

New Limitations on the Michigan Nonprofit Exemption from Securities Registration

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On November 1, 2010, the Michigan Office of Financial and Insurance Regulation (OFIR) issued its Fifth Transition Order related to implementation of the Michigan Uniform Securities Act (MUSA). The Fifth Transition Order is available [here](#). Among other things, the Fifth Transition Order limits the availability of the nonprofit securities exemption effective January 1, 2011.

The Nonprofit Exemption under MUSA

Section 201(g) of MUSA provides all nonprofit organizations with an automatic exemption from the requirements of Sections 301 to 306 and 505 of MUSA. No filings or fees are required under this exemption. The nonprofit exemption is available for:

A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the investment company act of 1940, 15 USC 80a-3.

Significantly, however, MUSA Section 201(g) authorizes OFIR to limit the nonprofit exemption as applicable to nonprofit issuers of debt securities. Section 201(g) provides:

With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in this subdivision, the administrator by rule or order may limit the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (ii) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to meet 1 or more of the following:

(i) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

(ii) To file a request for exemption authorization for which a rule under this act may specify the scope of the exemption; the requirement of an offering statement; the filing of sales and advertising literature; the filing of consent to service of process complying with section 611; and grounds for denial or suspension of the exemption.

(iii) To register under section 304.

OFIR exercised the power given to it by these provisions in its issuance of the Fifth Transition Order.

New Limitations on the Nonprofit Exemption Under the Fifth Transition Order

The Fifth Transition Order provides that, effective January 1, 2011, the nonprofit exemption is available for debt securities offerings only if the offering is limited to \$500,000 and the securities are sold exclusively to bona fide members of the issuer without payment of a commission or consulting fee. Unless a nonprofit organization meets these new limitations or qualifies for another exemption from registration under MUSA, the organization will need to register its debt securities by qualification under Section 304 of MUSA. This may be accomplished by filing the offering documents with OFIR and paying a \$250 registration fee at least 20 business days before making any offers or sales in Michigan. More specifically, the Fifth Transition Order provides as follows:

1. Beginning January 1, 2011, pursuant to Section 201(g) of the Act, MCL 451.2201(g):

(a) With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the Act, MCL 451.2201(g), the self-executing exemption from the registration requirements of the Act set forth in section 201(g) of the act, MCL 451.2201(g), shall be available only for an offer or sale of a security that is part of an issue having an aggregate sales price of \$500,000 or less and sold to a bona fide member of the issuing organization without payment of a commission or consulting fee.

(b) The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the act, MCL 451.2201(g), who does not qualify for the self-executing exemption under section (a) above, shall register the securities under section 304 of the Act by:

(i) Filing with the Administrator, at least 20 days before the offer or sale of the security, an offering circular or prospectus specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used, and

(ii) Paying to the Administrator a registration fee of \$250.00 dollars.

(c) Unless the Administrator notifies the issuer in writing within 20 business days that the registration is disallowed, the securities shall be deemed approved registered under section 304 of the Act.

(d) Sections (a), (b) and (c) above shall not apply to any offer or sale made within one year after the date of this order pursuant to an offering made in good faith before the date of this order in reliance on section 201(g) of the Act."

Significantly, Subsection 1(d) of the Fifth Transition Order contains a transition provision for offerings that were begun before November 1, 2010. If a nonprofit organization commenced an offering in Michigan

before November 1, 2010, that qualified for the self-executing nonprofit exemption under Section 201(g) of the MUSA, the organization may continue that securities offering in reliance on Section 201(g) of MUSA until October 31, 2011. Thereafter, each nonprofit organization must comply with the exemption or registration requirements of MUSA as modified by the Fifth Transition Order.

Summary

Any nonprofit organization that commences a securities offering in Michigan after November 1, 2010 in reliance on the self-executing nonprofit exemption under Section 201(g) of MUSA may continue the offering in reliance on that exemption through December 31, 2010. Beginning January 1, 2011, however, debt securities of nonprofit organizations will qualify for the nonprofit exemption only if the maximum offering amount is \$500,000 or less and the securities are sold exclusively to bona fide members of the organization without payment of a commission or consulting fee. If these limitations are not met and no other exemption is available, nonprofit organizations will need to register their debt securities by paying a \$250 registration fee and filing the offering materials with OFIR at least 20 business days before any offer or sale.

Organizations that already had commenced an offering in Michigan before November 1, 2010 in reliance on the self-executing nonprofit exemption under Section 201(g) of MUSA may continue the offering in reliance on that exemption through October 31, 2011. Thereafter, they also must comply with the new limitations on the nonprofit exemption imposed by the Fifth Transition Order.

We would be pleased to talk with you about these developments, and to assist you in all aspects of your organization's on-going legal and compliance needs. Warner Norcross & Judd LLP is a full-service law firm. Our Nonprofit Organizations Group is an interdisciplinary team of attorneys and paralegals who regularly advise and assist nonprofit organizations with the full range of legal and compliance matters. More information about our firm, our practice group and our services is available on our Web site at: <http://www.wnj.com/>.

Please do not hesitate to call if you have any questions.

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