

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

**In the matter of:**

**Order administering the  
Michigan Uniform Securities Act**

**Order No. 2016-1**

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Issued and entered  
on this 8<sup>th</sup> day of January, 2016

ORDER ADMINISTERING THE MICHIGAN UNIFORM SECURITIES ACT (2002), 2008 PA 551

1. On October 1, 2009, the Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 (the "Act") *et seq.*, took effect.
2. Section 102(a) of the Act, MCL 451.2102(a), designates the Office of Financial and Insurance Regulation as the Administrator of the Act.
3. The Administrator is authorized under section 605 of the Act, MCL 451.2605, to issue orders as are necessary or appropriate in the public interest or that are for the protection of investors and consistent with the purposes intended by the Act.
4. Michigan Governor Rick Snyder's Executive Reorganization Order No. 2012-6, MCL 445.2034, transferred the Securities Division of the Office of Financial and Insurance Regulation to the Department of Licensing and Regulatory Affairs (the "Department"), and designated the Department director as the Act's Administrator, effective on November 6, 2012. The Department Director then delegated his authority as Administrator under the Act to the Corporations, Securities & Commercial Licensing Bureau's director (the "Administrator" or "Acting Administrator").
5. Section 3(a)(10) of the Federal Securities Act of 1933, 15 USC §77c(a)(10), setting forth the federal exemption from registration for offers and sales of securities in specified exchange transactions, provides the following:

Except with respect to a security exchanged in a case under title 11, any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval.

6. On June 18, 2008, the U.S. Securities and Exchange Commission's (SEC) Division of Corporation Finance issued Staff Legal Bulletin No. 3A (CF) providing its views regarding the above exemption under 15 USC §77c(a)(10), indicating, in part, that the authorized governmental entity conducting the hearing upon the fairness of the terms and conditions of the transaction (the "fairness hearing") must find that the terms and conditions of the transaction are fair to or are "in the best interests of" the shareholders participating in the exchange both procedurally and substantively. The Bulletin also indicated that the SEC's Division of Corporation Finance would review a request for a "no-action" position received from issuers that are unsure of whether the exemption is available for the specific transaction as long as the issuers make the request an adequate period of time before the fairness hearing is held.
7. Section 202(1)(i) of the Act, MCL 451.2202(1)(i), authorizes the Administrator to approve the terms and conditions of a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for 1 or more bona fide outstanding securities, claims, or property interests, or partly in exchange and partly for cash at a hearing to determine the transaction's fairness.
8. Section 3(3) of the Michigan Administrative Procedures Act, 1969 PA 306 (the "APA"), MCL 24.203(3), defines "contested case" to mean:

[A] proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing . . . .
9. Section 5(1) of the APA, MCL 24.205(1), defines "license" as including "the whole or part of an agency permit, certificate, approval, registration, charter, or similar form of permission required by law . . . ."
10. Section 5(2) of the APA, MCL 24.205(2), defines "licensing" as including "agency activity involving the grant, denial, renewal, suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license."
11. Parts 5-13 of the Procedural Rules promulgated under the predecessor act, former 1964 PA 265, provide for the commencement of proceedings and contested cases and the conduct during and after formal hearings, 1983 AACRS, R 451.2501-3305.
12. Rule 1301, 1983 AACRS, R 451.3301, authorizes the Administrator, a person designated by statute, or 1 or more hearing officers designated and authorized by the administrator to conduct contested cases under the APA.
13. Rule 1501, 1983 AACRS, R 451.3501, authorizes the Administrator to order a public hearing for the purpose of obtaining information and providing the public with an opportunity to present data, views, and arguments on issues upon which the Administrator is authorized to make a determination.
14. Section 503(1) of the Act, MCL 451.2503(1) requires that, in either a civil action or an administrative proceeding under the Act, "a person claiming an exemption, exception,

preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusion.”

THEREFORE, IT IS ORDERED THAT:

- A. Fairness determinations under MCL 451.2202(1)(i) shall be made by the Acting Administrator or Administrator.
- B. The proponents of a plan pursuant to which a security is to be issued in exchange for one or more bona fide outstanding securities, claims or property interests or partly in such exchange and partly for cash, may request approval of such plan by the Administrator or Acting Administrator. The application shall be made with the Corporations, Securities and Commercial Licensing Bureau as described below. The Administrator or Acting Administrator may in his or her sole discretion reject any application. The Administrator or Acting Administrator will only consider an application for a proposed exchange transaction where:
  - i. The applicant is a domestic business entity formed, organized, or incorporated under the laws of Michigan;
  - ii. The applicant is a business entity has its headquarters or principal place of business located in Michigan;
  - iii. That the entity to be acquired or merged has its headquarters in Michigan; or
  - iv. That a minimum of 50% of the securities, claims, or property interests to be exchanged are owned by persons residing in Michigan.
- C. The application and all accompanying documents shall be type-written and submitted to the Administrator or Acting Administrator. The application shall be signed and dated by the applicant or by a person authorized to act on the applicant’s behalf. The application shall request that the Administrator or Acting Administrator conduct a hearing pursuant to MCL 451.2201(1)(i) and shall contain the following information:
  - i. The full legal name, state of formation, organization or incorporation, and principal office address of any person proposing to issue securities or deliver other consideration in the proposed exchange;
  - ii. A description of the proposed transaction, including but not limited to all parties to the transaction, all major lines of business engaged in by such parties, expected benefits of the transaction, a chronological description of the transaction to date, a projected timetable and description of all events necessary to consummate the transaction, all legal and financial advisors providing advice to any party to the transaction, all identification of any persons providing any valuation or fairness opinions to any party with respect to the securities or other consideration to be issued or exchanged in the proposed transaction;
  - iii. A list and description of the securities or other consideration to be issued or delivered in the proposed exchange;
  - iv. A list and description of the bona fide securities, claims or property interests for which the securities or other consideration referred to in paragraph C(iii) will be issued and exchanged, including the full legal name, state of formation, organization or incorporation, and principal office address of the issued of any such bona fide securities;

- v. A brief statement of the terms and conditions under which the securities or other consideration referred to in paragraph C(iii) will be issued and exchanged or delivered and exchanged for the bona fide securities, claims or property interests;
- vi. A list of full legal names, addresses, and percentage interest owned of all persons to whom the securities will be issued or other consideration delivered in the exchange. If some or all of such persons are to receive the securities or other consideration by virtue of their ownership of shares of stock in a corporation, the applicant may comply with this requirement by submitting a list which shows the shareholders of the corporation and the number of shares held by each shareholder as of a date not more than 30 days of the application;
- vii. A statement setting forth the distinct number of and percentage total of all persons named on the list to be provided pursuant to paragraph C(vi) who are residents of Michigan;
- viii. A statement setting forth proposed findings of fact which the applicant requests that the Administrator or Acting Administrator find and incorporate in the written decision with respect to the application;
- ix. A statement as to whether the applicant intends to rely on the exemption from federal securities registration provided for in section 3(a)(10) of the Securities Act of 1933, 15 USC §77c(a)(10); and
- x. Any additional information which the applicant desires the Administrator or Acting Administrator to consider. The Administrator or Acting Administrator may also waive or modify the requirements of these procedures by allowing the applicant to submit less information than these procedures would otherwise require.

D. The application shall be accompanied by the following documents:

- i. All written agreements, and accompanying appendices, exhibits, and attachments, governing the proposed transaction;
- ii. All press releases or other media announcements regarding the proposed transaction disseminated by any party to the proposed transaction;
- iii. A draft copy of the notice of the requested hearing to be held by the Administrator, Acting Administrator, or Administrator's designee in connection with the application that the applicant plans to mail to all persons to whom the applicant proposes to issue securities or to deliver other consideration in the proposed transaction;
- iv. An audited balance sheet, prepared in accordance with generally accepted accounting principles in the United States ("US GAAP"), as of the close of the most recent fiscal year, and, in the case of a proposed rollup transaction, a pro forma balance sheet, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;
- v. An audited income statement, prepared in accordance with US GAAP, for the most recent fiscal year, and, in the case of a proposed roll up transaction, a pro forma income statement, as of the close of most recent fiscal year, disclosing the effect of the transaction, in each case, of any person whose securities will be issued or exchanged in the proposed transaction;

- vi. All valuation or fairness opinions identified in paragraph C(iii), including all materials supporting any parties' valuation of the securities or other consideration to be issued or exchanged in the proposed transaction;
  - vii. Any other documents which the applicant desires the Administrator or Acting Administrator to consider. The Administrator or Acting Administrator may require the applicant to submit other documents in addition to the documents required by these procedures. The Administrator or Acting Administrator may also waive or modify the requirements of these procedures by allowing the applicant to submit fewer documents other than those which this procedure would otherwise require.
  - viii. A written undertaking to pay, upon receipt of an invoice from the Administrator or Acting Administrator, the fees and costs required by paragraph I; and
  - ix. A completed and notarized Form U-2, Uniform Consent to Service of Process.
- E. The Administrator or Acting Administrator may inform the applicant of any deficiencies in the application or of any additional information or documents required and may require the applicant to amend or resubmit the application prior to setting a date for the hearing.
- F. The Administrator or Acting Administrator, in his or her sole discretion may retain an independent valuation consultant to review all of the materials submitted in paragraph C(vi).
- G. The Acting Administrator reserves the right to designate a hearing officer to be assigned by the Michigan Administrative Hearing System as the presiding officer over a fairness hearing.
- H. Upon filing of an application complying with this Order, correction of any deficiencies and amendment of the application as necessary, and receipt of all materials requested by the Administrator or Acting Administrator, the Administrator, Acting Administrator, or the Administrator's designee will, within a reasonable period of time, inform the applicant of the date, time, and place of the hearing.
- I. Upon filing an application complying with this Order, the applicant shall remit to the Administrator or Acting Administrator a non-refundable fairness proceeding filing fee of \$500.00.
- J. The applicant shall by United States mail, postage prepaid, send notice of the hearing to all persons to whom it is proposed to issue securities or to deliver the other consideration in such exchange, not less than 14 days prior to the hearing. The applicant shall provide to the Administrator or Acting Administrator, on or before the date of the hearing, a certification that the notice of hearing has been so mailed.
- K. An evidentiary hearing shall be held by the Administrator, Acting Administrator, or the Administrator's designee, pursuant to MCL 451.2201(1)(i). All fairness hearings shall be conducted in accordance with the APA and applicable procedural rules. With the consent of both parties to the merger or acquisition, if applicable, the hearing may be conducted by telephone conference.
- L. The Administrator, Acting Administrator, or the Administrator's designee may permit testimony of counsel, all interested parties to the exchange, and any holder of securities, claims or property interests to be exchanged who wishes to make a statement or raise questions. Any interested

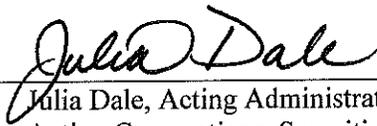
party who is unable to attend the hearing shall be permitted to participate by telephone or in writing.

M. The applicant has the burden of proving the applicability of the exemption set forth in MCL 451.2201(1)(i) by a preponderance of the evidence.

N. Within a reasonable period of time after the hearing, the Administrator or Acting Administrator shall issue an order either granting or denying approval of the terms and conditions of the proposed transaction, determining whether the terms and conditions of the proposed transaction are fair to the shareholders participating in the exchange.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

By:



Julia Dale, Acting Administrator and  
Acting Corporations, Securities & Commercial Licensing Bureau Director