

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

**In the matter of:**

**Fourth Transition Order administering the  
Michigan Uniform Securities Act**

**Order No. 10-026-M**

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**Issued and entered  
on this 11<sup>th</sup> day of March 2010  
By Ken Ross  
Commissioner**

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

WHEREAS, the Commissioner of the Office of Financial and Insurance Regulation (OFIR) issued the following Transition Orders implementing the Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 to MCL 451.2703 (Act), which Act took effect on October 1, 2009: (1) Order No. 09-049-M (First Transition Order), dated September 1, 2009; (2) Order No. 09-055-M (Second Transition Order), dated September 30, 2009; and (3) Order No. 09-070-M, dated December 18, 2009 (Third Transition Order); and

WHEREAS, the Commissioner of OFIR is charged with the administration of the Act and authorized under Section 605 of the Act, MCL 451.2605, to issue such orders as are necessary or appropriate in the public interest or for the protection of investors that are consistent with the purposes intended by the Act; and

WHEREAS, Section 307 of the Act, MCL 451.2307, authorizes the Administrator to waive or modify, in whole or in part, any or all of the requirements of Section 302 of the Act, MCL 451.2302; and

WHEREAS, Section 404(1) of the Act, MCL 451.2404(1), prohibits an individual from transacting business in Michigan as an Investment Adviser Representative (IAR) unless the individual is registered under the Act as an IAR (or is exempt), and paragraph 8 of the First Transition Order extended the registration deadline for IARs to register with Michigan from October 1, 2009 to July 1, 2010; and

WHEREAS, subject to Section 222 of the Investment Advisers Act of 1940, 15 USC 80-b-18a, Section 411(6) of the Act, MCL 451.2411(6), authorizes the Administrator to prohibit, limit, or impose conditions on the custody of funds or securities of a client of an Investment Adviser (IA); and

WHEREAS, Section 412(1)-(4) of the Act, MCL 451.2412(1)-(4), authorizes the Administrator, in the public interest, to issue an order and impose a civil fine of not more than \$10,000.00 if the IAR filed an application for registration in this state under this Act that contained a statement that was false or misleading with respect to a material fact; and

WHEREAS, Section 412(5) of the Act, MCL 451.2412(5), authorizes the Administrator to require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals; and

WHEREAS, pursuant to Section 604(4)(a) of the Act, MCL 451.2604(4)(a), the Administrator may issue an order for appropriate relief, including imposition of a fine of not more than \$10,000.00 for a single violation of the Act or a rule or order issued pursuant to the Act.

NOW, THEREFORE, IT IS ORDERED as follows:

1. Pursuant to Section 307 of the Act, MCL 451.2307, if an issuer notice files under Section 302(4) of the Act, MCL 451.2302(4), by submitting U.S. Securities and Exchange Commission FORM D, (expires June 12, 2012), which is available on the North American Securities Administrators Association (NASAA) website at [http://www.nasaa.org/Industry\\_Regulatory\\_Resources/Uniform\\_Forms/](http://www.nasaa.org/Industry_Regulatory_Resources/Uniform_Forms/), the issuer is not required to submit a separate consent to service of process form pursuant to Section 302(4)(b) of the Act, MCL 451.2302(4)(b).

2. Pursuant to Section 411(6) of the Act, MCL 451.2411(6), Paragraph 7 of the First Transition Order is amended as follows:

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 CLIENT funds or securities until standards for maintaining custody of customer securities and CLIENT funds are established by further order or promulgation of administrative rules. HOWEVER, THE ADMINISTRATOR MAY STILL REVIEW WRITTEN REQUESTS FOR CUSTODY ORDERS SUBMITTED BY AN INVESTMENT ADVISER, AND IF THE ADMINISTRATOR APPROVES SUCH REQUEST HE MAY ISSUE A CUSTODY ORDER TO THE INVESTMENT ADVISER, WHICH ORDER MAY INCLUDE LIMITATIONS, CONDITIONS OR OTHER REQUIREMENTS AS THE ADMINISTRATOR DEEMS NECESSARY OR APPROPRIATE IN THE PUBLIC INTEREST.

IT IS FURTHER ORDERED that an amended paragraph 7, without editing shown be immediately posted to the OFIR website, <http://web2.cis.ad.state.mi.us/ofir/home.asp>:

7. All new applicants for investment adviser registration and all investment advisers without custody orders are prohibited under MCL 451.2411(6) from taking custody of client funds or securities until standards for maintaining custody of customer securities and client funds are established by further order or promulgation of administrative rules. However, the administrator may still review written requests for custody orders submitted by an investment adviser, and if the Administrator approves such request he may issue a custody order to the Investment Adviser, which order may include limitations, conditions or other requirements as the Administrator deems necessary or appropriate in the public interest.

3. Paragraph 8 of the First Transition Order is amended as follows:

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~~, NOVEMBER 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~~ THE 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~~ BY November 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. IAR APPLICANTS SHOULD FILE THEIR APPLICATIONS WITH THE FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA) THROUGH WEB CRD/IARD NO LATER THAN SEPTEMBER 1, 2010 IN ORDER TO ALLOW OFIR SUFFICIENT TIME TO PROCESS THE APPLICATIONS. NOTWITHSTANDING THE FOREGOING, OFIR CANNOT GUARANTEE THAT APPLICATIONS FILED WITH FINRA THROUGH WEB CRD/IARD BY SEPTEMBER 1, 2010 WILL BE PROCESSED BY THE NOVEMBER 1, 2010 REGISTRATION DEADLINE. IAR APPLICANTS ARE ENCOURAGED TO APPLY FOR REGISTRATION THROUGH FINRA WEB CRD/IARD AS EARLY AS POSSIBLE. AN IAR WHOSE APPLICATION IS NOT APPROVED AS OF NOVEMBER 1, 2010, CANNOT CONDUCT

BUSINESS IN MICHIGAN AS AN IAR UNTIL OFIR APPROVES  
THE IAR'S APPLICATION.

IT IS FURTHER ORDERED that an amended paragraph 8, without editing shown be immediately posted to the OFIR website,  
<http://web2.cis.ad.state.mi.us/ofir/home.asp>:

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 November 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 the Michigan Uniform Securities Act, 2008 PA 551, MCL 451.2101 to 451.2703, and provided that he or she successfully completes the registration process by November 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. IAR applicants should file their applications with the Financial Industry Regulatory Authority (FINRA) through Web CRD/IARD no later than September 1, 2010 in order to allow OFIR sufficient time to process the applications. Notwithstanding the foregoing, OFIR cannot guarantee that applications filed with FINRA through Web CRD/IARD by September 1, 2010 will be processed by the November 1, 2010 registration deadline. IAR applicants are encouraged to apply for registration through FINRA Web CRD/IARD as early as possible. An IAR whose application is not approved as of November 1, 2010, cannot conduct business in Michigan as an IAR until OFIR approves the IAR's application.

4. (a) Pursuant to Section 412(5) of the Act, MCL 451.2412(5), until August 2, 2010, an IAR Applicant shall not be subject to the examination requirement in paragraph 9 of the First Transition Order, as clarified by paragraph 4 of the Third Transition Order, if the Chief Compliance Officer (CCO) and the Owner or Officer of the IA firm with which the IAR is currently employed, and the IAR, submit to OFIR as part of the IAR's application, a written Investment Adviser Representative (IAR) Certification and Consent Form, form number FIS 0580 (the Form), which is available on the OFIR website.

(b) Pursuant to Section 412(1)-(4) of the Act, MCL 451.2412(1)-(4) and Section 604 of the Act, MCL 451.2604, the Administrator is authorized to issue an order and impose a civil fine if the material information on the Form is found to be false, misleading or inaccurate.

(c) The Form requires the CCO and the Owner or Officer of the IA Firm and the IAR to (i) attest to the fact that the following material information is true and accurate; and (ii) agree to entry of an order and imposition of a fine if OFIR determines that the information is not true and accurate:

(1) The IAR has been continuously employed by an IA firm and has been performing IAR services without a two or more year break in service, since he/she passed the Series 65 or the series 66 examination; and

(2) The IAR applicant has filed his/her U-4 form application requesting IAR registration in Michigan through FINRA Web CRD/IARD.

(3) The undersigned CCO, IA Owner or Officer and IAR affirm that the foregoing material information is true and accurate and agree that if OFIR determines that any of the foregoing information is false, inaccurate, or misleading, the CCO, the Owner or Officer of the IA firm, and the IAR consent to entry of an Order (a) identifying the false, inaccurate, or misleading information; and (b) obligating the CCO, the Owner or Officer of the IA firm, and the IAR to pay to OFIR a fine in the amount of \$10,000.00; and (c) directing that all fees earned be refunded to the affected clients of the IAR from the date the IAR became registered in Michigan through the date OFIR determines that the information on the Form was false, inaccurate or misleading and so notifies the IAR, the CCO and the Owner or Officer of the IA firm.

(4) Additionally, with respect to the foregoing, the undersigned CCO, IA Owner or Officer and IAR each waive all due process and procedural requirements of the Michigan Administrative Procedures Act of 1969, MCL 24.201 and the Act.

**(d) WAIVER OF THE IAR APPLICANT'S EXAMINATION REQUIREMENT THROUGH SUBMISSION OF THE FORM TO OFIR DOES NOT CONSTITUTE AN APPROVAL OF THE IAR APPLICATION. ALL FORMS MUST BE SUBMITTED TO OFIR NO LATER THAN AUGUST 2, 2010. AFTER AUGUST 2, 2010, OFIR SHALL NOT ACCEPT A FORM SEEKING TO WAIVE AN IAR APPLICANT'S EXAMINATION REQUIREMENT AND THE EXAMINATION REQUIREMENT SET FORTH IN PARAGRAPH 9 OF THE FIRST TRANSITION ORDER, AS CLARIFIED BY PARAGRAPH 4 OF THE THIRD TRANSITION ORDER, SHALL BE ENFORCED.**

**(e) AFTER NOVEMBER 1, 2010, IF AN IAR APPLICANT'S EXAMINATION REQUIREMENT HAS BEEN WAIVED, BUT OFIR HAS NOT APPROVED THE IAR'S APPLICATION, THE IAR APPLICANT IS NOT ALLOWED TO CONDUCT BUSINESS IN MICHIGAN AS AN IAR UNTIL OFIR HAS APPROVED THE APPLICATION.**

**NOTE: OFIR CANNOT GUARANTEE THAT AN IAR REQUESTING AN EXAMINATION WAIVER WILL HAVE HIS/HER APPLICATION APPROVED BY THE REGISTRATION DEADLINE DATE EVEN IF THE APPLICATION IS SUBMITTED TO OFIR BY AUGUST 2, 2010.**

**(f) IF AN IAR APPLICANT IS ENTITLED TO A REFUND OF HIS/HER FINRA EXAMINATION FEES BECAUSE AN IAR APPLICANT'S EXAMINATION REQUIREMENT IS WAIVED AS DESCRIBED ABOVE, AND THE IAR HAS NOT/DID NOT TAKE THE EXAMINATION, THE IAR'S REFUND REQUEST CAN ONLY BE SUBMITTED TO OFIR FOR PROCESSING AFTER THE NOVEMBER 1, 2010 EXTENDED REGISTRATION DEADLINE DATE.**

5. Except as MODIFIED by the terms of this Order, all other provisions of the First Transition Order, the Second Transition Order, the Third Transition Order and the Act shall be administered, implemented, and enforced as provided in the Act, subject to such further Orders as may be needed throughout the transition process.



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

# Investment Adviser Representative (IAR) Certification and Consent

Our firm \_\_\_\_\_ IA Firm IARD # \_\_\_\_\_  
(Name of Investment Adviser (IA) Firm)

is hereby requesting a waiver of the examination requirements for the IAR listed below.

Name of IAR \_\_\_\_\_ IAR CRD# \_\_\_\_\_

Date IAR passed S65 or S66 examination \_\_\_\_\_

*REMINDER: THERE CANNOT BE A BREAK IN IAR EMPLOYMENT OF MORE THAN TWO YEARS.*

IAR's Employment Dates  
(since exam was taken)

IAR's Employers and job duties at each employer (Attach additional pages as needed)  
(since exam was taken)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_, certify that I have been employed or engaged by one or more IA firms performing services for which IAR registration is required under the Act without a break in service lasting more than two years since I passed the Series 65 or the series 66 examination. After diligent review of records and information available, I further certify that the above material information is true and accurate to the best of my knowledge, information and belief, and I agree to entry of an order and imposition of a fine if OFIR determines that the information is not true and accurate. I have also read the Fourth Transition Order issued on March 11, 2010 and consent to all penalties to be assessed if false, inaccurate or misleading information is provided.

IAR Signature \_\_\_\_\_ Date \_\_\_\_\_

I, \_\_\_\_\_, certify that the IAR identified above has been employed or engaged by one or more IA firms performing services for which IAR registration is required under the Act without a break in service lasting more than two years since he/she passed the Series 65 or the series 66 examination. After diligent review of records and information available, I further certify that the above material information is true and accurate to the best of my knowledge, information and belief, and I agree to entry of an order and imposition of a fine if OFIR determines that the information is not true and accurate. I have also read the Fourth Transition Order issued on March 11, 2010 and consent to all penalties to be assessed if false, inaccurate or misleading information is provided.

Chief Compliance Officer of IA Firm Signature \_\_\_\_\_ Date \_\_\_\_\_

I represent that I, \_\_\_\_\_, am authorized to execute this IAR Certification and Consent on behalf of the IA Firm identified above and certify that the IAR identified above has been employed or engaged by one or more IA firms performing services for which IAR registration is required under the Act without a break in service lasting more than two years since he/she passed the Series 65 or the series 66 examination. After diligent review of records and information available, I further certify that the above material information is true and accurate to the best of my knowledge, information and belief, and I agree to entry of an order and imposition of a fine if OFIR determines that the information is not true and accurate. I have also read the Fourth Transition Order issued on March 11, 2010 and consent to all penalties to be assessed if false, inaccurate or misleading information is provided.

IA Firm Owner or Officer Signature \_\_\_\_\_ Date \_\_\_\_\_

## RETURN COMPLETED FORM TO THE OFFICE OF FINANCIAL AND INSURANCE REGULATION

Office of Financial and Insurance Regulation  
Securities Section  
P.O. Box 30701  
Lansing, MI 48909-8201

Authority: PA 551 of 2008. This form is mandatory pursuant to the Fourth Transition Order No. 10-026-M.



### Michigan Department of Energy, Labor & Economic Growth

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