

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

451.2461 Registration application; notice of filing; duties of administrator; factors to be considered; order; sanctions; discipline; proceeding.

Sec. 461.

(1) When the administrator receives an application for registration as a Michigan investment market, the administrator shall publish notice of the filing on a website managed by the administrator, where interested persons are provided an opportunity to submit written information concerning the application. Within 60 days after the date of publication of the notice, or within any longer period to which the administrator and applicant agree, the administrator shall do 1 of the following:

(a) If the administrator finds that the requirements of this article and rules promulgated under this article are satisfied, issue an order granting registration.

(b) If subdivision (a) is not met, issue an order denying registration, or granting a conditional or limited registration.

(2) In considering an application for registration for purposes of subsection (1), the administrator shall consider all of the following:

(a) Whether the Michigan investment market has the capacity to facilitate the transactions contemplated in this article and complies with the provisions of this article, the rules and orders of the administrator under this article, and the rules established by the Michigan investment market.

(b) Whether the rules established by the Michigan investment market provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers and other persons using its facilities.

(c) Whether the structure established by the Michigan investment market is designed to protect against fraud and manipulative behavior; is, in general, designed to protect investors and the public interest by not attempting to regulate or administer actions, practices, or persons that are not placed under the purview of the Michigan investment market by this article; and ensures that the operations of the Michigan investment market do not foster unfair discrimination between users, issuers, or other persons that interact with the Michigan investment market.

(d) Whether the rules established by the Michigan investment market provide for appropriate discipline of users and persons associated with its users for a violation of the provisions of this article, the rules and orders of the administrator under this article, or the rules established by the Michigan investment market.

(e) Whether the rules established by the Michigan investment market impose any burden on competition or obstruction to a liquid intrastate securities market that is not necessary or appropriate to further the purposes of this article.

(3) If the administrator finds that the order is in the public interest and subsection (4) authorizes the action, the administrator may issue an order to revoke, suspend, condition, or limit the registration of a registrant or censure, impose a bar, or impose a civil fine in an amount that does not exceed \$10,000.00 for a single violation of this act or rules promulgated under this act, or \$500,000.00 for multiple violations, on a registrant or other person.

(4) The administrator may impose a sanction described in subsection (3) if any of the following apply to the Michigan investment market or other person that is the subject of the administrator's order:

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

(b) The person willfully violated or willfully failed to comply with this act, or a rule or order issued by the administrator under this act, within the previous 10 years.

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

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

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

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

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

- (iii) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization.
- (iv) A court adjudicating a United States postal service fraud.
- (v) The insurance regulator of a state denying, suspending, or revoking the license or registration of an insurance agent.
- (vi) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.
- (f) The person is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.
- (g) The person is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature. The administrator shall not enter an order against an applicant or registrant under this subdivision without a finding of insolvency as to the applicant or registrant.
- (h) The person refuses to allow or otherwise impedes the administrator from conducting an examination or inspection under section 459(3) or refuses access to a registrant's office to conduct an examination or inspection under section 459(3).
- (i) The person has failed to reasonably supervise an employee or other individual if he or she was subject to the person's supervision and committed a violation of this act, or a rule or order of the administrator under this act, within the previous 5 years.
- (j) The person has not paid a proper filing fee within 30 days after having been notified by the administrator of a deficiency. The administrator shall vacate an order under this subdivision if the deficiency is corrected.
- (k) After notice and opportunity for a hearing, 1 or more of the following have occurred within the previous 10 years:
 - (i) A court of competent jurisdiction has found the person to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.
 - (ii) The person was found to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person.
 - (iii) The person was found to have been suspended or expelled from membership by or participation in a self-regulatory organization operating under the securities laws of a foreign jurisdiction.
 - (l) The person is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.
 - (m) The person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.
 - (n) The person is not qualified on the basis of factors such as training, experience, and knowledge of the securities business, as indicated by evidence presented at a hearing conducted for the purpose of reviewing the applicant's qualifications for registration.
- (5) The administrator may suspend or deny an application summarily, may restrict, condition, limit, or suspend a registration, or censure, bar, or may impose a civil fine on a registrant, pending final determination of an administrative proceeding. When an order under this subsection is issued, the administrator shall promptly notify each person that is subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested by a person that is subject to the order or is not ordered by the administrator within 30 days after the date of service of the order, the order is final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.
- (6) Except under subsection (5), the administrator shall not issue an order under this section unless the administrator has met all of the following:
 - (a) Given appropriate notice to the applicant or registrant.
 - (b) Provided an opportunity for hearing to the applicant or registrant.
 - (c) Made findings of fact and conclusions of law on the record pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (7) The administrator by order may discipline a person that controls, directly or indirectly, a person that is not in compliance with this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a basis for discipline under this section.

(8) The administrator shall not institute a proceeding under subsection (3) solely based on material facts actually known by the administrator unless an investigation or the proceeding is instituted within 1 year after the administrator first became aware of the material facts.

History: Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014

Compiler's Notes: Enacting section 1 of Act 355 of 2014 provides: "Enacting section 1. It is the intent of the legislature by enacting this amendatory act to regulate a class of intrastate broker-dealers that is exempt under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and that will facilitate intrastate securities transactions among persons of this state."