



MICHIGAN'S MAKEOVER

New State Securities Law to Take Effect

ON OCTOBER 1, 2009, MICHIGAN ROLLED OUT A NEW UNIFORM SECURITIES ACT—ONE DESIGNED TO BETTER REFLECT FEDERAL SECURITIES LAWS. THE NEW ACT CONFERS INCREASED POWER AND DISCRETION UPON THE DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH'S OFFICE OF FINANCIAL AND INSURANCE REGULATION (OFIR), WHICH IS RESPONSIBLE FOR ADMINISTERING THE LAW.

QUICK TAKE

- Michigan's new securities law took effect October 1st
- State regulations now more closely reflect federal securities law
- The new Act should be reviewed by anyone involved in the offer and sale of securities in Michigan

Replacing the State's existing securities law, the Act includes a number of key changes. Space does not permit a full discussion in this issue of Hot Points, but here's a summary of noteworthy changes affecting the regulation of the offer and sale of securities in Michigan.



DEFINITION OF "SECURITY"

The new Act explicitly adds "security futures" and "investments in viatical or life-settlement agreements" to the term "security," as well as certain puts, calls, straddles, options, and privileges. Interest in a limited partnership, limited liability company, or limited liability partnership as an investment contract is now also included as a "security." The definition of "security" excludes an interest in a contributory or noncontributory pension or welfare plan that is subject to the Employee Retirement Income Security Act of 1974, and incorporates the concept of investment in a "common enterprise."

REGISTRATION OF SECURITIES

Several minor changes related to registration are set forth in the new Act—among them, language about those scenarios of which one or more must be present for a person to offer or sell a security in Michigan. In certain instances, the period in which a registration statement becomes effective has generally been set at 30 days—although the Act offers the OFIR considerable discretion to extend that timeframe.

EXEMPT SECURITIES

The new Act makes many technical changes to the list of exempt securities, including the specific inclusion of a "federal covered security." Removed from the exempt list are certain prime quality, negotiable commercial papers; and investment contracts or options issued in connection with an employee's stock.

FILING REQUIREMENTS

Under the new Act, Michigan still requires the filing of a SEC Form D (or other OFIR-approved form), as well as a consent to process, and a nonrefundable \$100 filing fee within 15 days of the first sale of any Federal Covered Security in Michigan. The Act specifies when a first sale is said to have occurred, and gives OFIR the authority to impose additional notice filings.

LIMITED OFFERING EXEMPTION

The exemption for limited offerings is now simpler and more concise. When a sale is part of a single issue in which, during a 12-month period, there are no more than 25 purchasers (excluding institutional investors, federal-covered investment advisors, and other exempt persons or entities), and certain other conditions are met, it is exempt from registration in Michigan. Those conditions include no general solicitation or advertising of the offer to sell, no commission or other remuneration to anyone other than a registered agent or broker-dealer, and a reasonable belief that all Michigan purchasers are doing so for investment purposes.

Due to the complexity and fact-specific nature of the subject, anyone considering offering or selling securities in Michigan will want to become thoroughly acquainted with the new law's provisions. Please contact the author or Gurinder J. Singh, 734.668.7727, for assistance.

