

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

SECURITIES

Filed with the Secretary of State on January 3, 2019.

These rules become effective 180 days after filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State. [Effective July 3, 2019.]

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PART 2. EXEMPTIONS FROM REGISTRATION OF SECURITIES

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R 451.2.3 Bad actor disqualification.

Rule 2.3.

(1) Exemptions available at section 201(g), MCL 451.2201(g), section 202(1)(k), MCL 451.2202(1)(k), section 202(1)(n), MCL 451.2202(1)(n), section 202(1)(t), MCL 451.2202(1)(t), and section 202a, MCL 451.2202a, are not available for an offer or sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20% or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid, directly or indirectly, remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor is subject to either of the following:

(a) Disqualification as described in SEC rule 506(d) of SEC regulation D, 17 C.F.R. §230.506(d).

(b) Disqualification as described in SEC rule 262 of Regulation A, 17 C.F.R. §230.262.

(2) Subrule (1) of this rule does not apply under any of the following conditions:

(a) With respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before September 23, 2013. Issuers relying on this subrule shall furnish to each offeree and purchaser, a reasonable time prior to sale, a description in writing of any matters that would cause a disqualification under subrule (1) of this rule, but which occurred before September 23, 2013.

(b) Upon a showing of good cause and without prejudice to any other action by the administrator, if the administrator determines that it is not necessary under the circumstances that an exemption be denied. Requests for a determination by the administrator under this subsection must be made in writing.

(c) If, before the relevant sale, the court or regulatory authority that entered the relevant order, judgment, or decree advises in writing, whether contained in the relevant order, judgment, or decree, or separately to the administrator or its staff, that disqualification under subrule (1) of this rule should not arise as a consequence of such order, judgment, or decree.

(d) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known, that a disqualification existed under subrule (1) of this rule. **For purposes of this subrule, an issuer shall not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist.** The nature and scope of the factual inquiry shall vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.