

## Investment Management E-news

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### Michigan Provides More Details On New Registration Requirement For Investment Adviser Representatives

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We previously advised that Michigan's new Uniform Securities Act (2002) 2008, PA 551 (the "New Uniform Act"), will become effective on October 1, 2009 and that, among other things, the New Uniform Act will for the first time require registration of investment adviser representatives.

Michigan's Office of Financial and Insurance Regulation has just issued further information regarding the requirement for investment adviser representatives to register.

#### Definition of Investment Adviser Representative

The New Uniform Act defines an investment adviser representative ("IAR") as "an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing."

Michigan does not presently require IARs to register. Under current law, a state-registered investment adviser is only required to list any IARs engaged by it on certain supplemental forms filed with the state. Federal covered investment advisers, which are advisers registered with the Securities and Exchange Commission, have not been required to make any filings with the state with respect to their IARs. Under the New Uniform Act, IARs of both Michigan-registered investment advisers and those federal covered investment advisers which have a place of business in Michigan or have more than five clients that are Michigan residents, may not transact business in the state unless they register. Registration will be made on Form U-4 through the CRD/IARD System maintained by FINRA.

The following individuals are excluded from the definition of investment adviser representative and thus are not required to register:

- Performs only clerical or ministerial acts.
- Is an agent whose performance of investment advice is solely incidental to the individual

acting as an agent and does not receive special compensation for investment advisory services.

- Is employed by or associated with a federal covered investment adviser, unless the individual meets any of the following:
  - Has a “place of business” in the state and is an “investment adviser representative”.
  - Has a “place of business” in the state, and is not a “supervised person”.
- Is excluded by rule or order under the New Uniform Act

### **Exemptions from Registration as an Investment Adviser Representative**

The following individuals are exempt from registration:

- An individual who is employed by or associated with an investment adviser that is exempt from registration under Section 403(2) of the New Uniform Act. This includes investment advisers with no place of business in the state and whose clients in the state are limited to federal covered investment advisers, investment advisers registered with the state, broker-dealers, institutional investors and bona fide preexisting clients whose principal residence is not in the state.
- A federal covered investment adviser that is excluded from the notice filing requirements of Section 405.
- Any other individual exempted by rule or order under the New Uniform Act.

### **Rules Regarding Investment Adviser Representative Registration**

Rules to the New Uniform Act have yet to be passed. In light of this, many of the particulars regarding registration requirements, examination requirements and waivers, etc. have yet to be determined. If Rules to the New Uniform Act are not passed by October 1, 2009, the State of Michigan will issue Orders that will be effective until the rules pass.

#### **Examination Requirements and Waivers**

Most other states require that an IAR demonstrate a passing score with respect to the following examinations: (1) Uniform Investment Adviser Law Examination (Series 65 examination); or (2) General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

Many other states waive the examination requirements for persons holding any of the following professional designations: CFP, ChFC, PFS, CFA and CIC. Most states also provide for grandfathering of IARs who have been registered in another state or have passed specified examinations within the past few years. There is currently no indication whether Michigan intends to follow these practices.

### **Registration Window for Investment Adviser Representatives**

The State of Michigan will have a window of time (to be determined) for individuals to comply with

the New Uniform Act's registration requirement.

For more information about the registration requirements for IARs or 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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