

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

In the matter of:

Second Transition Order administering the
Michigan Uniform Securities Act

Order No. 09-055-M

Issued and entered
on this 30th day of September 2009
by Ken Ross
Commissioner

SECOND TRANSITION ORDER ADMINISTERING MICHIGAN
UNIFORM SECURITIES ACT, 2008 PA 551

WHEREAS, the Commissioner of the Office of Financial and Insurance Regulation (OFIR) issued on September 1, 2009 Order No. 09-049-M, an initial Transition Order implementing the new Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, which act takes effect on October 1, 2009; and

WHEREAS, the Commissioner of OFIR is charged to perform all duties of the Administrator under both the current and newly enacted Uniform Securities Acts; and

WHEREAS, the Commissioner has determined that subsection (b) of paragraph 14 of said Order needs to be amended to eliminate the stated records filing requirement with respect to an initial offer of sale in this state;

NOW, THEREFORE, IT IS ORDERED that Paragraph 14 of Order No. 09-049-M is deleted, and the following is substituted as Paragraph 14:

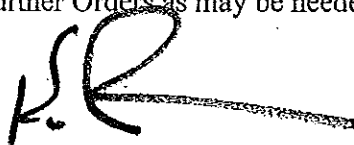
14. With respect to a security issued by an investment company that is a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933, 15 USC 77r, that is not otherwise exempt under Sections 201 to 203 of 2008 PA 551, MCL 451.2201 to MCL 451.2203; the issuer, or a person acting on behalf of the issuer, shall, before the initial offer of sale in this state, (a) file a consent to service of process available on the website of the North American Securities Administrators Association (NASAA) – www.nasaa.org or on the Administrator's web site – www.michigan.gov/ofir, and pay the fee required by MCL 451.2302(1)(a); and (b) file with the Administrator all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933. the Uniform Investment Company Notice Filing form (Form NF) also available at www.nasaa.org or on the Administrator's web site – www.michigan.gov/ofir. After the initial offer of sale, if the issuer files an amendment to its registration statement with the Securities and Exchange Commission, it shall file with the

Administrator a copy of all records that are part of any amendment to a federal registration of the amendment.

IT IS FURTHER ORDERED THAT a corrected paragraph 14, without editing shown, be posted immediately to the OFIR website, to read as follows:

14. With respect to a security issued by an investment company that is a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933, 15 USC 77r, that is not otherwise exempt under Sections 201 to 203 of 2008 PA 551, MCL 451.2201 to MCL 451.2203, the issuer, or a person acting on behalf of the issuer, shall, before the initial offer of sale in this state, (a) file a consent to service of process available on the website of the North American Securities Administrators Association (NASAA) – www.nasaa.org or on the Administrator's web site – www.michigan.gov/ofir, and pay the fee required by MCL 451.2302(1)(a); and (b) file with the Administrator the Uniform Investment Company Notice Filing form (Form NF) also available at www.nasaa.org or on the Administrator's web site – www.michigan.gov/ofir. After the initial offer of sale, if the issuer files an amendment to its registration statement with the Securities and Exchange Commission, it shall file with the Administrator a copy of the amendment.

Except as modified by the terms of this Order, IT IS FURTHER ORDERED THAT all other provisions of Order No. 09-049-M and 2008 PA 551 shall be administered, implemented, and enforced as provided in the Act, subject to such further Orders as may be needed throughout the transition process.



Ken Ross, Administrator
Commissioner of the Office of
Financial & Insurance Regulation

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

In the matter of:

Transition Order administering the
Michigan Uniform Securities Act

Order No. 09-049-M

Issued and entered
on this 1st day of September 2009
by Ken Ross
Commissioner

**TRANSITION ORDER ADMINISTERING MICHIGAN
UNIFORM SECURITIES ACT, 2008 PA 551**

WHEREAS, the Commissioner of the Office of Financial and Insurance Regulation (OFIR) is charged with administration of the Michigan Uniform Securities Act, 1964 PA 265, MCL 451.501 to 451.818, under E.R.O. No. 2000-2, MCL 445.2003 and E.R.O. No. 2008-1, MCL 445.2005, and of R 451.601.0 to R 451.818.1 of the Michigan Administrative Code promulgated pursuant to that act, which act is scheduled for repeal on October 1, 2009; and

WHEREAS, OFIR is charged with administration of the Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 to 451.2703, which act takes effect on October 1, 2009; and

WHEREAS, the Commissioner of OFIR is charged to perform all duties of the Administrator under both the current and newly enacted Uniform Securities Acts; and

WHEREAS, the Commissioner must promulgate new administrative rules to implement 2008 PA 551, under the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and that process may be expected to take over six months to complete; and

WHEREAS, Sections 605 and 703 of 2008 PA 551, MCL 451.2605, 451.2703, authorize the Administrator to issue such orders as are necessary in the public interest or for the protection of investors and consistent with the purposes intended by the act, while all administrative orders, effective registrations, statements of policy, interpretative opinions, declaratory rulings, no action determinations, releases, and conditions imposed upon the registrations under the predecessor act and administrative rules remain in effect; and

WHEREAS, Section 406 of 2008 PA 551, MCL 451.2406, requires the registration of investment advisor representatives, not previously required to register, and this provision alone can be expected to generate as many as 10,000 new applications in the coming months which OFIR must review and process; and

WHEREAS, Section 405 of 2008 PA 551, MCL 451.2405(1), provides for notice filings by federal covered investment advisors and Section 302(1) of 2008 PA 551, MCL 451.2302(1) provides for notice filings for a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933, 15 USC 77r issued by an investment company not exempt under Sections 201 to 203 of 2008 PA 551, MCL 451.2201 to MCL 451.2203; and

WHEREAS, the Administrator has determined that a transition order is necessary in the public interest, necessary for the protection of investors, consistent with the purposes intended by the act, necessary to assure the orderly review and processing of thousands of new applications, and necessary to assure that current registrants, new applicants for registration, issuers or persons acting on behalf of issuers, and other persons active in the industry are aware of their duties and of the procedures OFIR will follow from the time the new act takes effect on October 1, 2009 until new administrative rules implementing the act are promulgated;

NOW THEREFORE, IT IS ORDERED on and after October 1, 2009 as follows:

1. Pursuant to MCL 451.2410(6), the administrator designates the Central Registration Depository (CRD) or the Investment Adviser Registration Depository (IARD), hereafter "Web CRD/IARD," operated by the Financial Industry Regulatory Authority, Inc. (FINRA) to receive and store filings and collect related fees from all persons required to register or notice file under 2008 PA 551; and the administrator further directs applicants, registrants, and persons required to notice file to use the North American Securities Administrators Association (NASAA) forms available at NASAA website, www.nasaa.org, or Web CRD/IARD, or the OFIR Website, www.michigan.gov/ofir.
2. Any person currently registered in Michigan as a broker-dealer, agent, or investment adviser shall seek renewal or withdrawal of that registration electronically through the Web CRD/IARD in accordance with all instructions, requirements, and conditions there specified, including payment of the required fee.
3. Any person currently registered in Michigan as a broker-dealer, agent, or investment adviser required to amend or change a registration shall amend the applicable Web CRD/IARD forms electronically in accordance with all instructions, requirements, and conditions there specified, including payment of the required fee. With respect to an investment adviser that amends its Form ADV, the investment adviser shall also submit the amended Form ADV, Parts I and II, and any amended investment advisory contract, on paper directly to the Administrator with all changes highlighted.
4. Any applicant for initial registration to transact business in this state as a broker-dealer, agent, investment adviser, or investment adviser representative must apply for registration if required by 2008 PA 551 through Web CRD/IARD in accordance with all instructions, requirements, and conditions there specified, including payment of the required fee, and any applicant must also supply such additional documents as the Administrator may request, such as balance sheets, or sample contracts, subject to such additional requirements, conditions, or provisions as are specified in this Order.

5. Unless waived by the administrator, an applicant for initial registration in Michigan who seeks to transact business in this state as a broker-dealer or agent must take and pass, within the two-year period immediately preceding the filing date of the application reflected on the records of the Web CRD/IARD, either the Uniform Securities Agent State Law Examination (S63) or the Uniform Combined State Law Examination (S66), and take and pass within the two year period immediately preceding the filing date of the application reflected on the records of the Web CRD/IARD, the general securities business examination set forth in paragraph (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to take and pass each examination in paragraphs (b) to (h) that relates to the applicant's proposed securities activities:

- (a) the General Securities Representative Examination (S7);
- (b) the Investment Company Products/Variable Contracts Representative Examination (S6);
- (c) the Direct Participation Programs Representative Examination (S22);
- (d) the Municipal Securities Representative Examination (S52);
- (e) the Corporate Securities Limited Representative Examination (S62);
- (f) the Registered Options Representative Examination (S42);
- (g) the Government Securities Representative Examination (S72);
- (h) the Private Placement Representative Examination (S82).

6. All Administrator's orders previously issued to investment adviser registrants under MCL 451.502(h) that specify custodial standards, practices, and conditions shall continue in full force and effect until withdrawn or modified under the Administrative Procedures Act, 1969 PA 306, MCL 24.201.

7. All new applicants for investment adviser registration and all current registered investment advisers without custody orders are prohibited under MCL 451.2411(6) from taking custody of funds or securities until standards for maintaining custody of customer securities and funds are established by further order or promulgation of administrative rules.

8. To assure an orderly procedure for OFIR to process thousands of new registrations, any investment adviser representative not otherwise exempt under MCL 451.2404(2)(a) shall be permitted to transact business in this state as an investment adviser representative temporarily exempt from registration under MCL 451.2404(2)(b) from October 1, 2009 until July 1, 2010, provided that he or she is employed by or associated with an investment adviser properly registered in Michigan or exempt from registration under either Michigan Uniform Securities Act - 1964 PA 265, MCL 451.501 to 451.818, or 2008 PA 551, MCL 451.2101 to 451.2703 - and provided that he or she successfully completes the registration process before July 1, 2010. For the purpose of implementing this paragraph, the Web CRD/IARD is expected to be ready to process Michigan applications for investment adviser representatives in November 2009.

9. In addition to all requirements included in the Web CRD/IARD registration process, initial applicants for registration as an investment adviser representative must pay the fee required by MCL 451.2410, file a consent to service of process, and unless waived by the Administrator, take and pass within the two-year period immediately preceding the date of the application

reflected on the records of the Web CRD/IARD, either the Uniform Investment Adviser State Law Examination (S65) or the Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

10. An investment adviser representative applicant who has been registered within the past 2 years as an investment adviser representative in a state requiring registration shall not be required to comply with the examination requirement in paragraph 9, and the examination requirement is waived for any person who is current and in good standing as a Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards; a Chartered Financial Consultant (ChFC) or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania; Chartered Financial Analyst (CFA), awarded by the Institute of Chartered Financial Analysts; Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants; or Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

11. An initial application for registration as an investment adviser representative shall not be considered filed until the required fee and all required submissions have been received by the administrator. The administrator's approval will be reported through Web CRD/IARD.

12. Under MCL 451.2502(3)(b), authorizing the administrator to specify the contents of an investment advisory contract, an investment adviser, investment adviser representative, or federal covered investment adviser shall not enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

(a) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser.

(b) That the investment adviser, investment adviser representative, or federal covered investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

(c) That no assignment of the investment advisory contract may be made by any investment adviser, investment adviser representative or federal covered investment adviser without the consent of the other party to the contract.

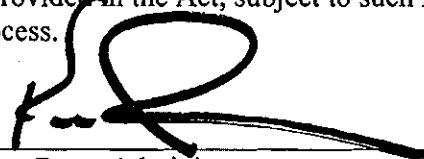
(d) That the investment adviser, investment adviser representative, or federal covered investment adviser, if a partnership, shall notify the other party to the investment advisory contract of any change in the membership of the partnership within fifteen (15) days after the change.

13. A federal covered investment adviser required to notice file under MCL 451.2405(3) shall do so electronically through Web CRD/IARD by properly executing Form ADV, Parts I and II, and paying the fee required by MCL 451.2410(5).

14. With respect to a security issued by an investment company that is a federal covered security as defined in Section 18(b)(2) of the Securities Act of 1933, 15 USC 77r, that is not otherwise exempt under Sections 201 to 203 of 2008 PA 551, MCL 451.2201 to MCL 451.2203, the issuer, or a person acting on behalf of the issuer, shall, before the initial offer of sale in this state, (a) file a consent to service of process available on the website of the North American Securities Administrators Association (NASAA) – www.nasaa.org or on the Administrator’s web site – www.michigan.gov/ofir, and pay the fee required by MCL 451.2302(1)(a); and (b) file with the Administrator all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933. After the initial offer of sale, if the issuer files an amendment to its registration statement with the Securities and Exchange Commission, it shall file with the Administrator a copy of all records that are part of any amendment to a federal registration.

15. Under Section 611 of PA 2008 551, MCL 451.2611, the NASAA Form U-2, Consent to Service of Process, available at www.nasaa.org, shall be the form used to provide consent to service of process wherever required by the act.

16. Except as otherwise modified by the terms of this Order, all other provisions of 2008 PA 551 shall be administered, implemented, and enforced as provided in the Act, subject to such further Orders as may be needed throughout the transition process.



Ken Ross, Administrator
Commissioner of the Office of
Financial & Insurance Regulation