

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. 2018-1

\_\_\_\_\_ /  
on this 28<sup>th</sup> day of March, 2018

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

**I. FACTUAL BACKGROUND AND STATUTORY AUTHORITY**

1. The Michigan Uniform Securities Act (2002), 2008 PA 551, MCL 451.2101 *et seq.* (the "Act"), took effect on October 1, 2009.
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").
5. The Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq.* ("FOIA") establishes the public policy that all persons, except persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.
6. Section 3(1) of FOIA, MCL 15.233(1), entitles a requester of public records under FOIA with the right to inspect, copy, or receive copies of the public records of a public body, unless those records are exempt from disclosure under section 13 of FOIA, MCL 15.243.
7. Section 2(e) of FOIA, MCL 15.232(e) defines a "public record" as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function."
8. Under sections 3(4) and 3(5) of FOIA, MCL 15.233(4) & (5), the Administrator is not required to make a compilation of information or to create a new public record upon request.

9. Section 607(1) of the Act, MCL 451.2607(1) states:

(1) Subject to subsection (2), records obtained by the administrator or filed under this act, including a record contained in or filed with any registration statement, application, notice filing, or report, are public records and are available for public examination.

10. Section 13(1)(d) of FOIA, MCL 15.243(1)(d), exempts from disclosure under FOIA any records or information specifically described and exempted from disclosure by statute.

11. Section 607(2) of the Act, MCL 451.2607(2), states in part:

(2) The following records are not public records and are not available for public examination under subsection (1):

\* \* \*

(f) A record obtained by the administrator through a designee of the administrator that is determined by a rule or order under this act to have been either of the following:

\* \* \*

(ii) Appropriately determined to be nonpublic or nondisclosable by that designee if the administrator finds that this is in the public interest and for the protection of investors.

12. The former Administrator, by Order No. 09-049-M, Transition Order Administering Michigan Uniform Securities Act ("Transition Order 1"), designated the Central Registration Depository ("CRD") or the Investment Adviser Registration Depository ("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 the Act.

13. In addition to the filings that it receives on behalf of the Administrator, FINRA maintains numerous other records on the CRD and IARD. FINRA permits the Administrator, through its online access to the CRD and IARD, to have access to some, but not all, of these other records. Additionally, the CRD and IARD are able to generate numerous reports for the Administrator. Although these reports may include information obtained from filings FINRA has collected on behalf of the Administrator, in almost all cases the report will also include information FINRA has obtained from and holds on behalf of other sources.

14. When the Administrator obtains a record from FINRA, other than a record FINRA received on the Administrator's behalf, including a report that is generated through the CRD or IARD, FINRA considers the record to be nonpublic.<sup>1</sup>

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<sup>1</sup> FINRA has decided to make available to the public via BrokerCheck, <https://brokercheck.finra.org>, only certain information within its possession concerning securities agents and broker-dealer firms. Similarly, the SEC operated Investment Adviser Public Disclosure (IAPD), <http://www.adviserinfo.sec.gov>, is an online tool to help anyone check the background of Investment Advisers and Investment Adviser Representatives.

15. The Administrator determines that it is appropriate and in the public interest and for the protection of investors that any records obtained by the Administrator from FINRA through the CRD and IARD, which FINRA considers to be nonpublic, including any reports generated by CRD and IARD, other than those records received by FINRA on behalf of the Administrator, are not subject to public examination in accordance with section 607(2)(f)(ii) of the Act, MCL 451.2607(2)(f)(ii).

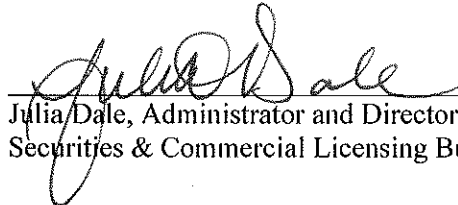
## II. ORDER

THEREFORE, IT IS ORDERED THAT:

1. Records and information obtained by the administrator from FINRA through the CRD and IARD, other than those records received by FINRA on behalf of the Administrator,<sup>2</sup> are not available for public examination under section 607(1) of the Act, MCL 451.2607(1), pursuant to the Administrator's authority under section 607(2)(f)(ii) of the Act, MCL 451.2607(2)(f)(ii) and section 13(1)(d) of FOIA, MCL 15.243(1)(d).

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU

By:

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

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<sup>2</sup> Nothing in this order should be understood as in any way limiting the Administrator's ability to assert any applicable exemptions under section 13(1) of the FOIA, MCL 15.243(1), in response to a request for public records that are obtained by and held by FINRA on the CRD and IARD on behalf of the Administrator.