

MICHIGAN CORPORATION & SECURITIES BUREAU

RELEASE NO. 92-4-S

TO: ALL INTERESTED PARTIES

SUBJECT: Assignment of Investment Advisory Contracts Under Sections 102(b)

General Background:

Section 102(b) provides as follows:

It is unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing...that no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract....

Rule 102(f)(4) of the Model Rules under the Uniform Securities Act, as adopted by NASAA on September 3, 1987, provides as follows:

For purposes of Section 102[(b)](2) of the [Uniform Securities] Act, a transaction which does not result in a change of actual control or management of an investment advisor is not an assignment.

Action or Interpretation:

Michigan has not adopted a provision similar to Rule 102(f)(4) of the Model Rules under the Uniform Securities Act, as adopted by NASAA. However, there is such a provision under the Investment Advisors Act of 1940. Reg. 275.202(a)(1)-1 provides:

A transaction which does not result in a change of actual control or management of an investment advisor is not an assignment for purposes of Sections 205(a)(2) of the [Investment Advisors] Act.

The purpose of this release is to advise all interested parties that although the Michigan Uniform Securities Act does not provide language excluding from Section 102(b) assignments where no change in control results, the Bureau believes such an interpretation is consistent with statutory intent. Therefore, the Bureau will undertake no action in instances where the transaction is consistent with Reg. 275.202(a)(1)-1 of the Investment Advisors Act of 1940.

AUTHORITY:

Act 265 of 1964, Section 102(b).

Signed by Carl L. Tyson, Director
Corporation & Securities Bureau
Dated: September 29, 1992