

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

451.2202a Offer or sale of security by issuer; exemption from MCL 451.2301 to 451.2306 and 451.2504; requirements; adjustment; report; limitations; rules; filing fee; website; violation; "controlling person" defined; exemption as "Michigan invests locally exemption."

Sec. 202a.

(1) Except as otherwise provided in this act, an offer or sale of a security by an issuer is exempt from the requirements of sections 301 to 306 and 504 if the offer or sale meets all of the following requirements:

(a) The issuer of the security is an entity that is incorporated or organized under the laws of this state, is a resident of this state under SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, and is authorized to do business in this state.

(b) The transaction meets the requirements for the federal exemption for intrastate offerings under 15 USC 77c(a)(11) and SEC rule 147, 17 CFR 230.147, including, but not limited to, the requirements for determining whether an offeree or purchaser is a resident of this state, or the federal exemption for intrastate offerings under 15 USC 77e and SEC rule 147A, 17 CFR 230.147A. All of the following apply concerning these requirements:

(i) 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 purchaser owns and occupies property in this state as his or her principal residence.

(D) Any other record or documents issued by this state that establishes that the purchaser's principal residence is in this state.

(ii) The provisions of SEC rule 147, 17 CFR 230.147, or SEC rule 147A, 17 CFR 230.147A, as applicable, apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization.

(iii) If a purchaser of a security that is exempt under this section resells that security within 6 months after the closing of the particular offering in which the purchaser obtained that security to a person that is not a resident of this state, the original investment agreement between the issuer and the purchaser is void. If an agreement to purchase, or the purchase of, a security is void under this subparagraph, the issuer may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subparagraph shall not exceed the amount of the person's investment in the security.

(c) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the following amounts:

(i) One million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has not made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(ii) Two million dollars, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption, if the issuer has made available to each prospective purchaser and the administrator audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, as defined in section 720 of the occupational code, 1980 PA 299, MCL 339.720, in accordance with the statements on auditing standards of the American institute of certified public accountants or the statements on standards for accounting and review services of the American institute of certified public accountants, as applicable.

(d) The issuer has not accepted more than \$10,000.00 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 CFR 230.501. The issuer may rely on confirmation that the purchaser is an accredited investor from a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor.

(e) At least 10 days before an offer of securities is made in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the administrator, in writing or in electronic form as specified by the administrator, that contains all of the following:

(i) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in

reliance on this exemption, accompanied by the filing fee specified in this section.

(ii) A copy of the disclosure statement to be provided to prospective investors in connection with the offering. The disclosure statement must contain all of the following:

(A) A description of the issuer, including its type of entity, the address and telephone number of its principal office, its formation history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

(B) The identity of each person that owns more than 10% of the ownership interests of any class of securities of the issuer.

(C) The identity of the executive officers, directors, and managing members of the issuer, and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

(D) The terms and conditions of the securities being offered and of any outstanding securities of the issuer, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities.

(E) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offering and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this sub-subparagraph, a description of the consideration being paid to that person for that assistance.

(F) A description of any litigation or legal proceedings involving the issuer or its management.

(G) The name and address of any website that the issuer intends to use in connection with the offering, including its uniform resource locator or URL. If the issuer has not engaged a website described in this sub-subparagraph at the time the issuer files the disclosure statement described in this subparagraph with the administrator under this subdivision but subsequently does engage a website for use in connection with the offering, the issuer shall provide the information described in this sub-subparagraph to the administrator by filing a supplemental notice.

(iii) An escrow agreement with a bank or other depository institution located in this state, in which the purchaser funds will be deposited, that provides that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and that all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The bank or other depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached.

(f) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the investment company act of 1940, 15 USC 80a-3, or an entity that would be an investment company but for the exclusions provided in subsection (c) of that section, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 USC 78m and 78o(d).

(g) The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

"IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 CFR 230.147(E), OR SUBSECTION (E) OF SEC RULE 147A, 17 CFR 230.147A(E), AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(h) The issuer requires each purchaser to certify in writing, and to include as part of that certification his or her signature, and his or her initials next to each paragraph of the certification, as follows: "I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.

This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, that the securities are subject to possible dilution, that there is no ready market for the sale of those securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Michigan resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Michigan resident, within 6 months after the closing of the offering, my contract with the issuer for the purchase of these securities is void."

(i) If the offer and sale of securities under this section is made through an internet website, all of the following requirements are met:

(i) Before any offer of an investment opportunity to residents of this state through the use of a website, the issuer provides to the website and to the administrator evidence that the issuer is organized under the laws of this state and that it is authorized to do business in this state.

(ii) The issuer obtains from each purchaser of a security under this section evidence that the purchaser is a resident of this state and, if applicable, an accredited investor.

(iii) The website operator files a written notice with the administrator that includes the website operator's name, business address, and contact information and states that it is authorized to do business in this state and is being utilized to offer and sell securities under this exemption. Beginning 12 months after the date of the written notice, a website operator that has filed a written notice under this subparagraph shall annually notify the administrator in writing of any changes in the information provided to the administrator under this subparagraph.

(iv) The issuer and the website keep and maintain records of the offers and sales of securities made through the website and provide ready access to the records to the administrator on request. The administrator may access, inspect, and review any website described in this subdivision and its records.

(j) All payments for the purchase of securities are directed to and held by the bank or depository institution subject to the provisions of subdivision (e)(iii).

(k) Offers or sales of a security are not made through an internet website unless the website has filed the written notice required under subdivision (i)(iii) with the administrator.

(l) The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he or she is registered as a broker-dealer, investment adviser, or investment adviser representative under article 4. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the registration requirements under article 4 if he or she does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section.

(m) The issuer provides a copy of the disclosure statement provided to the administrator under subdivision (e)(ii) to each prospective purchaser at the time the offer of securities is made to the prospective purchaser. In addition to the information described in subdivision (e)(ii), the disclosure statement provided to the administrator and to prospective purchasers shall include additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and should not present risks that could apply to any issuer or any offering.

(n) The term of the offering does not exceed 12 months after the date of the first offer.

(2) Every fifth year, the administrator shall cumulatively adjust each of the following dollar amounts to reflect the change in the consumer price index for all urban consumers published by the federal bureau of labor statistics:

(a) The dollar limitations provided in subsection (1)(c), rounding each dollar limitation to the nearest \$50,000.00.

(b) The dollar limitation provided in subsection (1)(d) and section 201(1)(y)(iv), rounding that dollar limitation to the nearest \$100.00.

(3) If the offer and sale of a security of an issuer is exempt under this section, the issuer shall provide a quarterly report to the issuer's purchasers until none of the securities issued under this section are outstanding. All of the following apply to the quarterly report described in this subsection:

(a) The issuer shall provide the report free of charge to the purchasers.

(b) An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within 45 days after the end of each fiscal quarter and remains available until the next quarterly report is issued.

(c) The issuer shall file each report with the administrator and must provide a written copy of the report to any purchaser on request.

(d) The report must include all of the following:

(i) The compensation received by each director and executive officer of the issuer, including cash compensation

earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) The exemption provided in this section shall not be used in conjunction with any other exemption under this article, except offers and sales to controlling persons shall not count toward the limitation in subsection (1)(c).

(5) The exemption described in this section does not apply if an issuer or person that is affiliated with the issuer or offering is subject to any disqualification established by the administrator by rule or contained in rule 262 as promulgated under the securities act of 1933, 17 CFR 230.262. However, this subsection does not apply if both of the following are met:

(a) On a showing of good cause and without prejudice to any other action by the administrator, the administrator determines that it is not necessary under the circumstances that an exemption be denied.

(b) The issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(6) The administrator may adopt rules to implement the provisions of this section and to protect purchasers that purchase securities that are exempt from registration under this section.

(7) The administrator shall charge a nonrefundable filing fee of \$100.00 for filing an exemption notice required under subsection (1). The fees paid to the administrator under this subsection shall be used to pay the costs incurred in administering and enforcing this act.

(8) A website through which an offer or sale of securities under this section is made is not subject to the broker-dealer, investment adviser, or investment adviser representative registration requirements under article 4 if the website meets all of the following conditions:

(a) It does not offer investment advice or recommendations.

(b) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the website.

(c) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the website.

(d) It does not hold, manage, possess, or otherwise handle purchaser funds or securities.

(e) It does not engage in any other activities that the administrator by rule determines are inappropriate for an exemption from the registration requirements under article 4.

(9) Except for section 504, article 5 applies to a violation of this section, including a violation concerning website operation.

(10) As used in this section, "controlling person" means an officer, director, partner, or trustee, or another individual who has similar status or performs similar functions, of or for the issuer or to a person that owns 10% or more of the outstanding shares of any class or classes of securities of the issuer.

(11) The exemption described in this section may be referred to as the "Michigan invests locally exemption".

History: Add. 2013, Act 264, Imd. Eff. Dec. 30, 2013 ;-- Am. 2017, Act 141, Imd. Eff. Oct. 30, 2017

Compiler's Notes: For transfer of securities division of office of finance and insurance regulation from office of finance and insurance regulation to department of licensing and regulatory affairs, see E.R.O. No. 2012-6, compiled at MCL 445.2034.