 certificate, or like security sold to persons other than bona
25 fide members of the cooperative.

26 (i) An equipment trust certificate in respect to equipment
27 leased or conditionally sold to a person, if any security issued

1 by the person would be exempt under this section or would be a
2 federal covered security under section 18(b)(1) of the securities
3 act of 1933, 15 USC 77r.

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

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

8 (b) A nonissuer transaction by or through a broker-dealer
9 registered or exempt from registration under this act, and a
10 resale transaction by a sponsor of a unit investment trust
11 registered under the investment company act of 1940, in a
12 security of a class that has been outstanding in the hands of the
13 public for at least 90 days, if all of the following are met at
14 the date of the transaction:

15 (i) The issuer of the security is engaged in business, the
16 issuer is not in the organizational stage or in bankruptcy or
17 receivership, and the issuer is not a blank check, blind pool, or
18 shell company that has no specific business plan or purpose or
19 has indicated that its primary business plan is to engage in a
20 merger or combination of the business with, or an acquisition of,
21 an unidentified person.

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

24 (iii) The security does not constitute the whole or part of
25 an unsold allotment to, or a subscription or participation by,
26 the broker-dealer as an underwriter of the security or a
27 redistribution.

1 (iv) A nationally recognized securities manual or its
2 electronic equivalent designated by rule or order under this act
3 or a record filed with the securities and exchange commission
4 that is publicly available contains all of the following:

5 (A) A description of the business and operations of the
6 issuer.

7 (B) The names of the issuer's executive officers and the
8 names of the issuer's directors, if any.

9 (C) An audited balance sheet of the issuer as of a date
10 within 18 months before the date of the transaction or, in the
11 case of a reorganization or merger, and when the parties to the
12 reorganization or merger each had an audited balance sheet, a pro
13 forma balance sheet for the combined entity.

14 (D) An audited income statement for each of the issuer's 2
15 immediately previous fiscal years or for the period of existence
16 of the issuer, whichever is shorter, or, in the case of a
17 reorganization or merger when each party to the reorganization or
18 merger had audited income statements, a pro forma income
19 statement.

20 (v) Any of the following requirements are met:

21 (A) The issuer of the security has a class of equity
22 securities listed on a national securities exchange registered
23 under section 6 of the securities exchange act of 1934, 15 USC
24 78f, or designated for trading on the national association of
25 securities dealers automated quotation system.

26 (B) The issuer of the security is a unit investment trust
27 registered under the investment company act of 1940.

1 (C) The issuer of the security, including its predecessors,
2 has been engaged in continuous business for at least 3 years.

3 (D) The issuer of the security has total assets of at least
4 \$2,000,000.00 based on an audited balance sheet as of a date
5 within 18 months before the date of the transaction or, in the
6 case of a reorganization or merger when the parties to the
7 reorganization or merger each had an audited balance sheet as of
8 a date within 18 months before the date of the transaction, a pro
9 forma balance sheet for the combined entity.

10 (c) A nonissuer transaction by or through a broker-dealer
11 registered or exempt from registration under this act in a
12 security of a foreign issuer that is a margin security defined in
13 regulations or rules adopted by the board of governors of the
14 federal reserve system.

15 (d) A nonissuer transaction by or through a broker-dealer
16 registered or exempt from registration under this act in an
17 outstanding security if the guarantor of the security files
18 reports with the securities and exchange commission under the
19 reporting requirements of section 13 or 15(d) of the securities
20 exchange act of 1934, 15 USC 78m or 78o.

21 (e) A nonissuer transaction by or through a broker-dealer
22 registered or exempt from registration under this act in a
23 security that meets 1 or more of the following:

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

27 (ii) Has a fixed maturity or a fixed interest or dividend, if

1 both of the following are met:

2 (A) A default has not occurred during the current fiscal year
3 or within the 3 previous fiscal years or during the existence of
4 the issuer and any predecessor if less than 3 fiscal years, in
5 the payment of principal, interest, or dividends on the
6 security.

7 (B) The issuer is engaged in business, is not in the
8 organizational stage or in bankruptcy or receivership, and is not
9 and has not been within the previous 12 months a blank check,
10 blind pool, or shell company that has no specific business plan
11 or purpose or has indicated that its primary business plan is to
12 engage in a merger or combination of the business with, or an
13 acquisition of, an unidentified person.

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

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

19 (h) A nonissuer transaction by a federal covered investment
20 adviser with investments under management in excess of
21 \$100,000,000.00 acting in the exercise of discretionary authority
22 in a signed record for the account of others.

23 (i) A transaction in a security, whether or not the security
24 or transaction is otherwise exempt, in exchange for 1 or more
25 bona fide outstanding securities, claims, or property interests,
26 or partly in exchange and partly for cash, if the terms and
27 conditions of the issuance and exchange or the delivery and

1 exchange and the fairness of the terms and conditions have been
2 approved by the administrator at a hearing.

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

6 (k) A transaction in a note, bond, debenture, or other
7 evidence of indebtedness secured by a mortgage or other security
8 agreement if all of the following are met:

9 (i) The note, bond, debenture, or other evidence of
10 indebtedness is offered and sold with the mortgage or other
11 security agreement as a unit.

12 (ii) A general solicitation or general advertisement of the
13 transaction is not made.

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

17 (l) A transaction by an executor, administrator of an estate,
18 sheriff, marshal, receiver, trustee in bankruptcy, guardian, or
19 conservator.

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

21 (i) An institutional investor.

22 (ii) A federal covered investment adviser.

23 (iii) Any other person exempted by rule or order under this
24 act.

25 (n) A sale or an offer to sell securities by or on behalf of
26 an issuer, if the transaction is part of a single issue in which
27 all of the following are met:

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

4 (ii) There is no general solicitation or general advertising
5 used in connection with the offer to sell or sale of the
6 securities.

7 (iii) A commission or other remuneration is not paid or
8 given, directly or indirectly, to a person other than a
9 broker-dealer registered under this act or an agent registered
10 under this act for soliciting a prospective purchaser in this
11 state.

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

15 (o) A transaction under an offer to existing security holders
16 of the issuer, including persons that at the date of the
17 transaction are holders of convertible securities, options, or
18 warrants, if a commission or other remuneration, other than a
19 standby commission, is not paid or given, directly or indirectly,
20 for soliciting a security holder in this state.

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

24 (i) A registration or offering statement or similar record as
25 required under the securities act of 1933 has been filed, but is
26 not effective, or the offer is made in compliance with rule 165
27 adopted under the securities act of 1933, 17 CFR 230.165.

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

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

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

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

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

18 (r) A transaction involving the distribution of the
19 securities of an issuer to the security holders of another person
20 in connection with a merger, consolidation, exchange of
21 securities, sale of assets, or other reorganization to which the
22 issuer, or its parent or subsidiary, and the other person, or its
23 parent or subsidiary, are parties.

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

25 (t) An offer or sale of a security to a person not resident
26 in this state and not present in this state if the offer or sale
27 does not constitute a violation of the laws of the state or

1 foreign jurisdiction in which the offeree or purchaser is present
2 and is not part of an unlawful plan or scheme to evade this act.

3 (u) An offer or sale of a security pursuant to an employee's
4 stock purchase, savings, option, profit-sharing, pension, or
5 similar employees' benefit plan, including any securities, plan
6 interests, and guarantees issued under a compensatory benefit
7 plan or compensation contract, contained in a record, established
8 by the issuer, its parents, its majority-owned subsidiaries, or
9 the majority-owned subsidiaries of the issuer's parent for the
10 participation of their employees including any of the following:

11 (i) Offers or sales of those securities to directors; general
12 partners; trustees, if the issuer is a business trust; officers;
13 or consultants and advisors.

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

16 (iii) Former employees, directors, general partners,
17 trustees, officers, consultants, and advisors if those
18 individuals were employed by or providing services to the issuer
19 when the securities were offered.

20 (iv) Insurance agents who are exclusive insurance agents of
21 the issuer, its subsidiaries or parents, or who derive more than
22 50% of their annual income from those organizations.

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

24 (i) A stock dividend or equivalent equity distribution,
25 whether the corporation or other business organization
26 distributing the dividend or equivalent equity distribution is
27 the issuer or not, if nothing of value is given by stockholders

1 or other equity holders for the dividend or equivalent equity
2 distribution other than the surrender of a right to a cash or
3 property dividend if each stockholder or other equity holder may
4 elect to take the dividend or equivalent equity distribution in
5 cash, property, or stock.

6 (ii) An act incident to a judicially approved reorganization
7 in which a security is issued in exchange for 1 or more
8 outstanding securities, claims, or property interests, or partly
9 in exchange and partly for cash.

10 (iii) The solicitation of tenders of securities by an offeror
11 in a tender offer in compliance with rule 162 adopted under the
12 securities act of 1933, 17 CFR 230.162.

13 (w) Subject to subsection (2), a nonissuer transaction in an
14 outstanding security by or through a broker-dealer registered or
15 exempt from registration under this act, if both of the following
16 are met:

17 (i) The issuer is a reporting issuer in a foreign
18 jurisdiction designated in subsection (2)(a), or by rule or order
19 of the administrator, and has been subject to continuous
20 reporting requirements in the foreign jurisdiction for not less
21 than 180 days before the transaction.

22 (ii) The security is listed on the foreign jurisdiction's
23 securities exchange that has been designated in subsection
24 (2)(a), or by rule or order under this act, or is a security of
25 the same issuer that is of senior or substantially equal rank to
26 the listed security or is a warrant or right to purchase or
27 subscribe to any of the foregoing.

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

3 (a) Canada, together with its provinces and territories, is a
4 designated foreign jurisdiction and the Toronto stock exchange,
5 inc., is a designated securities exchange.

6 (b) After an administrative hearing in compliance with
7 applicable state law, the administrator, by rule or order under
8 this act, may revoke the designation of a securities exchange
9 under subsection (1)(w) or this subsection if the administrator
10 finds that revocation is necessary or appropriate in the public
11 interest and for the protection of investors.

12 Sec. 203. A rule or order under this act may exempt a
13 security, transaction, or offer, or a rule or order under this
14 act may exempt a class of securities, transactions, or offers,
15 from any or all of the requirements of sections 301 to 306 and
16 504, and a rule or order under this act may waive any or all of
17 the conditions for an exemption or offers under sections 201 and
18 202.

19 Sec. 204. (1) Except with respect to a federal covered
20 security or a transaction involving a federal covered security,
21 an order of the administrator under this act may deny or suspend
22 application of, condition, limit, or revoke an exemption created
23 under section 201(c)(iii), (g), or (h) or 202 or an exemption or
24 waiver created under section 203 with respect to a specific
25 security, transaction, or offer. An order under this section may
26 only be issued pursuant to the procedures in section 306(4) or
27 604.

1 (2) A person does not violate section 301, 303 to 306, 504,
2 or 510 by an offer to sell, an offer to purchase, a sale, or a
3 purchase effected after the entry of an order issued under this
4 section if the person did not know, and in the exercise of
5 reasonable care could not have known, of the order.

6 ARTICLE 3

7 REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL COVERED
8 SECURITIES

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

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

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

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

15 Sec. 302. (1) A rule or order under this act may require
16 the filing of 1 or more of the following records with respect to
17 a security issued by an investment company that is a federal
18 covered security as defined in section 18(b)(2) of the securities
19 act of 1933, 15 USC 77r, that is not otherwise exempt under
20 sections 201 to 203:

21 (a) Before the initial offer of a federal covered security in
22 this state, all records that are part of a federal registration
23 statement filed with the securities and exchange commission under
24 the securities act of 1933, a consent to service of process
25 signed by the issuer, and a fee of \$500.00.

26 (b) After the initial offer of the federal covered security
27 in this state, all records that are part of an amendment to a

1 federal registration statement filed with the securities and
2 exchange commission under the securities act of 1933.

3 (2) Any security issued by a unit investment trust that is
4 registered or that has filed a registration statement under the
5 investment company act of 1940 as an investment company may be
6 offered for sale and sold into, from, or within this state for an
7 indefinite period commencing upon the later of the trust's
8 effectiveness with the securities and exchange commission or the
9 administrator's receipt of a notice as prescribed by the
10 administrator and a 1-time notice filing fee of \$500.00.

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

13 (a) A notice filing is effective for a period of 1 year,
14 commencing upon the later of the effectiveness of the offering
15 with the securities and exchange commission or the
16 administrator's receipt of the notice filing.

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

22 (c) A notice filing may be terminated by filing with the
23 administrator a notice of termination as prescribed by the
24 administrator. The termination is effective upon the
25 administrator's receipt of the notice of termination.

26 (4) With respect to any security that is a federal covered
27 security under section 18(b)(4)(D) of the securities act of 1933,

1 15 USC 77r, the issuer shall file all of the following:

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

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

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

8 (5) The administrator, by rule or order, may require the
9 filing of any document filed with the securities and exchange
10 commission under the securities act of 1933 and a nonrefundable
11 filing fee of \$100.00 with respect to any federal covered
12 security.

13 (6) The administrator may issue a stop order suspending the
14 offer and sale of a federal covered security, except a federal
15 covered security under section 18(b)(1) of the securities act of
16 1933, 15 USC 77r, if it finds that the order is in the public
17 interest and there is a failure to comply with this section.

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

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

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

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

27 (ii) If the issuer projects nonexempt sales of the security

1 in this state during the 1-year renewal period of more than
2 \$250,000.00 but not more than \$700,000.00, \$400.00.

3 (iii) If the issuer projects nonexempt sales of the security
4 in this state during the 1-year renewal period of more than
5 \$700,000.00 but not more than \$1,000,000.00, \$800.00.

6 (iv) If the issuer projects nonexempt sales of the security
7 in this state during the 1-year renewal period of more than
8 \$1,000,000.00, \$1,400.00.

9 (b) For purposes of subdivision (a), an issuer's projection
10 of nonexempt sales of a security must be reasonable and based on
11 any facts known to the issuer at the time of renewal that may
12 affect sales of the security, including, but not limited to,
13 nonexempt sales of the security in this state during the current
14 1-year notice filing period.

15 (c) If an issuer's nonexempt sales of a security in this
16 state during a 1-year notice filing period exceed the projections
17 for that period that the issuer had submitted to the
18 administrator for determination of the issuer's renewal fee for
19 that 1-year notice filing period, the issuer is not required to
20 amend its projections or pay an additional fee for that notice
21 filing period. However, the fee for renewal of the notice filing
22 shall be the greater of the following:

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

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

27 (d) If an issuer's nonexempt sales of a security in this

1 state during a 1-year notice filing period are less than the
2 projections for that period that the issuer had submitted to the
3 administrator for determination of the issuer's renewal fee for
4 the 1-year notice filing period, the issuer is not entitled to a
5 refund of any part of the renewal fee for that period or
6 adjustment of the renewal fee for any renewal period.

7 (e) Upon written request of the administrator, an issuer
8 shall provide sales reports showing the issuer's nonexempt sales
9 of a security in this state for the current and 2 previous 1-year
10 notice filing periods, but the issuer is not otherwise required
11 to provide a sales report to the administrator in connection with
12 a renewal of a notice filing.

13 (f) If the administrator determines that for 2 consecutive
14 1-year notice filing periods an issuer's nonexempt sales of a
15 security in this state exceeded the issuer's sales projections
16 for that period, the administrator may assess the issuer a
17 penalty in the amount of the renewal fees the issuer would have
18 paid under subdivision (a) if its projections had been accurate.
19 This penalty is in addition to an increased fee for renewal under
20 subdivision (c), if any.

21 (9) If the administrator finds that there is a failure to
22 comply with a notice or fee requirement of this section, the
23 administrator may issue a stop order suspending the offer and
24 sale of a federal covered security in this state, except a
25 federal covered security under section 18(b)(1) of the securities
26 act of 1933, 15 USC 77r. If the deficiency is corrected, the
27 stop order is void as of the time of its issuance and no other

1 penalty may be imposed by the administrator.

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

6 (2) A registration statement and accompanying records under
7 this section must contain or be accompanied by all of the
8 following records in addition to the information specified in
9 section 305 and a consent to service of process complying with
10 section 611:

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

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

19 (c) Copies of any other information, or any other records,
20 filed by the issuer under the securities act of 1933 requested by
21 the administrator.

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

26 (3) A registration statement under this section becomes
27 effective simultaneously with or subsequent to the federal

1 registration statement when all the following conditions are
2 satisfied:

3 (a) A stop order under subsection (4) or section 306 or
4 issued by the securities and exchange commission is not in effect
5 and a proceeding is not pending against the issuer under section
6 306.

7 (b) The registration statement has been on file for at least
8 20 days or a shorter period provided by rule or order under this
9 act.

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

23 (5) If the federal registration statement becomes effective
24 before each of the conditions in this section is satisfied or is
25 waived by the administrator, the registration statement is
26 automatically effective under this act when all the conditions
27 are satisfied or waived. If the registrant notifies the

1 administrator of the date when the federal registration statement
2 is expected to become effective, the administrator shall promptly
3 notify the registrant by telegram, telephone, or electronic means
4 and promptly confirm this notice by a record, indicating whether
5 all the conditions are satisfied or waived and whether the
6 administrator intends the institution of a proceeding under
7 section 306. The notice by the administrator does not preclude
8 the institution of a proceeding under section 306.

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

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

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

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

1 the registration statement, the amount of the securities covered
2 by the registration statement to which the person has indicated
3 an intention to subscribe, and a description of any material
4 interest of the person in any material transaction with the
5 issuer or a significant subsidiary effected within the previous 3
6 years or proposed to be effected.

7 (c) With respect to persons covered by subdivision (b), the
8 aggregate sum of the remuneration paid to those persons during
9 the previous 12 months and estimated to be paid during the next
10 12 months, directly or indirectly, by the issuer, and all
11 predecessors, parents, subsidiaries, and affiliates of the
12 issuer.

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

17 (e) With respect to a promoter if the issuer was organized
18 within the previous 3 years, the information or records specified
19 in subdivision (b), any amount paid to the promoter within that
20 period or intended to be paid to the promoter, and the
21 consideration for the payment.

22 (f) With respect to a person on whose behalf any part of the
23 offering is to be made in a nonissuer distribution, the person's
24 name and address, the amount of securities of the issuer held by
25 the person as of the date of the filing of the registration
26 statement, a description of any material interest of the person
27 in any material transaction with the issuer or any significant

1 subsidiary effected within the previous 3 years or proposed to be
2 effected, and a statement of the reasons for making the
3 offering.

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

13 (h) The kind and amount of securities to be offered, the
14 proposed offering price or the method by which it is to be
15 computed, any variation at which a proportion of the offering is
16 to be made to a person or class of persons other than the
17 underwriters, with a specification of the person or class, the
18 basis upon which the offering is to be made if otherwise than for
19 cash, the estimated aggregate underwriting and selling discounts
20 or commissions and finders' fees, including separately cash,
21 securities, contracts, or anything else of value to accrue to the
22 underwriters or finders in connection with the offering, or, if
23 the selling discounts or commissions are variable, the basis of
24 determining them and their maximum and minimum amounts, the
25 estimated amounts of other selling expenses, including legal,
26 engineering, and accounting charges, the name and address of each
27 underwriter and each recipient of a finder's fee, a copy of any

1 underwriting or selling group agreement under which the
2 distribution is to be made, or the proposed form of any such
3 agreement whose terms have not yet been determined, and a
4 description of the plan of distribution of any securities that
5 are to be offered otherwise than through an underwriter.

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

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

26 (k) The dates of, parties to, and general effect concisely
27 stated of each managerial or other material contract made or to

1 be made otherwise than in the ordinary course of business to be
2 performed in whole or in part at or after the filing of the
3 registration statement or that was made within the previous 2
4 years, and a copy of the contract.

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

10 (m) A copy of any prospectus, pamphlet, circular, form
11 letter, advertisement, or other sales literature intended as of
12 the effective date to be used in connection with the offering and
13 any solicitation of interest used in compliance with section
14 202(q)(ii).

15 (n) A specimen or copy of the security being registered,
16 unless the security is uncertificated, a copy of the issuer's
17 articles of incorporation and bylaws, or their substantial
18 equivalents, in effect, and a copy of any indenture or other
19 instrument covering the security to be registered.

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

26 (p) A signed or conformed copy of a consent of any
27 accountant, engineer, appraiser, or other person whose profession

1 gives authority for a statement made by the person, if the person
2 is named as having prepared or certified a report or valuation,
3 other than an official record, that is public, which is used in
4 connection with the registration statement.

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

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

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

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

24 (b) The administrator has not issued an order under section
25 306 delaying effectiveness.

26 (c) The applicant or registrant has not requested that
27 effectiveness be delayed.

1 (4) The administrator may delay effectiveness once for not
2 more than 90 days if the administrator determines the
3 registration statement is not complete in all material respects
4 and promptly notifies the applicant or registrant of that
5 determination. The administrator may also delay effectiveness
6 for a further period of not more than 30 days if the
7 administrator determines that the delay is necessary or
8 appropriate.

9 (5) A rule or order under this act may require as a condition
10 of registration under this section that a prospectus containing a
11 specified part of the information or record specified in
12 subsection (2) be sent or given to each person to which an offer
13 is made, before or concurrently with the earliest of any of the
14 following:

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

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

23 (c) Payment pursuant to the sale.

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

25 Sec. 305. (1) A registration statement may be filed by the
26 issuer, a person on whose behalf the offering is to be made, or a
27 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
17 connection 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 or a
24 record shall not be required under subsection (9) or section 304,
25 unless it is known to the person filing the registration
26 statement or to the person on whose behalf the distribution is to
27 be made, or unless it can be furnished by those persons without

1 unreasonable effort or expense.

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

14 (7) A rule or order under this act may require as a condition
15 of registration that a security registered under this act be sold
16 only on a specified form of subscription or sale contract and
17 that a signed or conformed copy of each contract be filed under
18 this act or preserved for a period specified by the rule or
19 order, which may not be longer than 5 years.

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

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

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

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

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

1 effectiveness of, a registration statement if the administrator
2 finds that the order is in the public interest and that 1 or more
3 of the following apply:

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

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

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

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

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

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

12 (f) The applicant or registrant has not paid the proper
13 filing fee, but the administrator shall void the order if the
14 deficiency 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
17 purchasers or would so operate.

18 (ii) The offering has been or would be made with unreasonable
19 amounts of underwriters' and sellers' discounts, commissions, or
20 other compensation, promoters' profits or participations, or
21 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, rules, or orders
26 that provide notice of conduct that violates subsection (1)(g).

27 (3) The administrator shall not institute a stop order

1 proceeding against an effective registration statement on the
2 basis of conduct or a transaction known to the administrator when
3 the registration statement became effective unless the proceeding
4 is instituted within 30 days after the registration statement
5 became effective.

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

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

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

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

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

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

9 Sec. 307. The administrator may waive or modify, in whole
10 or in part, any or all of the requirements of sections 302, 303,
11 and 304(2) or the requirement of any information or record in a
12 registration statement or in a periodic report filed pursuant to
13 section 305(9).

14 ARTICLE 4

15 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER
16 REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

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

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

23 (a) A broker-dealer if the broker-dealer does not have a
24 place of business in this state and if the broker-dealer's only
25 transactions effected in this state are with any of the
26 following:

27 (i) The issuer of the securities involved in the

1 transactions.

2 (ii) A broker-dealer registered as a broker-dealer under
3 this act or not required to be registered as a broker-dealer
4 under this act.

5 (iii) An institutional investor.

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

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

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

21 (A) The broker-dealer is registered under the securities
22 exchange act of 1934 or not required to be registered under the
23 securities exchange act of 1934 and is registered under the
24 securities laws of the state in which the customer relationship
25 was established and where the customer had maintained a principal
26 place of residence.

27 (B) Within 45 days after the customer's first transaction in

1 this state, the person files an application for registration as a
2 broker-dealer in this state and a further transaction is not
3 effected more than 75 days after the date on which the
4 application is filed, or, if earlier, the date on which the
5 administrator notifies the person that the administrator has
6 denied the application for registration or has stayed the
7 pendency of the application for good cause.

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

16 (viii) Any other person exempted by rule or order under this
17 act.

18 (b) A person that deals solely in United States government
19 securities and is supervised as a dealer in government securities
20 by the board of governors of the federal reserve system, the
21 comptroller of the currency, the federal deposit insurance
22 corporation, or the office of thrift supervision.

23 (c) A person licensed or registered as a mortgage broker,
24 mortgage lender, or mortgage servicer under the mortgage brokers,
25 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651
26 to 445.1684, in the offer or sale of mortgage loans as defined in
27 section 1a of the mortgage brokers, lenders, and servicers

1 licensing act, 1987 PA 173, MCL 445.1651a.

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

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

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

26 (i) An individual from Canada or other foreign jurisdiction
27 who is temporarily present in this state and with whom the

1 broker-dealer had a bona fide customer relationship before the
2 individual entered the United States.

3 (ii) An individual from Canada or other foreign jurisdiction
4 who is present in this state and whose transactions are in a
5 self-directed tax advantaged retirement plan of which the
6 individual is the holder or contributor in that foreign
7 jurisdiction.

8 (iii) An individual who is present in this state, with whom
9 the broker-dealer customer relationship arose while the
10 individual was temporarily or permanently resident in Canada or
11 the other foreign jurisdiction.

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

17 Sec. 402. (1) An individual shall not transact business in
18 this state as an agent unless the individual is registered under
19 this act as an agent or is exempt from registration as an agent
20 under subsection (2).

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

23 (a) An individual who represents a broker-dealer in effecting
24 transactions in this state limited to those described in section
25 15(h)(2) of the securities exchange act of 1934, 15 USC 78o.

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

1 (c) An individual who represents an issuer with respect to an
2 offer or sale of the issuer's own securities or those of the
3 issuer's parent or any of the issuer's subsidiaries, and who is
4 not compensated in connection with the individual's participation
5 by the payment of commissions or other remuneration based,
6 directly or indirectly, on transactions in those securities.

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

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

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

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

27 (h) An individual who represents an issuer and who restricts

1 participation to performing clerical or ministerial acts.

2 (i) An employee of a person licensed or registered under the
3 mortgage brokers, lenders, and servicers licensing act, 1987 PA
4 173, MCL 445.1651 to 445.1684, in the offer or sale of mortgage
5 loans as defined in section 1a of the mortgage brokers, lenders,
6 and servicers licensing act, 1987 PA 173, MCL 445.1651a, when
7 acting as an employee of the licensed or registered person.

8 (j) Any other individual exempted by rule or order under this
9 act.

10 (3) The registration of an agent is effective only while the
11 agent is employed by or associated with a broker-dealer
12 registered under this act or an issuer that is offering, selling,
13 or purchasing its securities in this state.

14 (4) A broker-dealer, or an issuer engaged in offering,
15 selling, or purchasing securities in this state, shall not employ
16 or associate with an agent who transacts business in this state
17 on behalf of broker-dealers or issuers unless the agent is
18 registered under subsection (1) or exempt from registration under
19 subsection (2).

20 (5) An individual shall not act as an agent for more than 1
21 broker-dealer or more than 1 issuer at a time, unless the
22 broker-dealers or the issuers for which the agent acts are
23 affiliated by direct or indirect common control or are authorized
24 by rule or order under this act.

25 Sec. 403. (1) A person shall not transact business in this
26 state as an investment adviser unless the person is registered
27 under this act as an investment adviser or is exempt from

1 registration as an investment adviser under subsection (2).

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

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

8 (i) Federal covered investment advisers, investment advisers
9 registered under this act, or broker-dealers registered under
10 this act.

11 (ii) Institutional investors.

12 (iii) Bona fide preexisting clients whose principal places of
13 residence are not in this state, if the investment adviser is
14 registered under the securities act of the state in which the
15 clients maintain principal places of residence.

16 (iv) Any other client exempted by rule or order under this
17 act.

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

22 (c) The person is an investment adviser who is not required
23 to be registered as an investment adviser under the investment
24 advisers act of 1940 if the investment adviser's only clients in
25 this state are other investment advisers, federal covered
26 advisers, broker-dealers, or institutional investors.

27 (d) Any other person exempted by rule or order under this

1 act.

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

15 (4) An investment adviser shall not employ or associate with
16 an individual required to be registered under this act as an
17 investment adviser representative who transacts business in this
18 state on behalf of the investment adviser unless the individual
19 is registered under section 404(1) or is exempt from registration
20 under section 404(2).

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

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

1 (a) An individual who is employed by or associated with an
2 investment adviser that is exempt from registration under section
3 403(2) or a federal covered investment adviser that is excluded
4 from the notice filing requirements of section 405.

5 (b) Any other individual exempted by rule or order under this
6 act.

7 (3) The registration of an investment adviser representative
8 is not effective while the investment adviser representative is
9 not employed by or associated with an investment adviser
10 registered under this act or a federal covered investment adviser
11 that has made or is required to make a notice filing under
12 section 405.

13 (4) An individual may transact business as an investment
14 adviser representative for more than 1 investment adviser or
15 federal covered investment adviser unless a rule or order under
16 this act prohibits or limits an individual from acting as an
17 investment adviser representative for more than 1 investment
18 adviser or federal covered investment adviser.

19 (5) An individual acting as an investment adviser
20 representative shall not, directly or indirectly, conduct
21 business in this state on behalf of an investment adviser or a
22 federal covered investment adviser if the registration of the
23 individual as an investment adviser representative is suspended
24 or revoked or the individual is barred from employment or
25 association with an investment adviser or a federal covered
26 investment adviser by an order under this act, the securities and
27 exchange commission, or a self-regulatory organization. If a

1 federal covered investment adviser requests and good cause is
2 shown, the administrator, by order, may waive, in whole or in
3 part, the application of the requirements of this subsection.

4 (6) An investment adviser registered under this act, a
5 federal covered investment adviser that has filed a notice under
6 section 405, or a broker-dealer registered under this act is not
7 required to employ or associate with an individual as an
8 investment adviser representative if the only compensation paid
9 to the individual for a referral of investment advisory clients
10 is paid to an investment adviser registered under this act, a
11 federal covered investment adviser who has filed a notice under
12 section 405, or a broker-dealer registered under this act with
13 which the individual is employed or associated as an investment
14 adviser representative.

15 Sec. 405. (1) Except with respect to a federal covered
16 investment adviser described in subsection (2), a federal covered
17 investment adviser shall not transact business in this state as a
18 federal covered investment adviser unless the federal covered
19 investment adviser complies with subsection (3).

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

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

25 (i) Federal covered investment advisers, investment advisers
26 registered under this act, and broker-dealers registered under
27 this act.

1 (ii) Institutional investors.

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

4 (iv) Other clients specified by rule or order under this
5 act.

6 (b) A federal covered investment adviser that does not have a
7 place of business in this state if the federal covered investment
8 adviser has had, during the preceding 12 months, not more than 5
9 clients that are residents of this state in addition to those
10 specified under subdivision (a).

11 (c) Any other person excluded by rule or order under this
12 act.

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

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

21 Sec. 406. (1) A person shall register as a broker-dealer,
22 agent, investment adviser, or investment adviser representative
23 by filing an application and a consent to service of process
24 complying with section 611 and paying the fee specified in
25 section 410 and any reasonable fees charged by the designee of
26 the administrator for processing the filing. Each application
27 must contain both of the following:

1 (a) The information or record required for the filing of a
2 uniform application.

3 (b) If requested by the administrator, any other financial or
4 other information or record that the administrator determines is
5 appropriate.

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

10 (3) If an order is not in effect and no proceeding is pending
11 under section 412, registration becomes effective at 12 noon on
12 the forty-fifth day after a completed application is filed unless
13 the registration is denied. A rule or order under this act may
14 set an earlier effective date or may defer the effective date
15 until 12 noon on the forty-fifth day after the filing of any
16 amendment completing the application.

17 (4) A registration is effective until 12 midnight on December
18 31 of the year for which the application for registration is
19 filed. Unless an order is in effect under section 412, a
20 registration may be automatically renewed each year by filing the
21 records required by rule or order under this act and paying the
22 fee specified in section 410 and the costs charged by the
23 designee of the administrator for processing the filings.

24 (5) A rule or order under this act may impose other
25 conditions not inconsistent with the national securities markets
26 improvement act of 1996, Public Law 104-290, 110 Stat. 3416, or
27 an order under this act may waive, in whole or in part, specific

1 requirements in connection with registration if the imposition or
2 waiver is appropriate in the public interest and for the
3 protection of investors.

4 Sec. 407. (1) A broker-dealer or investment adviser may
5 succeed to the current registration of another broker-dealer or
6 investment adviser or a notice filing of a federal covered
7 investment adviser, and a federal covered investment adviser may
8 succeed to the current registration of an investment adviser or
9 notice filing of another federal covered investment adviser, by
10 filing as a successor an application for registration under
11 section 401 or 403, or a notice under section 405, for the
12 unexpired portion of the current registration or notice filing.

13 (2) A broker-dealer or investment adviser that changes its
14 form of organization or state of incorporation or organization
15 may continue its registration by filing an amendment to its
16 registration if the change does not involve a material change in
17 its financial condition or management. The amendment is
18 effective when filed or on a date designated by the registrant in
19 the filing. The new organization is a successor to the original
20 registrant for the purposes of this act. If there is a material
21 change in financial condition or management, the broker-dealer or
22 investment adviser shall file a new application for
23 registration. Any predecessor registered under this act shall
24 stop conducting its securities business other than winding down
25 transactions and shall file for withdrawal of broker-dealer or
26 investment adviser registration within 45 days after filing its
27 amendment to effect succession.

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

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

8 Sec. 408. (1) If an agent registered under this act
9 terminates employment by or association with a broker-dealer or
10 issuer, or if an investment adviser representative registered
11 under this act terminates employment by or association with an
12 investment adviser or federal covered investment adviser, or if
13 either registrant terminates activities that require registration
14 as an agent or investment adviser representative, the
15 broker-dealer, investment adviser, or federal covered investment
16 adviser shall promptly file a notice of termination. If the
17 registrant learns that the broker-dealer, issuer, investment
18 adviser, or federal covered investment adviser has not filed the
19 notice, the registrant may file the notice.

20 (2) If an agent registered under this act terminates
21 employment by or association with a broker-dealer registered
22 under this act and begins employment by or association with
23 another broker-dealer registered under this act; or if an
24 investment adviser representative registered under this act
25 terminates employment by or association with an investment
26 adviser registered under this act or a federal covered investment
27 adviser that has filed a notice under section 405 and begins

1 employment by or association with another investment adviser
2 registered under this act or a federal covered investment adviser
3 that has filed a notice under section 405, then upon the filing
4 by or on behalf of the registrant, within 30 days after the
5 termination, of an application for registration that complies
6 with the requirement of section 406(1) and payment of the filing
7 fee required under section 410, 1 of the following applies to the
8 registration of the agent or investment adviser representative:

9 (a) If the agent's central registration depository record or
10 successor record or the investment adviser representative's
11 investment adviser registration depository record or successor
12 record does not contain a new or amended disciplinary disclosure
13 within the previous 12 months, the registration is immediately
14 effective as of the date of the completed filing.

15 (b) If the agent's central registration depository record or
16 the investment adviser representative's investment adviser
17 registration depository record contains a new or amended
18 disciplinary disclosure within the preceding 12 months, the
19 registration is temporarily effective as of the date of the
20 completed filing.

21 (3) If there are or were grounds for discipline under section
22 412, the administrator may withdraw a temporary registration
23 within 30 days after the application is filed. If the
24 administrator does not withdraw the temporary registration within
25 the 30-day period, registration becomes automatically effective
26 on the thirty-first day after filing.

27 (4) The administrator may prevent the effectiveness of a

1 transfer of an agent or investment adviser representative under
2 subsection (2)(a) or (b) based on the public interest and the
3 protection of investors.

4 (5) If the administrator determines that a registrant or
5 applicant for registration is no longer in existence, has ceased
6 to act as a broker-dealer, agent, investment adviser, or
7 investment adviser representative, is the subject of an
8 adjudication of incapacity, is subject to the control of a
9 committee, conservator, or guardian, or cannot reasonably be
10 located, a rule or order under this act may require the
11 registration be canceled or terminated or the application
12 denied. The administrator may reinstate a canceled or terminated
13 registration, with or without hearing, and may make the
14 registration retroactive.

15 Sec. 409. Withdrawal of registration by a broker-dealer,
16 agent, investment adviser, or investment adviser representative
17 is effective 60 days after an application to withdraw is filed or
18 within a shorter period as provided by rule or order under this
19 act, unless a revocation or suspension proceeding is pending when
20 the application is filed. If a proceeding is pending, withdrawal
21 is effective when and on conditions required by rule or order
22 under this act. The administrator may institute a revocation or
23 suspension proceeding under section 412 within 1 year after the
24 withdrawal became effective automatically and issue a revocation
25 or suspension order as of the last date on which registration was
26 effective if a proceeding is not pending.

27 Sec. 410. (1) Before October 1, 2007, a person shall pay a

1 fee of \$300.00 when initially filing an application for
2 registration as a broker-dealer and a fee of \$300.00 when filing
3 a renewal of registration as a broker-dealer. After
4 September 30, 2007, a person shall pay a fee of \$250.00 when
5 initially filing an application for registration as a
6 broker-dealer and a fee of \$250.00 when filing a renewal of
7 registration as a broker-dealer. If the filing results in a
8 denial or withdrawal, the administrator shall retain all of the
9 filing fee.

10 (2) Before October 1, 2007, an individual shall pay a fee of
11 \$65.00 when filing an application for registration as an agent, a
12 fee of \$65.00 when filing a renewal of registration as an agent,
13 and a fee of \$65.00 when filing for a change of registration as
14 an agent. After September 30, 2007, an individual shall pay a
15 fee of \$30.00 when filing an application for registration as an
16 agent, a fee of \$30.00 when filing a renewal of registration as
17 an agent, and a fee of \$30.00 when filing for a change of
18 registration as an agent. If the filing results in a denial or
19 withdrawal, the administrator shall retain all of the filing
20 fee.

21 (3) Before October 1, 2007, a person shall pay a fee of
22 \$200.00 when filing an application for registration as an
23 investment adviser and a fee of \$200.00 when filing a renewal of
24 registration as an investment adviser. After September 30, 2007,
25 a person shall pay a fee of \$150.00 when filing an application
26 for registration as an investment adviser and a fee of \$150.00
27 when filing a renewal of registration as an investment adviser.

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

3 (4) Before October 1, 2007, an individual shall pay a fee of
4 \$65.00 when filing an application for registration as an
5 investment adviser representative, a fee of \$65.00 when filing a
6 renewal of registration as an investment adviser representative,
7 and a fee of \$65.00 when filing a change of registration as an
8 investment adviser representative. After September 30, 2007, an
9 individual shall pay a fee of \$30.00 when filing an application
10 for registration as an investment adviser representative, a fee
11 of \$30.00 when filing a renewal of registration as an investment
12 adviser representative, and a fee of \$30.00 when filing a change
13 of registration as an investment adviser representative. If the
14 filing results in a denial or withdrawal, the administrator shall
15 retain all of the filing fee.

16 (5) Before October 1, 2007, a federal covered investment
17 adviser required to file a notice under section 405 shall pay an
18 initial and annual notice fee of \$200.00. After September 30,
19 2007, a federal covered investment adviser required to file a
20 notice under section 405 shall pay an initial and annual notice
21 fee of \$150.00.

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

25 (7) An investment adviser representative who is registered as
26 an agent under section 402 and who represents a person that is
27 both registered as a broker-dealer under section 401 and

1 registered as an investment adviser under section 403 or required
2 as a federal covered investment adviser to make a notice filing
3 under section 405 is not required to pay an initial or annual
4 registration fee for registration as an investment adviser
5 representative.

6 Sec. 411. (1) Subject to section 15(h) of the securities
7 act of 1934, 15 USC 78o, or section 222 of the investment
8 advisers act of 1940, 15 USC 80b-18a, a rule or order under this
9 act may establish minimum financial requirements for
10 broker-dealers registered or required to be registered under this
11 act and investment advisers registered or required to be
12 registered under this act.

13 (2) Subject to section 15(h) of the securities exchange act
14 of 1934, 15 USC 78o, or section 222(b) of the investment advisers
15 act of 1940, 15 USC 80b-18a, a broker-dealer registered or
16 required to be registered under this act and an investment
17 adviser registered or required to be registered under this act
18 shall file financial reports required by rule or order under this
19 act. If the information contained in a record filed under this
20 subsection is or becomes inaccurate or incomplete in any material
21 respect, the registrant shall promptly file a correcting
22 amendment.

23 (3) Subject to section 15(h) of the securities exchange act
24 of 1934, 15 USC 78o, or section 222 of the investment advisers
25 act of 1940, 15 USC 80b-18a, a broker-dealer registered or
26 required to be registered under this act and an investment
27 adviser registered or required to be registered under this act

1 shall make and maintain the accounts, correspondence, memoranda,
2 papers, books, and other records required by rule or order of the
3 administrator. The records required to be maintained under this
4 subsection shall be maintained as follows:

5 (a) Broker-dealer records may be maintained in any form of
6 data storage acceptable under section 17(a) of the securities
7 exchange act of 1934, 15 USC 78q, if they are readily accessible
8 to the administrator.

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

11 (4) The records of a broker-dealer registered or required to
12 be registered under this act and of an investment adviser
13 registered or required to be registered under this act are
14 subject to reasonable periodic, special, or other audits or
15 inspections by a representative of the administrator, in or
16 outside of this state, as the administrator considers necessary
17 or appropriate in the public interest and for the protection of
18 investors. An audit or inspection may be made at any time and
19 without prior notice. The administrator may copy and remove for
20 audit or inspection copies of all records the administrator
21 reasonably considers necessary or appropriate to conduct the
22 audit or inspection. The administrator may assess a reasonable
23 charge for conducting an audit or inspection under this
24 subsection.

25 (5) Subject to section 15(h) of the securities exchange act
26 of 1934, 15 USC 78o, or section 222 of the investment advisers
27 act of 1940, 15 USC 80b-18a, a rule or order under this act may

1 require a broker-dealer and investment adviser that has custody
2 of or discretionary authority over funds or securities of a
3 client to obtain insurance or post a bond or other satisfactory
4 form of security in an amount established by the administrator by
5 rule or order. The administrator may determine the requirements
6 of the insurance, bond, or other satisfactory form of security.
7 Insurance or a bond or other satisfactory form of security shall
8 not be required of a broker-dealer registered under this act
9 whose net capital exceeds, or of an investment adviser registered
10 under this act whose minimum financial requirements exceed, the
11 amounts required by rule or order under this act. The insurance,
12 bond, or other satisfactory form of security must permit an
13 action by a person to enforce any liability on the insurance,
14 bond, or other satisfactory form of security if commenced within
15 the time limitations in section 509(10)(b).

16 (6) Subject to section 15(h) of the securities exchange act
17 of 1934, 15 USC 78o, or section 222 of the investment advisers
18 act of 1940, 15 USC 80b-18a, an agent shall not have custody of
19 funds or securities of a customer except under the supervision of
20 a broker-dealer and an investment adviser representative shall
21 not have custody of funds or securities of a client except under
22 the supervision of an investment adviser or federal covered
23 investment adviser. A rule or order under this act may prohibit,
24 limit, or impose conditions on the custody of funds or securities
25 of a customer by a broker-dealer and on the custody of securities
26 or funds of a client by an investment adviser.

27 (7) With respect to an investment adviser registered or

1 required to be registered under this act, a rule or order under
2 this act may require that information or other record be
3 furnished or disseminated to clients or prospective clients in
4 this state as necessary or appropriate in the public interest and
5 for the protection of investors and advisory clients.

6 (8) A rule or order under this act may require an individual
7 registered under section 402 or 404 to participate in a
8 continuing education program approved by the securities and
9 exchange commission and administered by a self-regulatory
10 organization or, in the absence of such a program, a rule or
11 order under this act may require continuing education for an
12 individual registered under section 404.

13 Sec. 412. (1) If the administrator finds that the order is
14 in the public interest and subsection (4) authorizes the action,
15 an order under this act may deny an application or condition or
16 limit registration of an applicant to be a broker-dealer, agent,
17 investment adviser, or investment adviser representative and, if
18 the applicant is a broker-dealer or investment adviser, of a
19 partner, officer, or director, or a person having a similar
20 status or performing similar functions, or any person directly or
21 indirectly in control of the broker-dealer or investment
22 adviser.

23 (2) If the administrator finds that the order is in the
24 public interest and subsection (4) authorizes the action, an
25 order under this act may revoke, suspend, condition, or limit the
26 registration of a registrant and if the registrant is a
27 broker-dealer or investment adviser, of a partner, officer, or

1 director, or a person having a similar status or performing
2 similar functions, or a person directly or indirectly in control
3 of the broker-dealer or investment adviser. However, the
4 administrator may not do any of the following:

5 (a) Institute a revocation or suspension proceeding under
6 this subsection based on an order issued under a law of another
7 state that is reported to the administrator or a designee of the
8 administrator more than 1 year after the date of the order on
9 which it is based.

10 (b) Under subsection (4)(e)(i) or (ii), issue an order on the
11 basis of an order issued under the securities act of another
12 state unless the other order was based on conduct for which
13 subsection (4) would authorize the action had the conduct
14 occurred in this state.

15 (3) If the administrator finds that the order is in the
16 public interest and subsection (4)(a) to (f), (i) to (j), or (l)
17 to (n) authorizes the action, an order under this act may
18 censure, impose a bar, or impose a civil penalty in an amount not
19 to exceed a maximum of \$10,000.00 for a single violation or
20 \$500,000.00 for more than 1 violation on a registrant and, if the
21 registrant is a broker-dealer or investment adviser, on a
22 partner, officer, or director, a person having a similar status
23 or performing similar functions, or a person directly or
24 indirectly in control of the broker-dealer or investment
25 adviser.

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

1 (a) The person filed an application for registration in this
2 state under this act or the predecessor act within the previous
3 10 years, which, as of the effective date of registration or as
4 of any date after filing in the case of an order denying
5 effectiveness, was incomplete in any material respect or
6 contained a statement that, in light of the circumstances under
7 which it was made, was false or misleading with respect to a
8 material fact.

9 (b) The person willfully violated or willfully failed to
10 comply with this act or the predecessor act or a rule adopted or
11 order issued under this act or the predecessor act within the
12 previous 10 years.

13 (c) The person was convicted of any felony or within the
14 previous 10 years was convicted of a misdemeanor involving a
15 security, a commodity futures or option contract, or an aspect of
16 a business involving securities, commodities, investments,
17 franchises, insurance, banking, or finance.

18 (d) The person is enjoined or restrained by a court of
19 competent jurisdiction in an action instituted by the
20 administrator under this act or the predecessor act, a state, the
21 securities and exchange commission, or the United States from
22 engaging in or continuing an act, practice, or course of business
23 involving an aspect of a business involving securities,
24 commodities, investments, franchises, insurance, banking, or
25 finance.

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

1 (i) The securities or other financial services regulator of a
2 state, or the securities and exchange commission or other federal
3 agency denying, revoking, barring, or suspending registration as
4 a broker-dealer, agent, investment adviser, federal covered
5 investment adviser, or investment adviser representative.

6 (ii) The securities regulator of a state or the securities
7 and exchange commission against a broker-dealer, agent,
8 investment adviser, investment adviser representative, or federal
9 covered investment adviser.

10 (iii) The securities and exchange commission or a
11 self-regulatory organization suspending or expelling the
12 registrant from membership in a self-regulatory organization.

13 (iv) A court adjudicating a United States postal service
14 fraud.

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

17 (vi) A depository institution or financial services regulator
18 suspending or barring the person from the depository institution
19 or other financial services business.

20 (f) The person is the subject of an adjudication or
21 determination, after notice and opportunity for hearing, by the
22 securities and exchange commission, the commodity futures trading
23 commission, the federal trade commission, a federal depository
24 institution regulator, or a depository institution, insurance, or
25 other financial services regulator of a state that the person
26 willfully violated the securities act of 1933, the securities
27 exchange act of 1934, the investment advisers act of 1940, the

1 investment company act of 1940, or the commodity exchange act,
2 the securities or commodities law of a state, or a federal or
3 state law under which a business involving investments,
4 franchises, insurance, banking, or finance is regulated.

5 (g) The person is insolvent, either because the person's
6 liabilities exceed the person's assets or because the person
7 cannot meet the person's obligations as they mature. The
8 administrator shall not enter an order against an applicant or
9 registrant under this subdivision without a finding of insolvency
10 as to the applicant or registrant.

11 (h) The person refuses to allow or otherwise impedes the
12 administrator from conducting an audit or inspection under
13 section 411(4) or refuses access to a registrant's office to
14 conduct an audit or inspection under section 411(4).

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

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

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

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

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

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

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

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

22 (n) The person is not qualified on the basis of factors such
23 as training, experience, and knowledge of the securities
24 business. If an application is made by an agent for a
25 broker-dealer that is a member of a self-regulatory organization
26 or by an individual for registration as an investment adviser
27 representative, a denial order shall not be based on this

1 subdivision if the individual has successfully completed all
2 examinations required by subsection (5). The administrator may
3 require an applicant for registration under section 402 or 404
4 who has not been registered in a state within the 2 years
5 preceding the filing of an application in this state to
6 successfully complete an examination.

7 (5) A rule or order under this act may require that an
8 examination, including an examination developed or approved by an
9 organization of securities regulators, be successfully completed
10 by a class of individuals or all individuals. An order under
11 this act may waive an examination as to an individual and a rule
12 under this act may waive an examination as to a class of
13 individuals if the administrator determines that the examination
14 is not necessary or appropriate in the public interest and for
15 the protection of investors.

16 (6) The administrator may suspend or deny an application
17 summarily, restrict, condition, limit, or suspend a registration,
18 or censure, bar, or impose a civil penalty on a registrant
19 pending final determination of an administrative proceeding. On
20 the issuance of the order, the administrator shall promptly
21 notify each person subject to the order that the order has been
22 issued, the reasons for the action, and that, within 15 days
23 after the receipt of a request in a record from the person, the
24 matter will be scheduled for a hearing. If a hearing is not
25 requested by a person subject to the order or is not ordered by
26 the administrator within 30 days after the date of service of the
27 order, the order is final. If a hearing is requested or ordered,

1 the administrator, after notice of and opportunity for hearing to
2 each person subject to the order, may modify or vacate the order
3 or extend the order until final determination.

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

6 (a) Appropriate notice has been given to the applicant or
7 registrant.

8 (b) Opportunity for hearing has been given to the applicant
9 or registrant.

10 (c) Findings of fact and conclusions of law have been made on
11 the record pursuant to the administrative procedures act of 1969,
12 1969 PA 306, MCL 24.201 to 24.328.

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

20 (9) The administrator shall not institute a proceeding under
21 subsection (1), (2), or (3) solely based on material facts
22 actually known by the administrator unless an investigation or
23 the proceeding is instituted within 1 year after the
24 administrator actually knew the material facts.

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

27 (a) Take possession of funds or securities in connection

1 with the transaction for which payment is made for services as a
2 finder.

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

12 (c) Participate in the offer, purchase, or sale of a
13 security in violation of section 301. However, if the
14 broker-dealer makes a reasonable effort to ascertain if a
15 registration has been effected or an exemption order granted in
16 this state or to ascertain the basis for an exemption claim and
17 does not have knowledge that the proposed transaction would
18 violate section 301, the broker-dealer's activities as a finder
19 do not violate section 301.

20 (d) Participate in the offer, purchase, or sale of a
21 security without obtaining information relative to the risks of
22 the transaction, the direct or indirect compensation to be
23 received by promoters, partners, officers, directors, or their
24 affiliates, the financial condition of the issuer, and the use of
25 proceeds to be received from investors, or fail to read any
26 offering materials obtained. This section does not require
27 independent investigation or alteration of offering materials

1 furnished to the broker-dealer.

2 (e) Fail to inform or otherwise ensure disclosure to all
3 persons involved in the transaction as a result of the
4 broker-dealer's finding activities of any material information
5 which the broker-dealer knows, or in the exercise of reasonable
6 care should know based on the information furnished to the
7 broker-dealer, is material in making an investment decision,
8 until conclusion of the transaction.

9 (f) Locate, introduce, or refer persons that the
10 broker-dealer knows, or after a reasonable inquiry should know,
11 are not suitable investors by reason of their financial
12 condition, age, experience, or need to diversify investments.

13 ARTICLE 5

14 FRAUD AND LIABILITIES

15 Sec. 501. It is unlawful for a person, in connection with
16 the offer, sale, or purchase of a security, to directly or
17 indirectly do any of the following:

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

19 (b) Make an untrue statement of a material fact or omit to
20 state a material fact necessary in order to make the statements
21 made, in the light of the circumstances under which they were
22 made, not misleading.

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

26 Sec. 502. (1) It is unlawful for a person that advises
27 others for compensation, either directly or indirectly or through

1 publications or writings, as to the value of securities or the
2 advisability of investing in, purchasing, or selling securities,
3 or that, for compensation and as part of a regular business,
4 issues or promulgates analyses or reports relating to securities,
5 to do any of the following:

6 (a) Employ a device, scheme, or artifice to defraud another
7 person.

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

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

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

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

24 (c) Participate in the offer, purchase, or sale of a security
25 in violation of section 301. However, if the investment adviser
26 makes a reasonable effort to ascertain if a registration has been
27 effected or an exemption order granted in this state or to

1 ascertain the basis for an exemption claim and does not have
2 knowledge that the proposed transaction would violate section
3 301, his or her activities as a finder do not violate section
4 301.

5 (d) Participate in the offer, purchase, or sale of a security
6 without obtaining information relative to the risks of the
7 transaction, the direct or indirect compensation to be received
8 by promoters, partners, officers, directors, or their affiliates,
9 the financial condition of the issuer, and the use of proceeds to
10 be received from investors, or fail to read any offering
11 materials obtained. This subdivision does not require
12 independent investigation or alteration of offering materials
13 furnished to the finder.

14 (e) Fail to inform or otherwise ensure disclosure to all
15 persons involved in the transaction as a result of his or her
16 finding activities of any material information which the finder
17 knows, or in the exercise of reasonable care should know based on
18 the information furnished to him or her, is material in making an
19 investment decision, until conclusion of the transaction. This
20 subdivision does not require the finder to independently generate
21 information.

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

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

27 (a) Define an act, practice, or course of business of an

1 investment adviser or an investment adviser representative, other
2 than a supervised person of a federal covered investment adviser,
3 as fraudulent, deceptive, or manipulative, and prescribe means
4 reasonably designed to prevent investment advisers and investment
5 adviser representatives, other than supervised persons of a
6 federal covered investment adviser, from engaging in acts,
7 practices, and courses of business defined as fraudulent,
8 deceptive, or manipulative.

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

11 Sec. 503. (1) In a civil action or administrative
12 proceeding under this act, a person claiming an exemption,
13 exception, preemption, or exclusion has the burden to prove the
14 applicability of the exemption, exception, preemption, or
15 exclusion.

16 (2) In a criminal proceeding under this act, a person
17 claiming an exemption, exception, preemption, or exclusion has
18 the burden of going forward with evidence of the claim.

19 Sec. 504. (1) Subject to subsection (2), a rule or order
20 under this act may require the filing of a prospectus, pamphlet,
21 circular, form letter, advertisement, sales literature, or other
22 advertising record relating to a security or investment advice
23 addressed or intended for distribution to prospective investors,
24 including clients or prospective clients of a person registered
25 or required to be registered as an investment adviser under this
26 act.

27 (2) This section does not apply to sales and advertising

1 literature specified in subsection (1) relating to a federal
2 covered security, a federal covered investment adviser, or a
3 security or transaction exempted by section 201, 202, or 203
4 except as required under section 201(g).

5 Sec. 505. A person shall not make or cause to be made, in a
6 record that is used in an action or proceeding or filed under
7 this act, a statement that, at the time and in the light of the
8 circumstances under which it is made, is false or misleading in a
9 material respect, or, in connection with the statement, omit to
10 state a material fact necessary to make the statement made, in
11 the light of the circumstances under which it was made, not false
12 or misleading.

13 Sec. 506. The filing of an application for registration, a
14 registration statement, a notice filing under this act, or the
15 registration of a person, the notice filing by a person, or the
16 registration of a security under this act does not constitute a
17 finding by the administrator that a record filed under this act
18 is true, complete, and not misleading. The filing or
19 registration or the availability of an exemption, exception,
20 preemption, or exclusion for a security or a transaction does not
21 mean that the administrator has passed upon the merits or
22 qualifications of, or recommended or given approval to, a person,
23 security, or transaction. A person shall not make or cause to be
24 made to a purchaser, customer, client, or prospective customer or
25 client a representation inconsistent with this section.

26 Sec. 507. A broker-dealer, agent, investment adviser,
27 federal covered investment adviser, or investment adviser

1 representative is not liable to another broker-dealer, agent,
2 investment adviser, federal covered investment adviser, or
3 investment adviser representative for defamation relating to a
4 statement that is contained in a record required by the
5 administrator, or designee of the administrator, the securities
6 and exchange commission, or a self-regulatory organization,
7 unless the person knew, or should have known at the time that the
8 statement was made, that it was false in a material respect or
9 the person acted in reckless disregard of the statement's truth
10 or falsity.

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

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

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

27 Sec. 509. (1) Enforcement of civil liability under this

1 section is subject to the securities litigation uniform standards
2 act of 1998.

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

13 (a) The purchaser may maintain an action to recover the
14 consideration paid for the security, less the amount of any
15 income received on the security, and interest at 6% per year from
16 the date of the purchase, costs, and reasonable attorney fees
17 determined by the court, upon the tender of the security, or for
18 actual damages as provided in subdivision (c).

19 (b) The tender referred to in subdivision (a) may be made any
20 time before entry of judgment. Tender requires only notice in a
21 record of ownership of the security and willingness to exchange
22 the security for the amount specified. A purchaser that no
23 longer owns the security may recover actual damages as provided
24 in subdivision (c).

25 (c) Actual damages in an action arising under this subsection
26 are the amount that would be recoverable upon a tender less the
27 value of the security when the purchaser disposed of it and

1 interest at 6% from the date of purchase, costs, and reasonable
2 attorney fees determined by the court.

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

13 (a) The seller may maintain an action to recover the
14 security, any income received on the security, costs, and
15 reasonable attorney fees determined by the court, on the tender
16 of the purchase price, or for actual damages as provided in
17 subdivision (c).

18 (b) The tender referred to in subdivision (a) may be made any
19 time before entry of judgment. Tender requires only notice in a
20 record of the present ability to pay the amount tendered and
21 willingness to take delivery of the security for the amount
22 specified. If the purchaser no longer owns the security, the
23 seller may recover actual damages as provided in subdivision
24 (c).

25 (c) Actual damages in an action arising under this subsection
26 are the difference between the price at which the security was
27 sold and the value the security would have had at the time of the

1 sale in the absence of the purchaser's conduct causing liability,
2 interest at 6% from the date of sale of the security, costs, and
3 reasonable attorney fees determined by the court.

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

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

17 (6) A person that receives, directly or indirectly, any
18 consideration for providing investment advice to another person
19 and that employs a device, scheme, or artifice to defraud the
20 other person or engages in an act, practice, or course of
21 business that operates or would operate as a fraud or deceit on
22 the other person is liable to the other person. The person
23 defrauded may maintain an action to recover the consideration
24 paid for the advice and the amount of any actual damages caused
25 by the fraudulent conduct that gives rise to liability under this
26 subsection, interest at 6% from the date of the fraudulent
27 conduct, costs, and reasonable attorney fees determined by the

1 court, less the amount of any income received as a result of the
2 fraudulent conduct. This subsection does not apply to a
3 broker-dealer or its agents if the investment advice provided is
4 solely incidental to transacting business as a broker-dealer and
5 no special compensation is received for the investment advice.

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

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

15 (b) An individual who is a managing partner, executive
16 officer, or director of a person liable under subsections (2) to
17 (6), including each individual having a similar status or
18 performing similar functions, unless the individual sustains the
19 burden of proving that the individual did not know and, in the
20 exercise of reasonable care could not have known, of the
21 existence of the conduct by reason of which the liability is
22 alleged to exist.

23 (c) An individual who is an employee of or associated with a
24 person liable under subsections (2) to (6) and who materially
25 aids the conduct giving rise to the liability, unless the
26 individual sustains the burden of proving that the individual did
27 not know and, in the exercise of reasonable care could not have

1 known, of the existence of the conduct by reason of which the
2 liability is alleged to exist.

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

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

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

15 (10) A person may not obtain relief if an action is not
16 commenced within 1 of the following time limits, as applicable:

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

20 (b) Under subsection (2), other than for violation of section
21 301, or under subsection (3) or (6), unless the action is
22 commenced within the earlier of 2 years after discovery of the
23 facts constituting the violation or 5 years after the violation
24 occurred.

25 (11) A person that has made or engaged in the performance of
26 a contract in violation of this act or a rule adopted or order
27 issued under this act, or that has acquired a purported right

1 under the contract with knowledge of the facts by reason of which
2 its making or performance was in violation of this act, may not
3 base an action on the contract.

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

8 (13) The rights and remedies provided by this act are in
9 addition to any other rights or remedies that may exist, but this
10 act does not create a cause of action not specified in this
11 section or section 411(5).

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

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

18 (i) States the respect in which liability under section 509
19 may have arisen and fairly advises the purchaser, seller, or
20 recipient of investment advice of that person's rights in
21 connection with the offer, including financial or other
22 information necessary to correct all material misstatements or
23 omissions in the information that was required by this act to be
24 furnished to that person at the time of the purchase, sale, or
25 investment advice.

26 (ii) If the basis for relief under this section may have been
27 a violation of section 509(2), offers to repurchase the security

1 for cash, payable on delivery of the security, equal to the
2 consideration paid, and interest at 6% per year from the date of
3 purchase, less the amount of any income received on the security,
4 or, if the purchaser no longer owns the security, offers to pay
5 the purchaser upon acceptance of the offer damages in an amount
6 that would be recoverable upon a tender, less the value of the
7 security when the purchaser disposed of it, and interest at 6%
8 from the date of purchase in cash equal to the damages computed
9 in the manner provided in this subsection.

10 (iii) If the basis for relief under this section may have
11 been a violation of section 509(3), offers to tender the
12 security, on payment by the seller of an amount equal to the
13 purchase price paid, less income received on the security by the
14 purchaser and interest at 6% from the date of the sale, or if the
15 purchaser no longer owns the security, offers to pay the seller
16 upon acceptance of the offer, in cash, damages in the amount of
17 the difference between the price at which the security was
18 purchased and the value the security would have had at the time
19 of the purchase in the absence of the purchaser's conduct that
20 may have caused liability and interest at 6% from the date of the
21 sale.

22 (iv) If the basis for relief under this section may have been
23 a violation of section 509(4), and if the customer is a
24 purchaser, offers to pay as specified in subdivision (a)(ii) or,
25 if the customer is a seller, offers to tender or to pay as
26 specified in subdivision (a)(iii).

27 (v) If the basis for relief under this section may have been

1 a violation of section 509(5), offers to reimburse in cash the
2 consideration paid for the advice and interest at 6% from the
3 date of payment.

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

9 (vii) States that the offer must be accepted by the
10 purchaser, seller, or recipient of investment advice within 30
11 days after the date of its receipt by the purchaser, seller, or
12 recipient of investment advice or within a shorter period of not
13 less than 3 days that the administrator, by order, specifies.

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

16 (c) The offer under subdivision (a) is delivered to the
17 purchaser, seller, or recipient of investment advice or sent in a
18 manner that ensures receipt by the purchaser, seller, or
19 recipient of investment advice.

20 (d) The purchaser, seller, or recipient of investment advice
21 that accepts the offer under subdivision (a) in a record within
22 the period specified under subdivision (a)(vii) is paid in
23 accordance with the terms of the offer.

24 ARTICLE 6

25 ADMINISTRATION AND JUDICIAL REVIEW

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

27 (2) The administrator or officer, employee, or designee of

1 the administrator shall not use for personal benefit or the
2 benefit of others records or other information obtained by or
3 filed with the administrator that are not public under section
4 607(2). This act does not authorize the administrator or an
5 officer, employee, or designee of the administrator to disclose
6 the record or information, except in accordance with section 602,
7 607(3), or 608.

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

11 (4) The administrator may develop and implement investor
12 education initiatives to inform the public about investing in
13 securities, with particular emphasis on the prevention and
14 detection of securities fraud. In developing and implementing
15 these initiatives, the administrator may collaborate with public
16 and nonprofit organizations with an interest in investor
17 education. The administrator may accept grants or donations from
18 a person that is not affiliated with the securities industry or
19 from a nonprofit organization, regardless of whether or not the
20 organization is affiliated with the securities industry, to
21 develop and implement investor education initiatives. This
22 subsection does not authorize the administrator to require
23 participation or monetary contributions of a registrant in an
24 investor education program.

25 (5) All fees and civil fines received under this act shall be
26 deposited in the state treasury to the credit of the
27 administrator, to be used pursuant to legislative appropriation

1 by the administrator in carrying out those duties required by
2 law. After the payment of the amounts appropriated by the
3 legislature for the necessary expenses incurred in the
4 administration of this act, the money remaining shall be credited
5 to the general fund of this state.

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
10 appropriate to determine whether any person has violated, is
11 violating, or is about to violate this act or a rule adopted or
12 order issued under this act, or to aid in the enforcement of this
13 act 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 a record 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 statements, 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 a
4 statement, produce records, or otherwise fails to obey a subpoena
5 as required by the administrator under this act, the
6 administrator 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
16 prohibiting the offer or sale of securities or the providing of
17 investment advice.

18 (f) Order a civil fine of not less than \$10,000.00 and not
19 more than \$500,000.00 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,
3 statement, record, or other evidence, directly or indirectly, may
4 tend 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
7 evidence 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
19 conducting an investigation to determine whether a person has
20 violated, is violating, or is about to violate a law or rule of
21 the other state or foreign jurisdiction relating to securities
22 matters which the requesting regulator administers or enforces.
23 The administrator may provide the assistance by using the
24 authority to investigate and the powers conferred by this section
25 as the administrator determines is necessary or appropriate. The
26 assistance may be provided without regard to whether the conduct
27 described in the request would also constitute a violation of

1 this act or other law of this state if occurring in this state.
2 In deciding whether to provide the assistance, the administrator
3 may consider whether the requesting regulator is permitted and
4 has 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
8 availability of resources and employees of the administrator to
9 carry out 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
17 administrator may maintain an action in the circuit court to
18 enjoin the act, practice, or course of business and to enforce
19 compliance with this act or a rule adopted or order issued under
20 this act.

21 (2) In an action under this section and upon a proper
22 showing, the court may do any of the following:

23 (a) Issue a permanent or temporary injunction, restraining
24 order, or a declaratory judgment.

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

27 (i) An asset freeze, accounting, writ of attachment, writ of

1 general or specific execution, and an appointment of a receiver
2 or conservator, which may be the administrator, for the defendant
3 or the defendant's assets.

4 (ii) An order to the administrator to take charge and control
5 of a defendant's property, including investment accounts and
6 accounts in a depository institution, rents, and profits, to
7 collect debts, and to acquire and dispose of property.

8 (iii) The imposition of a civil fine of not more than
9 \$10,000.00 for a single violation or \$500,000.00 for multiple
10 violations.

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

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

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

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

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

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

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

8 (b) Issue an order denying, suspending, revoking, or
9 conditioning the exemptions for a broker-dealer under section
10 401(2)(a)(iv) or (vi) or an investment adviser under section
11 403(2)(a)(iii).

12 (c) Issue an order under section 204.

13 (2) An order under subsection (1) is effective on the date of
14 issuance. Upon issuance of the order, the administrator shall
15 promptly serve each person subject to the order with a copy of
16 the order and a notice that the order has been entered. The
17 order must include a statement of any civil penalty or costs of
18 the investigation the administrator will seek, a statement of the
19 reasons for the order, and notice that the matter will be
20 scheduled for a hearing within 15 days after receipt of a request
21 in a record from the person. If a person subject to the order
22 does not request a hearing and none is ordered by the
23 administrator within 30 days after the date of service of the
24 order, the order, including any civil penalty imposed or
25 requirement for payment of the costs of investigation sought in a
26 statement in that order, becomes final as to that person by
27 operation of law. If a hearing is requested or ordered, the

1 administrator, after notice of and opportunity for hearing to
2 each person subject to the order, may modify or vacate the order
3 or extend it until final determination.

4 (3) If a hearing is requested or ordered pursuant to
5 subsection (2), the hearing shall be held pursuant to the
6 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
7 24.328. A final order shall not be issued unless the
8 administrator makes findings of fact and conclusions of law on
9 the record pursuant to the administrative procedures act of 1969,
10 1969 PA 306, MCL 24.201 to 24.328. The final order may make
11 final, vacate, or modify the order issued under subsection (1).

12 (4) In a final order, the administrator may impose a civil
13 fine of not more than \$10,000.00 for a single violation or
14 \$500,000.00 for multiple violations.

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

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

24 (7) If a person fails to comply with an order under this
25 section, the administrator may petition a court of competent
26 jurisdiction to enforce the order. The court shall not require
27 the administrator to post a bond. If the court finds, after

1 service and opportunity for hearing, that the person is not in
2 compliance with the order, the court may adjudge the person in
3 civil contempt of the order. The court may impose an additional
4 civil penalty against the person for contempt in an amount not
5 less than \$10,000.00 or more than \$500,000.00 for each violation
6 and may grant any other relief the court determines is just and
7 proper in the circumstances.

8 Sec. 605. (1) The administrator may do any of the
9 following:

10 (a) Issue forms and orders and, after notice and comment, may
11 adopt and amend rules necessary or appropriate to carry out this
12 act, and may repeal rules, including rules and forms governing
13 registration statements, applications, notice filings, reports,
14 and other records.

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

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

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

1 records, including in the adoption of uniform rules, forms, and
2 procedures.

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

11 (a) Subject to section 15(h) of the securities exchange act
12 of 1934, 15 USC 78o, and section 222 of the investment advisers
13 act of 1940, 15 USC 80b-18a, the form and content of financial
14 statements required under this act.

15 (b) Whether unconsolidated financial statements must be
16 filed.

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

19 (4) The administrator may provide interpretative opinions or
20 issue determinations that the administrator will not institute a
21 proceeding or an action under this act against a specified person
22 for engaging in a specified act, practice, or course of business
23 if the determination is consistent with this act. A rule or
24 order under this act may charge a reasonable fee for
25 interpretative opinions or determinations that the administrator
26 will not institute an action or a proceeding under this act.

27 (5) A penalty under this act shall not be imposed and

1 liability does not arise for conduct that is engaged in or
2 omitted in good faith conformity with a rule, form, or order of
3 the administrator under this act.

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

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

19 (2) The administrator shall make all rules, forms,
20 interpretative opinions, and orders available to the public.

21 (3) Upon request, the administrator shall furnish to a person
22 a copy of a record that is a public record or a certification
23 that the public record does not exist. A rule under this act may
24 establish a reasonable charge for furnishing the record. A copy
25 of the record certified or a certificate of its nonexistence by
26 the administrator is prima facie evidence of a record or its
27 nonexistence.

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

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

8 (a) A record obtained by the administrator in connection with
9 an audit or inspection under section 411(4) or an investigation
10 under section 602.

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

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

21 (d) A nonpublic record received from a person specified in
22 section 608.

23 (e) Any social security number, residential address unless
24 used as a business address, or residential telephone number
25 unless used as a business telephone number contained in a record
26 that is filed.

27 (f) A record obtained by the administrator through a designee

1 of the administrator that is determined by a rule or order under
2 this act to have been either of the following:

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

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

9 (3) The administrator may disclose a record obtained in
10 connection 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
19 territories, 1 or more foreign jurisdictions, the securities and
20 exchange commission, the United States department of justice, the
21 commodity futures trading commission, the federal trade
22 commission, the securities investor protection corporation, a
23 self-regulatory organization, a national or international
24 organization of securities regulators, federal or state banking
25 and insurance regulators, and any governmental law enforcement
26 agency, in order to effectuate greater uniformity in securities
27 matters among the federal government, self-regulatory

1 organizations, and state and foreign governments.

2 (2) In cooperating, coordinating, consulting, and sharing
3 records and information 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
6 carrying out the public interest the following general policies:

7 (a) Maximizing effectiveness of regulation for the protection
8 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, coordination, consultation, and sharing
14 of records and information authorized by this section includes:

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

19 (b) Developing and maintaining uniform forms.

20 (c) Conducting a joint examination or investigation.

21 (d) Holding a joint administrative hearing.

22 (e) Instituting and prosecuting a joint civil or
23 administrative proceeding.

24 (f) Sharing and exchanging personnel.

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

27 (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, statements
5 of policy, and guidelines.

6 (l) Attending conferences and other meetings among securities
7 regulators, which may include representatives of governmental and
8 private organizations involved in capital formation, considered
9 to be necessary or appropriate to promote or achieve uniformity.

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

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

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

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

25 (2) Sections 401(1), 402(1), 403(1), 404(1), 501, 506, 509,
26 and 510 apply to a person that purchases or offers to purchase a
27 security if the offer to purchase or the purchase is made in this

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

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

7 (a) It originates from this state.

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 611. (1) A consent to service of process complying
27 with this section required by this act must be signed and filed

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

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

21 (3) Service under subsection (1) or (2) may be made by
22 providing a copy of the process to the office of the
23 administrator, but it is not effective unless both of the
24 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 Sec. 612. If any provision of this act or its application
18 to any person or circumstances is held invalid, the invalidity
19 does not affect other provisions or applications of this act that
20 can be given effect without the invalid provision or application,
21 and to this end, the provisions of this act are severable.

22 ARTICLE 7

23 TRANSITION

24 Sec. 701. This act takes effect 180 days after the date
25 this act is enacted.

26 Sec. 702. The uniform securities act, 1964 PA 265, MCL
27 451.501 to 451.818, is repealed.

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

9 (2) All effective registrations under the predecessor act,
10 all administrative orders relating to the registrations,
11 statements of policy, interpretative opinions, declaratory
12 rulings, no action determinations, and all conditions imposed
13 upon the registrations under the predecessor act remain in effect
14 for the same time period they would have remained in effect if
15 this act had not been enacted. They are considered to have been
16 filed, issued, or imposed under this act, but are exclusively
17 governed by the predecessor act.

18 (3) The predecessor act exclusively governs any offer or sale
19 made within 1 year after the effective date of this act pursuant
20 to an offering made in good faith before the effective date of
21 this act on the basis of an exemption available under the
22 predecessor act.