

## Investment Management E-news

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### NEW MICHIGAN UNIFORM SECURITIES ACT IMPACTS INVESTMENT ADVISERS AND FINDERS

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Recently, Michigan's Governor, Jennifer Granholm, signed into law the new Michigan Uniform Securities Act (2002) (the "New Uniform Act"). The New Uniform Act will replace the current Michigan Uniform Securities Act effective as of October 1, 2009. The New Uniform Act has several provisions of particular interest to investment advisers, investment adviser representatives, financial planners and finders.

#### Investment Adviser Representatives

An investment adviser representative ("IAR") generally is a person who, for compensation: (1) makes any recommendations or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines which recommendation or advice regarding securities should be given; (4) solicits, offers, or negotiates for the sale of or sells investment advisory services; or (5) supervises employees who perform any of the foregoing. Michigan ("Michigan" or the "State") has not to date required IARs to register. Under the current law, the only notification requirement for IARs has been that a state-registered investment adviser IAR must list any IARs engaged by it on certain supplemental forms filed with the State. Federally-covered investment advisers, which are advisers registered with the Securities and Exchange Commission ("SEC"), have not been required to make any filings with the State with respect to their IARs. Under the New Uniform Act, IARs of both State-registered investment advisers, and those federally-covered investment advisers which have a place of business in Michigan or have more than five clients that are Michigan residents (other than certain specified categories of investors, such as institutional investors) during the preceeding 12 months, may not transact business in the State unless they register. This will bring Michigan into conformity with the practice of most other states which require registration of IARs.

#### Financial Planners

The New Uniform Act also expands the definition of "investment adviser" to include financial planners. Although the SEC and state securities regulators have for many years taken the position that financial planners who provide investment advice are within the definition of investment adviser and must register as such, the New Uniform Act makes this interpretation explicit.

## Finders

The New Uniform Act's definition of "investment adviser" has also been revised to address "finders." Michigan law defines a finder as "a person who, for consideration, participates in the offer to sell, sale or purchase of securities by locating, introducing or referring potential purchasers or sellers." Michigan is only one of two states (the other one being Texas) that has enacted legislation defining finders and regulating their activities. The SEC does not register finders as such, although the various pronouncements of the SEC Staff over the years indicate that typical finders would be likely to qualify in the Staff's eyes as brokers or, depending on their particular activities, as investment advisers. In fact, it is not uncommon for a finder, if not providing investment advice in the form of advice on the terms of proposed transactions or on the merits of offers received, to participate in negotiations or other aspects of transactions and, worse yet, to receive transaction-based compensation for the finder's services, thereby "engag[ing] in the business of effecting transactions in securities for the account of others," which requires registration as a broker-dealer. Michigan's current law requires a finder to register as an investment adviser and imposes certain requirements on the finder's conduct.

The New Uniform Act realigns the classification of finders by revising the definition of investment adviser to remove finders as a category of persons to whom the definition applies. Instead, the New Uniform Act requires finders to register as broker/dealers.

## General

The New Uniform Act, like the current law, leaves many of the details subject to administrative rule making. Other than setting forth the general registration procedures and filing fees, no detail regarding the requirements or qualifications for registration of IARs are provided. However, it is likely that some standards will be imposed. For comparison, some other states require that IARs pass the Series 65 (Uniform Investment Advisers Examination) or the Series 66 (Uniform Combined State Law Examination) and the Series 7 (General Securities Examination) examinations. Some states will accept certain professional designations in lieu of the qualifying examinations, such as CFP, ChFC, PFS, CFA and CIC and waivers may also be available for IARs possessing significant securities experience.

Similarly, the New Uniform Act does not state the specific contents of the registration forms and other requirements for registration of a finder as a broker-dealer.

Finally, the New Uniform Act ups the ante for violators by increasing the potential penalties for violations to \$500,000 or imprisonment for up to 10 years.

For more information about the New Uniform Act, please feel free to contact your Butzel attorney, the authors listed below or other attorneys of the [Investment Management Practice Group](#).

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