

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Bulletin 2007-03-SEC

In the matter of

**Rule 803.7(7)(c)(ii) of the Michigan Uniform Limited Offering Exemption
and its application to Regulation D Rule 506 offerings**

**Issued and entered
this 6th day of March 2007
By Linda A. Watters
Commissioner**

Questions have arisen regarding whether an issuer making a Rule 506 of Regulation D offering is required to provide an undertaking to furnish to the Commissioner of the Office of Financial and Insurance Services, upon written request, information furnished by the issuer to offerees. This bulletin, in part, supersedes Release No. 97-2-S concerning the undertaking required by the State of Michigan pursuant to Rule 803.7(7)(c)(ii).

An issuer who is filing a Rule 506 offering within the State of Michigan is required to file a Form D with the Office of Financial and Insurance Services. The issue in question relates to Form D, Part E, paragraph 3, which is a part of the State Signature page. Pursuant to Rule 803.7(7)(c)(ii) of the Michigan Uniform Limited Offering Exemption (Michigan ULOE), the Form D, Part E, paragraph 3 requires an issuer to furnish to the Commissioner, upon written request, information furnished by the issuer to offerees.

The National Securities Market Improvement Act of 1996 (NSMIA) preempts state securities regulation of a category of securities called covered securities as defined in NSMIA. Section 18(a) of the Securities Act of 1933, 15 U.S.C. § 77r(a), prohibits states from requiring registration or imposing merit regulation of offerings of covered securities. As set forth in Section 18(b) of the Securities Act of 1933, 15 U.S.C. § 77r(b), covered securities include securities issued in transactions exempt from registration under the Securities Act of 1933 pursuant to the Securities and Exchange Commission (Commission) rules or regulations promulgated under Section 4(2) of the Securities Act of 1933 (15 U.S.C. § 77d(2)). Rule 506 was adopted pursuant to Section 4(2) of the Securities Act of 1933. Pursuant to Section 18(b) of the Securities Act of 1933, a state may impose notice filing requirements that are substantially similar to those required by rules or regulations under Section 4(2) of the Securities Act of 1933. Section 4(2) of the

Securities Act of 1933 does not require an undertaking by the issuer to furnish offering materials subject to a request by the Commission.

Since the Commission does not require issuers making Rule 506 offerings to provide such an undertaking, Michigan will not require issuers relying on a Rule 506 exemption to provide an undertaking pursuant to Rule 803.7(7)(c)(ii) of the Michigan Uniform Limited Offering Exemption. However, Rule 506 transactions are subject to the anti-fraud provisions contained within the Michigan Uniform Securities Act (MUSA). MCL 451.501. Michigan has broad investigatory powers to investigate fraud or deceit, or other alleged violations of MUSA, in connection with Rule 506 transactions and may request offering materials when conducting an investigation.

Any questions regarding this bulletin should be directed to:

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