

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008
ARTICLE 4A
MICHIGAN INVESTMENT MARKETS

451.2451 Definitions.

Sec. 451.

As used in this article:

(a) "Intrastate offering exemption" means the exemption described in section 202a or any other exemption from federal securities regulation under 15 USC 77c(a)(11) and SEC rule 147, 17 CFR 230.147, 15 USC 77e and SEC rule 147A, 17 CFR 230.147A.

(b) "Michigan investment market" means a person that is a broker-dealer, is exempt from federal registration under section 15(a)(1) of the securities exchange act of 1934, 15 USC 78o, and provides a market or exchange at which transactions in securities that are sold or offered for sale in this state under an intrastate offering exemption take place. As used in this subdivision, "market or exchange" includes an online market or exchange or any other market or exchange operated through a web portal.

(c) "Online" means functioning on or over the internet.

(d) "Personal identifying information" means any information used to locate or accurately categorize an individual, household, or business.

(e) "Resident of this state" means 1 of the following, as applicable:

(i) If a person is an individual, his or her principal residence is located in this state.

(ii) If a person is a business that is a general partnership or other form of organization that is not incorporated or organized under the laws of this state, that person's principal office is located in this state.

(iii) If the person is a business that is a corporation, limited liability company, limited partnership, trust, or other form of legal entity that is incorporated or organized under state law, that person is incorporated or organized under the laws of this state.

(f) "Service" means to include securities issued by a person in or on a market or exchange for sale or to assist in facilitating securities transactions in or on a market or exchange.

(g) "Web portal" means an online entity through which persons are able to effect transactions in securities.

History: Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014 ;-- Am. 2017, Act 141, Imd. Eff. Oct. 30, 2017

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."

451.2453 Transaction of business as Michigan investment market; registration required.

Sec. 453.

Beginning May 1, 2015, a person shall not transact business in this state as a Michigan investment market unless the person is registered under this article as a Michigan investment market.

History: Add. 2014, Act 355, Imd. Eff. Oct. 21, 2014 ;-- Am. 2014, Act 415, Imd. Eff. Dec. 30, 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." Enacting section 1 of Act 415 of 2014 provides: "Enacting section 1. By enactment of this amendatory act, it is the intent of the legislature to delay implementation of the requirements of article 4A of the uniform securities act (2002), 2008 PA 551, MCL 451.2451 to 451.2469, concerning Michigan investment markets, until May 1, 2015."

451.2455 Michigan investment market; registration requirements.

Sec. 455.

(1) A person shall register as a Michigan investment market by filing a written application, filing a consent to service of process that complies with section 611, and paying the fee specified in section 457. Subject to section 461, if a person complies with this article and demonstrates by clear and convincing evidence that the person meets the requirements for registration under this article, the administrator shall register that person as a Michigan investment market. If a person fails to provide clear and convincing evidence that the person meets the requirements for registration, the registration of the person shall remain at the discretion of the administrator.

(2) An application for registration as a Michigan investment market must contain all of the following:

(a) The names, mailing addresses, and telephone numbers of all individuals who serve as executive officers of the Michigan investment market or who are direct or indirect owners of at least a 10% ownership interest in the Michigan investment market.

(b) The uniform resource locator (URL), if applicable, used primarily by the Michigan investment market to effect transactions online.

(c) Any other information requested by the administrator as necessary to make a determination regarding registration of the Michigan investment market under section 461.

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

(4) A registration is effective until 12 midnight on December 31 of the year for which the application for registration is filed.

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."

451.2457 Filing fees.

Sec. 457.

(1) A person shall pay a fee of \$500.00 when initially filing an application for registration as a Michigan investment market and a fee of \$250.00 when filing a renewal of registration as a Michigan investment market.

(2) If an initial or renewal registration application is denied or withdrawn, the administrator shall retain all of the filing fee for that application.

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."

451.2459 Records; examination or inspection; report.

Sec. 459.

(1) A Michigan investment market that is registered or is required to register under this article must make a written or electronic record of each transaction conducted between users through the Michigan investment market, maintain that record for at least 7 years after the date of the transaction, and provide a written or electronic copy of the record for a particular transaction to each user involved in that transaction.

(2) In addition to the records described in subsection (1), a Michigan investment market that is registered or is required to register under this article shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule or order of the administrator and shall maintain those records in a form of data storage established by the administrator by rule or order.

(3) The records of a Michigan investment market that is registered or is required to register under this article are subject to reasonable periodic, special, or other examinations or inspections by a representative of the

administrator, in or outside of this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An examination or inspection may be made at any time and without prior notice. The administrator may reasonably request paper or electronic copies and remove for examination or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the examination or inspection. The administrator may assess a reasonable charge for conducting an examination or inspection under this subsection.

(4) In January of each year, the Michigan investment market must file a report with the administrator that includes a record of each transaction the Michigan investment market effected in the preceding calendar year.

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."

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."

451.2463 Servicing; requirements.

Sec. 463.

(1) A Michigan investment market may not service a business if the business has already utilized the services of a portal, market, or exchange that facilitates a secondary market for intrastate securities, rather than facilitates securities transactions for original purchasers of the business's intrastate securities of those purchasers' own securities. The business may not be or request to be serviced on 2 or more of those portals, markets, or exchanges at any given time.

(2) A Michigan investment market shall only service a business if that business meets, and the Michigan investment market verifies that the business meets, all of the following at the time the business conducts any offers, sales, or reselling of its intrastate securities:

(a) Is a resident of this state.

(b) Is doing business in this state at the time the business conducts any offers, sales, or reselling of its intrastate securities. For purposes of this subdivision, a business is considered to be doing business in this state if all of the following are met:

(i) If the business had gross revenues of more than \$5,000.00 from the sale of products or services or other conduct of its business for its most recent 12-month fiscal period, it derived at least 80% of its gross revenues, and those of its subsidiaries on a consolidated basis, from the operation of a business or of real property located in or from the rendering of services in this state during 1 of the following time periods:

(A) In its most recent fiscal year, if the first offer of any part of the issue is made during the first 6 months of the issuer's current fiscal year.

(B) In the first 6 months of its current fiscal year, or during the 12-month fiscal period ending with that 6-month period, if the first offer of any part of the business's intrastate offering is made during the last 6 months of the business's current fiscal year.

(ii) At the end of its most recent semiannual fiscal period before the first offer of any part of the issue, the business had at least 80% of its assets and those of its subsidiaries on a consolidated basis located in this state.

(iii) The business intends to use and uses at least 80% of the net proceeds to the business from the sale or resale of intrastate securities in connection with the operation of a business or of real property in, the purchase of real property located in, or the rendering of services in this state.

(iv) The principal office of the business is located within this state.

(c) Is not insolvent. As used in this subdivision, "insolvent" means any of the following:

(i) The liabilities of the business exceed its assets.

(ii) The business is unable to pay its debts as they mature.

(iii) The business has filed for bankruptcy or made an assignment for the benefit of creditors.

(d) Is not subject to a current or pending disciplinary court order or injunctions.

- (e) Is not a defendant in a pending court proceeding.
- (f) Complies with the laws of this state applicable to the conduct of its business.

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."

451.2465 Prohibited conduct.

Sec. 465.

- (1) A Michigan investment market shall not do any of the following:
 - (a) Sell or otherwise distribute to any third party personal identifying information of an individual without his or her written consent.
 - (b) In confirming whether an individual is a resident of this state or meets any other requirement of relevant state or federal law, require an individual to provide any personal information except for 1 or more of the following:
 - (i) The address of his or her primary residence.
 - (ii) The number of a valid operator's license, chauffeur's license, or official personal identification card issued by this state.
 - (iii) A current Michigan voter registration.
 - (iv) An operator's or chauffeur's license, military identification card, Michigan identification card, passport, or other government-issued identification document that includes a photograph of the individual.
 - (c) Charge a fee for a securities transaction conducted through the Michigan investment market that exceeds 5% of the value of the transaction, as determined by the value passed from 1 user of the Michigan investment market to another in exchange for that security.
 - (d) Deal in securities options, or include securities from more than 1 class in an offering, without obtaining written acknowledgment from each person involved in that transaction of the nature of the securities transacted.
- (2) A Michigan investment market must provide disclaimers and restrictive legends that conspicuously state that its transactions are limited to residents of this state under section 3(a)(11) of the securities act of 1933, 15 USC 77c, and must limit access to information about specific investment opportunities to individuals who confirm they are residents of this state, such as by providing a record or document described in section 202a(1)(b)(i)(A) to (D).
- (3) The Michigan investment market may not use established, nondiscretionary methods, whether by providing a trading facility or by setting rules, in bringing together the orders for securities of multiple buyers and sellers.
- (4) The Michigan investment market may, in exercising its discretion, elect to not effect any transaction that, in the opinion of the Michigan investment market, would be severely adverse or unconscionable as it relates to a party involved in the transaction or to a party involved in a transaction previously effected by the Michigan investment market.

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."

451.2467 Individual shown to be out-of-state resident; prima facie evidence of residency.

Sec. 467.

- (1) An individual's participation in a Michigan investment market in this state is considered a representation that he or she is a resident of this state. If it is subsequently shown that an individual was not a resident of this state at the time of his or her participation in a Michigan investment market, any transaction conducted by that individual while he or she was not a resident is void.
- (2) A person that is not a resident of this state shall not secondarily purchase an intrastate security within 9 months of the completion of the offering through which the security was sold originally. For purposes of this

section, each of the following is prima facie evidence that an individual is a resident of this state:

- (a) A valid operator's license, chauffeur's license, or official personal identification card issued by this state.
- (b) A current Michigan voter registration.
- (c) A signed affidavit as described in section 7cc(2) of the general property tax act, 1893 PA 206, MCL 211.7cc, that indicates that the individual owns and occupies property in this state as his or her principal residence.

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."

451.2469 Rules; compliance with state or federal statute, rule, or regulation.

Sec. 469.

(1) The department may promulgate any rules that the administrator considers necessary to administer this article if those rules are consistent with the provisions of this act.

(2) Nothing in this article exempts any person to which this article is subject from complying with any applicable state or federal statute, rule, or regulation that applies to that person or the conduct of that person's business.

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."