

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

In the matter of:

Fifth Transition Order administering the
Michigan Uniform Securities Act

Order No. 10- 097 -M

Issued and entered
on November 1, 2010

By: _____


Ken Ross
Commissioner

FIFTH TRANSITION ORDER ADMINISTERING THE MICHIGAN
2002 UNIFORM SECURITIES ACT, 2008 PA 551

WHEREAS, on October 1, 2009, the Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 (the "Act") *et seq.*, took effect, repealing the former Michigan Uniform Securities Act, MCL 451.501 *et seq.* (the "Predecessor Act"); and

WHEREAS, Section 102(a) of the Act, MCL 451.2102(a) designates the Office of Financial and Insurance Regulation (OFIR) as the administrator of the Act (the "Administrator"); and

WHEREAS, the Administrator is 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, the Administrator issued the following Transition Orders implementing the Act: (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; (3) Order No. 09-070-M, dated December 18, 2009 (Third Transition Order); and Order No. 10-026-M, dated March 11, 2010 (Fourth Transition Order); and

WHEREAS, Section 201(g) of the Act, MCL 451.2201(g), authorizes the Administrator to limit the availability of the exemption from the registration requirements of the Act with respect to certain charitable/non-profit issuers as defined therein; and

WHEREAS, under Section 201(c)(2) of the Predecessor Act, MCL 451.601(c)(2), a person registered as a broker dealer that also conducted business as an investment adviser did not have to register as an investment adviser; and

WHEREAS, under Section 404 of the Act, MCL 451.2404, a person conducting business as an investment adviser representative must register under the Act; and

WHEREAS, pursuant to Section 401(1) of the Act, MCL 451.2401(1), the Administrator is authorized to exempt from the registration requirements of the Act, a broker-dealer that is registered in Canada in accordance with Section 401(4) of the Act, MCL 451.2401(4); and

WHEREAS, pursuant to Section 402(2)(b) of the Act, MCL 451.2402(2)(b), the Administrator is authorized to exempt from the registration requirements of the Act, an agent of a Canadian broker-dealer that is exempt under Section 401(1) of the Act, MCL 451.2401; and

WHEREAS, pursuant to Section 502(3)(a) of the Act, MCL 451.502(3)(a), the Administrator may by order define an act, practice or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive, or manipulative.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Beginning January 1, 2011, pursuant to Section 201(g) of the Act, MCL 451.2201(g):

(a) With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the Act, MCL 451.2201(g), the self-executing exemption from the registration requirements of the Act set forth in section 201(g) of the act, MCL 451.2201(g), shall be available only for an offer or sale of a security that is part of an issue having an aggregate sales price of \$500,000 or less and sold to a bona fide member of the issuing organization without payment of a commission or consulting fee.

(b) The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the act, MCL 451.2201(g), who does not qualify for the self-executing exemption under section (a) above, shall register the securities under section 304 of the Act by:

(i) Filing with the Administrator, at least 20 days before the offer or sale of the security, an offering circular or prospectus specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used, and

(ii) Paying to the Administrator a registration fee of \$250.00 dollars.

(c) Unless the Administrator notifies the issuer in writing within 20 business days that the registration is disallowed, the securities shall be deemed approved registered under section 304 of the Act.

(d) Sections (a), (b) and (c) above shall not apply to any offer or sale made within one year after the date of this order pursuant to an offering made in good faith before the date of this order in reliance on section 201(g) of the Act."

2. IT IS FURTHER ORDERED that pursuant to Section 605(1) of the Act, MCL 451.2605(1):

(a) A broker-dealer registered as such prior to October 1, 2009, and who was previously exempt from investment adviser registration under section 201(c)(2) of the Predecessor Act (a "Previously Exempt Broker-Dealer") that acts or desires to act as an investment adviser in this state shall have until December 1, 2010 to apply to the Administrator for registration as an investment adviser under Section 403 of the Act, MCL 451.2403, in the manner described in paragraph 4 of the First Transition Order, including payment of the requisite investment adviser registration fee. Additionally, in connection with the investment adviser application, a Previously Exempt Broker-Dealer shall file with the Administrator a list of all investment adviser representatives associated and/or employed by the broker-dealer, which may be amended or supplemented pending the Administrator's action upon the investment adviser representative applications described in paragraph 2(c) of this Order.

(b) A Previously Exempt Broker-Dealer who timely files an application in accordance with paragraph 2(a) of this Order, shall be exempt from investment adviser registration under Section 403 of the Act, MCL 451.2403, unless and until the application is either approved or denied by the Administrator. Further, a Previously Exempt Broker-Dealer shall not be subject to any fines or penalties related solely to its failure to be registered as an investment adviser between October 1, 2009 and the date on which the application is either approved or denied; however, nothing in this subparagraph shall be construed as relieving a Previously Exempt Broker-Dealer from the fraud, liability, and other obligations set forth in Sections 501, 503, 505, 506, 508 and 509 of the Act, MCL 451.2501, MCL 451.2503, MCL 451.2505, MCL 451.2506, MCL 451.2508 and MCL 451.2509.

(c) If a Previously Exempt Broker-Dealer complies with paragraph 2(a) of this Order and timely submits its application for investment adviser registration, then its investment adviser representatives shall be exempt from the individual registration requirements of Section 404 of the Act, MCL 451.2404, unless and until (1) the application for investment adviser registration by the Previously Exempt Broker-Dealer is either approved or denied, and, if approved, then (2) the individual's application for investment adviser representative registration is either approved or denied by the Administrator; provided, that the individual promptly files an application for registration as an investment adviser representative and completes all of the registration related requirements by May 2, 2011. Further, an investment adviser representative shall not be subject to any fines or penalties related solely to the individual's failure to be registered as an investment adviser representative between October 1, 2009, and the date on which the individual's application is either approved or denied; however, nothing in this

subparagraph shall be construed as relieving an investment adviser representative from the fraud, liability, and other obligations set forth in Sections 501, 503, 505, 506, 508 and 509 of the Act, MCL 451.2501, MCL 451.2503, MCL 451.2505, MCL 451.2506, MCL 451.2508 and MCL 451.2509.

NOTE: Michigan's registration requirements for investment advisers and for investment adviser representatives are expressly set forth in Transition Order No. 1, and clarified in Transition Order No. 3. Copies of both orders are available at www.michigan.gov/ofir.

(d) An investment adviser representative who, in connection with an application for registration pursuant to subparagraph 2(c) of this Order, intends to rely upon an examination waiver pursuant to, and in accordance with, the Fourth Transition Order, shall file with the Administrator an "Investment Adviser Representative Certification and Consent Form" no later than February 1, 2011. Copies of the Fourth Transition Order and the Investment Adviser Representative Certification and Consent Form" are available at www.michigan.gov/ofir.

3. IT IS FURTHER ORDERED that:

(a) A broker-dealer that is registered as such in Canada that does not have a place of business in this state may effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

(i) An individual from Canada who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

(ii) An individual from Canada who is present in this state and whose transactions are in a self-directed, tax advantaged retirement plan of which the individual is the holder or contributor in Canada.

(iii) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada.

(b) An agent who represents a broker-dealer that is exempt under subparagraph 3(a) of this Order may effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in subparagraph (3)(a).

4. IT IS FURTHER ORDERED that pursuant to Section 502(3)(a) of the Act, MCL 451.2502(3)(a), the Administrator adopts the North American Association of Securities Administrators (NASAA) Model Rule on the Use of Senior-Specific Certifications and Professional Designations, adopted March 20, 2008, whereby the following constitutes fraudulent, deceptive, and/or manipulative acts, practices or course of business of an investment adviser and/or investment adviser representative:

(a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of Section 502(3)(a) of the Act, MCL 451.2502(3)(a). The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(i) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) use of a nonexistent or self-conferred certification or professional designation;

(iii) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(iv) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(1) is primarily engaged in the business of instruction in sales and/or marketing;

(2) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(3) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(4) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(b) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

(i) The American National Standards Institute; or

(ii) The National Commission for Certifying Agencies; or

(iii) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(c) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(i) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

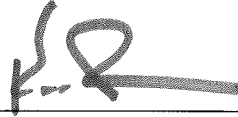
(ii) the manner in which those words are combined.

(d) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (i) indicates seniority or standing within the organization; or
- (ii) specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(e) Nothing in this Order shall limit the Administrator's authority to enforce existing provisions of law.



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