State Budget Office
Office of Regulatory Reinvention
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AMENDED

REGULATORY IMPACT STATEMENT (RIS) and COST-BENEFIT ANALYSIS

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than 28 days before the public hearing (MCL 24.245(3)-(4)). Submissions should be made by the department Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon approval by the ORR, the agency shall make copies available to the public at the public hearing (MCL 24.245(4)).

1. ORR-assigned rule set number:

2015-027 LR

2. ORR rule set title:

Securities

3. Department:

Licensing and Regulatory Affairs

4. Division/agency/bureau:

Corporations, Securities & Commercial Licensing Bureau

5. Name, title, and phone number of person completing this form:

Stephen Brey, Departmental Specialist; (517) 241-9212

6. Reviewed by department Regulatory Affairs Officer:

Liz Arasim, Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a "Small business" defined.
Sec. 7a.
"Small business" means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than $6,000,000.00.

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).
Sec. 40.
(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:
(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
(d) Establish performance standards to replace design or operational standards required in the proposed rule.
(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:
(a) 0-9 full-time employees.
(b) 10-49 full-time employees.
(c) 50-249 full-time employees.
(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

[**Note**: Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.
Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:
(a) The regulatory impact statement required under section 45(3).
(b) Instructions on any existing administrative remedies or appeals available to the public.
(c) Instructions regarding the method of complying with the rules, if available.
(d) Any rules filed with the secretary of state and the effective date of those rules.
(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with "N/A" or "none."

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The securities industry is regulated by the federal government, the states, and self-regulatory bodies such as the Financial Industry Regulatory Authority ("FINRA"). These rules have been drafted to be consistent with rules promulgated by the United States Securities & Exchange Commission ("SEC"), FINRA, and other states which have statutory schemes similar to that which has been adopted in Michigan.

These rules are not required by state or federal law; however, they are authorized by Section 605 of the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq*. These rules do not exceed federal standards or laws, so there are no costs or benefits arising from any such deviation.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

To ensure consistency with other states, drafters of these rules used model rules promulgated by the North American Securities Administrators Association, Inc. ("NASAA"), as well as from other states which have adopted the 2002 Uniform Securities Act. Rules promulgated by the states of California, Iowa, Kansas, Minnesota, and Missouri were used by the drafters to develop the rule set to be reasonably consistent with rule sets in other states that utilize a similar statutory scheme.

Part 1. Definitions

Definitions created by R 451.1.1 were pulled from SEC rules as well as from the rules promulgated by Iowa, Kansas, Missouri, and Minnesota. These rules compare favorably with those which were referenced in the drafting.

R. 451.1.2 is an exclusion from the definition of broker-dealer for certain persons whose activities fall within the definition of "finder" under section 102(f) of the Michigan Uniform Securities Act, or whose activities are limited to specific enumerated activities in the proposed rule. The proposed rule was modeled after California's exemption from registration as a broker-dealer for persons that meet the definition of "finder" under California law; the proposed rule compares favorably to the California law as far as the classes of persons to whom it applies, but

some differences do exist. "Finder" is a unique Michigan addition to the Uniform Securities Act (2002), making other 2002 states poor models for comparison in this context. California, by statute, created a registration scheme for finders, making it more appropriate for comparison purposes. Michigan's legislature defined the term "finder", but did little else in the statute to address persons that fall within the definition. The proposed rule is intended to bring clarity to applicable registration requirements for the persons whose activities fall within the "finder" definition, and to bridge the gap between what activities cause a person to be a finder versus being a broker-dealer. The proposed rule differs from the California statute in that it was crafted to be an exclusion from the definition of broker-dealer, rather than an exemption from registration. Whether structured as an exemption or an exclusion, the functional outcome is essentially the same – the person would not be required to register as a broker-dealer. Michigan's proposed rule differs in the manner described because it is being created by rule, rather than by statute as the California registration exemption was. The California registration exemption requires persons to notice-file with the state and to pay a fee; Michigan's proposed R. 451.1.2 carries no such burdens, meaning it is less burdensome than its California model. Michigan and California are unique, in that most states do not have a definition for the term "finder" or any registration scheme associated with it; therefore, the comparison is primarily between Michigan and California, and not other states. Michigan's proposed rule is less burdensome than California's statutory registration scheme for finders for the reasons outlined above, namely, that there is no fee or filing requirement. Minnesota exempts from registration certain issuer agents that comply with requirements identified in its Rule 2876.4020; the proposed rule more closely follows the California model, but is also less burdensome than Minnesota's rule which, like California, requires a notice to be filed with the state. None of Iowa, Kansas, or Missouri have "finders" definitions, exemptions, or exclusions. The proposed rule is less burdensome than many other states' requirements because most states do not have any exclusions or exemptions from registration as a broker-dealer for persons that have these limited activities in the securities industry, and those states that have created exemptions require more filings and fees to the state than the proposed rule in Michigan.

Part 2. Exemptions from Registration

R 451.2.1 adopts the NASSA statement of policy for Not-for-profit securities, creating a "church bond" exemption assuming the issuer complies with various conditions, including payment of a $250.00 filing fee. Iowa has a not-for-profit securities exemption that is largely similar to that in the proposed rule, although no fee is identified in Iowa's rule. Kansas does not have a specific exemption for not-for-profit securities, but requires such issuers to register or comply with some other generally-applicable exemption from registration. Kansas charges a $250 filing fee in connection with most exemptions. Minnesota has a statutory exemption from registration for certain not-for-profit securities issuers, with a fee of $50. Missouri's not-for-profit securities exemption is remarkably similar to the proposed rule, and also adopts the applicable NASAA statement of policy; there is a $100 filing fee associated with it. The proposed rule creates standards which are reasonably similar to Iowa, Minnesota, and Missouri. The fee associated with the proposed rule is identical to that charged by Iowa and Kansas, but more than that charged by Minnesota and Missouri. The proposed rule and fee are consistent with current Transition Order Five, Paragraph 1, including the filing fee for use of the exemption, and the self-executing exemption for offerings up to $500,000. However, the proposed rule will allow

the Bureau to apply the NASAA statement of policy adopted by the rule, which will be a change from current practices in Michigan, but which will bring Michigan in line with the practices of other states. Bureau staff estimates that the document review necessitated by the proposed rule (in conjunction with document reviews associated with proposed rules 451.3.5 and 451.3.6) will require the addition of one full time employee; staff estimates there are approximately 40 to 50 new filings per year, and approximately 40 hours for a review are required per filing.

R 451.2.2 identifies recognized securities manuals. Iowa, Kansas, and Minnesota all recognize multiple securities manuals, the totality of which are reasonably similar to the list of manuals identified in the proposed rule. Missouri only recognizes one ratings manual, and is an outlier. Deviations from the other states' guidelines are minimal, and costs of any such deviations would be minimal as well.

R 451.2.3 creates a disqualification from the ability to utilize specific classes of exemptions pursuant to the Michigan Uniform Securities Act for certain individuals with civil, criminal, or regulatory events in their pasts. This rule was drafted based upon the SEC's recent amendment to Rule 506, 17 CFR 230.506, which disqualifies certain persons and entities from relying on the exemption in the sale of securities. Iowa and Kansas have similar provisions. Minnesota and Missouri do not. The rule is intended to protect investors by keeping individuals with such events in their past from offering securities pursuant to exemptions in Michigan. To the extent the rule deviates from other states' requirements, there may be a cost, in that affected individuals will have more difficulty raising capital due to the need to register such securities, rather than sell them pursuant to an exemption. The Bureau believes this cost is justified to protect Michigan investors from persons who have engaged in activities that would disqualify them from using federally-available exemptions on which the proposed rule is based.

R 451.2.4 creates an exemption for persons engaged in the oil, gas, and mineral business. The rule is reasonably similar to current Michigan standards under Transition Order 3, Paragraph 3 and current R 451.803.5-(1)-(3). Kansas has a similar exemption from registration. Missouri had a similar exemption, but the rule creating the exemption was rescinded on November 11, 1984. Administrative rules in Iowa and Minnesota have no similar provisions. As noted above, the proposed rule would be consistent with current policy in Michigan, allowing for stability in the oil, gas, and mineral market places.

R 451.2.5 clarifies the meaning of "purchaser" for purposes of section 202(1)(n) of the Michigan Uniform Securities Act, MCL 451.2202(1)(n). Kansas defines "purchaser" and the definition is reasonably similar to that created by the proposed rule. Iowa, Minnesota and Missouri do not define "purchaser" in their rule sets. The benefit of defining "purchaser" as it is in the proposed rule would be to allow an issuer to sell securities to more investors and still qualify for the exemption found at MCL 451.2202(1)(n), which limits the number of "purchasers" to 50. The proposed rule would consider a husband and wife as one purchaser, rather than two, thus allowing more investors to be sought out by that issuer. The cost would be that more investors would be exposed to the security if the offering is fraudulent or not financially viable.

Part 3. Registration of Securities and Notice Filing of Federal Covered Securities.

R 451.3.1 creates notice filing requirements and identifies documents required to be filed with the administrator. All of Iowa, Kansas, Minnesota, and Missouri have notice-filing requirements which are substantially similar, if not identical to those in the proposed rules. Adoption of the rule would be consistent with current practices in Michigan, and would be consistent with other states.

R 451.3.2 designates the Electronic Filing Database ("EFD") as the depository for registrations, exemptions, notice filings, and amendments, and to collect fees on behalf of the administrator. According to NASAA, each of Iowa, Kansas, Minnesota, and Missouri utilize the EFD. The EFD is currently being utilized in Michigan

R 451.3.3 creates the Small corporate offering registration ("SCOR") pursuant to section 304 of the Michigan Uniform Securities Act. SCOR is currently available under Michigan's rules, so the proposed rule would encourage conformity with current practices. SCOR is also available in each of Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would ensure consistency with current practice in Michigan and the other states referenced.

R 451.3.4 creates prospectus requirements for issuers who register securities by qualification pursuant to section 304(2) of the Michigan Uniform Securities Act, MCL 451.2304(2). All of Iowa, Kansas, Minnesota, and Missouri have rules requiring a prospectus which are reasonably similar to the proposed rule. Adoption of the proposed rule would bring Michigan into conformity with the current practices in the other states referenced. Any deviation from the practices of other states would be minimal, and any costs associated with deviations would be minimal as well.

R 451.3.5 creates report requirements for issuers who register securities by qualification; it also gives the administrator or his designee the ability to examine the issuer's books and records. Iowa, Kansas, Missouri, and Minnesota all require ongoing reporting for issuers who register securities in their states. Adoption of the proposed rule would encourage consistency with these other states. Any deviation from the practices of other states would be minimal, and any costs associated with deviations would be minimal as well.

R 451.3.6 adopts by reference various statements of policy promulgated by NASAA. Michigan has not yet adopted the NASAA statements of policy. Iowa, Kansas, Missouri, and Minnesota have adopted all or some of the NASAA statements of policy from the proposed rules. Adoption of the proposed rule would bring Michigan in line with these other states, and encourage uniformity. Any deviation from the practices of other states would be minimal, and any costs associated with deviations would be minimal as well.

R. 451.3.7 clarifies the administrator's ability to deny the effectiveness of a registration statement under section 306(1) of the Michigan Uniform Securities Act, MCL 451.2306(1), if the applicant for registration fails to complete or withdraw the application within 7 months after the date the application for registration is filed. Missouri, at 15 CSR 30-52.280, allows its securities division to treat an application for registration of a security as "abandoned" after six months of inactivity; the abandoned application may then be withdrawn by the administrator. Kansas, at Rule 81-4-1, has a similar abandonment rule. Iowa and Minnesota do not have similar

rules. Any deviation from the practices of other states would be minimal, as the proposed rule merely allows the administrator to dispose of an application on which the applicant has stopped responding to Bureau information requests. Further, both Missouri and Kansas have similar rules, which would lead to uniformity with those states that have a similar statutory scheme to that which exists in Michigan.

Part 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

R 451.4.1 creates a "Canadian exemption" for certain Canadian broker-dealers. Michigan currently has a "Canadian exemption" for certain Canadian broker-dealers pursuant to Transition Order 5, Paragraph 3. Iowa allows a limited registration for Canadian broker-dealers which carries a $200 registration fee. Kansas and Missouri allow for total exemption of Canadian broker-dealers, subject to conditions similar to those in the proposed rule. Minnesota has no provisions in its rules addressing Canadian broker-dealers. Adoption of the proposed rule would be reasonably consistent with Kansas, Missouri, and current Michigan practices. Any deviation from the practices of other states would be minimal, and any costs associated with deviations would be minimal as well.

R 451.4.2 creates a "merger and acquisition broker exemption" based upon a recently-adopted NASAA model rule. Neither the Transition Orders nor current administrative rules address this issue, and none of Iowa, Kansas, Missouri, or Minnesota have adopted the NASAA model rule on the topic. Adoption of the proposed rule would not encourage uniformity with other states, but would allow for certain broker-dealers in Michigan to avoid having to incur the costs of registration to the extent their operations bring them within the scope of the exemption. Adoption of the proposed rule would reduce costs for certain broker-dealers and their agents, but would also reduce revenue for the Bureau in that certain registrants would no longer be required to register and pay filing fees. The number of broker-dealers which will be affected by the proposed rule is indeterminable at this time.

R 451.4.3 designates the Central Registration Depository ("CRD") operated by FINRA as the administrator's designee to collect filings and filing fees for registrations by broker-dealers, agents, and investment adviser representatives. Michigan currently engages FINRA's CRD system to perform these tasks pursuant to Transition Order 1. Each of Iowa, Kansas, Minnesota, and Missouri have also engaged FINRA's CRD to collect filings and filing fees for these registrations. Adoption of the proposed rule would encourage consistency with current Michigan practices, as well as practices by other states.

R 451.4.4 creates a rule regarding electronic signatures. Iowa, Kansas, Minnesota, and Missouri have adopted administrative rules which address electronic signatures; however, the Michigan proposed rule is much more substantial. The Michigan rule does not require records or signatures to be created, generated, communicated, received, stored, or otherwise processed by electronic means; it merely creates rules and standards for such records and signatures should an electronic medium be used. The proposed rule, while it differs from those in comparable states, should not impose any additional costs or burdens, as it creates no requirements. Adoption of the proposed rule may result in efficiencies by creating uniform standards which

are known and available to all who choose utilize electronic records and are affected by its application.

R 451.4.5 creates a registration exemption and notice filing requirement for certain investment advisers to private funds. This is a deviation from current requirements in Michigan created by Transition Order 6, which provided a registration exemption for an adviser to a private fund whose equity holders were "qualified clients" or "accredited investors" pursuant to SEC rules. Under the proposed rule, such advisers would still be exempt from registration; however, the advisers would have to meet several conditions, such as: not be subject to disqualification under SEC Rule 506(d), 17 CFR 230.506(d); file with the Bureau any report filed with the SEC; advise funds whose clients meet the definition of "qualified client" in SEC rule 205-3, 17 CFR 275.205-3 or "accredited investor" in SEC Rule 501, 17 CFR 230.501; make certain disclosures to beneficial owners of the fund; obtain annual audits of financial statements unless the adviser qualifies for an exception to providing audited financial statements; complete a notice filing; and pay a $200 notice filing fee. The proposed rule is similar to legislation adopted in Minnesota and rules promulgated by Iowa, Kansas, and Missouri, all of which are based on a NASAA model rule. The proposed rule requires nothing more than that required by the SEC, aside from the $200 notice-filing fee provided for in Sections 405 and 410 of the Michigan Uniform Securities Act, MCL 451.2405 and MCL 451.2410. The proposed rule is significantly less restrictive than those adopted in Iowa, Kansas, Minnesota, and Missouri, in that the proposed rule allows accredited investors to invest in private funds, while the rules adopted in these other states would not allow accredited investors to participate in such investments. The proposed rule is also less restrictive than requirements in Iowa, Kansas, Minnesota, and Missouri in that it exempts from audited financial statement requirements private funds that accept only qualified clients as investors; the other states require distribution of audited financial statements annually without exception. None of Iowa, Kansas, Minnesota, or Missouri allow accredited investors to invest in private funds, and none of them have any mechanism for waiving the financial statement requirement to reduce costs for funds that only accept presumably sophisticated qualified clients. The proposed rule in Michigan, on the other hand, allows funds to accept accredited investors, and allows private funds to avoid the cost and expense of annual financial statement audits if its investors are exclusively qualified clients. These unique features were included in the proposed rule after discussions with members of the State Bar of Michigan, and are intended to facilitate capital formation in Michigan in a way that most other states would not allow. Bureau staff believes that adequate investor protection safeguards have been maintained, notwithstanding the significant changes made to the model rule adopted by the other jurisdictions discussed in this section of the Regulatory Impact Statement. Adoption of the proposed rule would bring Michigan more in line with practices in Iowa, Kansas, Minnesota, and Missouri, and with that of the SEC. The proposed rule is less burdensome than the rules imposed by these other jurisdictions on similarly-situated advisers.

R 451.4.6 clarifies notice filing requirements for federal covered investment advisers. The proposed rule continues current standards in Michigan pursuant to Transition Order 1 which appoints the IARD as the administrator's designee for collecting filings and fees. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.7 creates the process for broker-dealer and agent registration applications. The proposed rule continues current standards in Michigan pursuant to Transition Order 1 which appoints the CRD as the administrator's designee for collecting filings and fees. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.8 creates the process for Michigan investment market applications. There is no parallel rule in any other state because the Michigan investment markets are unique to legislation passed in Michigan.

R 451.4.9 creates broker-dealer and agent examination requirements. The proposed rule continues current standards in Michigan pursuant to Transition Order 1, Paragraph 5 which creates examination requirements for applicants. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.10 creates the process for investment adviser registrations. The proposed rule continues current standards in Michigan pursuant to Transition Order 1 which appoints the IARD as the administrator's designee for collecting filings and fees. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.11 creates the process for investment adviser representative applications. The proposed rule continues current standards in Michigan pursuant to Transition Order 1 which appoints the IARD as the administrator's designee for collecting filings and fees. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.12 creates examination requirements for investment advisers and investment adviser representatives. The proposed rule continues current standards in Michigan pursuant to Transition Order 1, Paragraphs 9 and 10, which create examination requirements for applicants, and clarifies that sole proprietor investment advisers are subject to the same exam requirements as an investment adviser representative associated with an investment adviser firm. The proposed rule is consistent with rules adopted in Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would keep Michigan in line with these other states, and encourage uniformity.

R 451.4.13 creates prohibitions, limits, and restrictions on custody of client funds and securities by investment advisers. Iowa, Kansas, Missouri, and Minnesota each have a custody rule, and each is based on the SEC's custody rule, 17 CFR 275.206(4)-2. Adoption of the proposed rule would largely continue current practices and keep Michigan in line with these other states, encouraging uniformity.

R 451.4.14 creates a bond requirement for certain investment advisers. Current Michigan rules and the Transition Orders do not reference bond requirements for investment advisers. The proposed rule would apply only to investment advisers that have custody as "custody" is defined

in proposed rule 451.4.13, or who have discretionary authority over client assets. Iowa has a bond requirement for certain investment advisers that is substantially similar to the proposed rule. Kansas rules reference bond requirements for certain investment advisers; however, in or around May of 2012, the Kansas Securities Commission issued a special order waiving the bond requirements found at KAR 81-14-9(e). Minnesota has a bond requirement for investment advisers that is substantially similar to that in the proposed rule. Missouri rescinded its bond requirements in or around February of 1987. The proposed rule would only affect a subset of investment advisers who have custody of or discretionary authority over client funds, similar to those rules adopted in Iowa and Minnesota. Adoption of the proposed rule would bring Michigan in line with these other states, and encourage uniformity.

R 451.4.15 creates minimum financial requirements for broker-dealers. Current Michigan requirements for broker-dealers are established in both Transition Order 3, Paragraph 6 and R 451.602.6. Iowa, Kansas, Missouri, and Minnesota all have minimum net capital requirements that are substantially similar to those in the proposed rule. The proposed rule merely adopts the SEC's minimum financial requirements for broker-dealers. Adoption of the proposed rule would keep Michigan in line with these other states and the SEC, encouraging uniformity.

R 451.4.16 creates minimum financial requirements for Michigan investment markets. There is no parallel rule in any other state because the Michigan investment markets are unique to legislation passed in Michigan.

R 451.4.17 creates minimum financial requirements for investment advisers. Current Michigan requirements for investment advisers are established in Transition Order 3, Paragraph 7. Iowa, Kansas, Missouri, and Minnesota all have minimum financial requirements for investment advisers to some degree; most of these standards are reasonably similar to those in the proposed rule. Adoption of the proposed rule would keep Michigan in line with these other states and the SEC, encouraging uniformity.

R 451.4.18 creates requirements for financial statements. There are currently no promulgated administrative rules or orders addressing the form or substance of financial statements required to be filed with the administrator. The proposed rule, in circumstances that the Michigan Uniform Securities Act requires that financial statements be filed, would require a balance sheet, statement of cash flows, income statement, and a statement of member or shareholder equity. Financial statements must comply with GAAP and may be unaudited; however, the Bureau may require a filer of financial statements to submit audited financial statements. Iowa, Kansas, Minnesota, and Missouri have all adopted by rule reasonably similar requirements. Missouri's rules do not require financial statements to be prepared in accordance with GAAP, though Iowa, Kansas, and Minnesota do. Adoption of the proposed rule would bring Michigan's rules on financial statements more closely in line with other states, encouraging uniformity.

R 451.4.19 creates requirements for an investment adviser brochure. The proposed rule continues current Michigan standards with regard to the ADV Part 2 brochure filing requirement created by Transition Order 3, Paragraph 10. Each of Iowa, Kansas, Minnesota, and Missouri require the distribution to clients and filing with regulators of the ADV Part 2 brochure.

Adoption of the proposed rule would be in line with these other states, and would encourage uniformity.

R 451.4.20 creates requirements for an investment adviser who exercises voting authority with respect to client securities. The proposed rule makes it a fraudulent, deceptive, or manipulative act for an investment adviser to exercise voting authority with respect to client securities unless the adviser adopts and implements written procedures designed to ensure that any such voting is done in the client's best interests. The adviser must disclose to clients information about how the adviser votes the client's securities and describe the policies and procedures to the client. None of Iowa, Kansas, Minnesota, or Missouri have a parallel rule. The costs of such rule include, but are not limited to, the cost to advisers to develop, draft, and distribute written policies and procedures on voting client securities; advisers will need to take the time to explain these policies and procedures to clients as well. The benefit will be a more informed body of Michigan investors, as they will have a better understanding of how and why investment advisers vote their securities in the manner that they do. The rule may lead to greater investor knowledge, and protection of client interests in the voting of client securities by investment advisers. Adoption of the rule would not necessarily encourage uniformity; however, it would have the benefit of reduced likelihood of harm to investor interests, and a more informed Michigan investor class.

R 451.4.21 creates requirements for business continuity and succession plans for investment advisers. The proposed rule is a new rule, as there is no rule or order in place at this time requiring business continuity and succession plans. Each state has some requirement for the preservation of books and records before an investment adviser ceases operations; however, of the group of states reviewed, only Iowa has adopted the model rule at this time. NASAA published a model rule for business continuity plans in or around April of 2015, and that model rule is the basis for the proposed rule. The costs of the proposed rule will include the development and implementation of business continuity plans for firms that have not yet adopted them. The benefit of adopting the proposed rule would be reduced risks to clients' accounts in the event of death, disability, incapacity, natural disasters, acts of terrorism, or other disruption events. The adoption of the proposed rule requiring a business continuity plan would facilitate the continuance of day-to-day business operations, preservation of books and records, communication with clients, and protection of investors generally. While adoption of the proposed rule will not necessarily promote uniformity, it does advance the Bureau's investor protection mission.

R 451.4.22 creates record requirements for broker-dealers. This rule requires broker-dealers to comply with SEC rules for making, maintaining, and preserving records. Current Michigan rules are established by Transition Order 3, Paragraph 8, and R 451.603.1. The SEC's rules for required broker-dealer records may be found at 17 CFR 240.17a-3 and 17 CFR 240.17a-4; the proposed rules merely adopt these standards. The proposed rule is also consistent with those rules adopted by Iowa, Kansas, Minnesota, and Missouri. The rules are all essentially identical, merely adopting the SEC's recordkeeping requirements for broker-dealers. Adoption of the proposed rule would keep Michigan in line with these other states, encourage uniformity, and continue current practices in the state.

R 451.4.23 creates record requirements for Michigan investment markets. These rules mirror the broker-dealer record requirements at R 451.4.22. There is no parallel rule in any other state because the Michigan investment markets are unique to legislation passed in Michigan.

R 451.4.24 identifies records to be maintained by investment advisers. The proposed rule changes current standards in Michigan pursuant to Transition Order 3, Paragraph 9 and R 451.603.5, which creates recordkeeping requirements for investment advisers. The change is not, however, very substantial, in that it merely lists out records to be maintained, rather than referring to the SEC's rule on the matter. The proposed rule is reasonably consistent with rules promulgated by Iowa, Kansas, Minnesota, and Missouri. Adoption of the proposed rule would bring Michigan in line with these other states, and encourage uniformity.

R 451.4.25 identifies prohibited practices for investment advisers and investment adviser representatives. The proposed rule does not have an existing equivalent in Michigan at this time. Each of Iowa, Kansas, Minnesota, and Missouri provide similar lists of conduct which are deemed to be either "fraudulent and deceptive" or "dishonest and unethical", or both. Adoption of the proposed rule would bring Michigan in line with these other states, promoting uniformity, and providing clear guidance to regulated persons on what conduct is not acceptable under the Michigan Uniform Securities Act.

R 451.4.26 creates requirements for the contents and substance of investment adviser contracts with clients. Michigan has current requirements for the contents and substance of investment adviser contracts pursuant to Transition Order 1, Paragraph 12. The rule continues the requirements established by Transition Order 1, Paragraph 12. The proposed rule also clarifies certain unlawful acts which are prohibited; identifies when an investment adviser may be paid on a basis of capital gains or appreciation of funds; and clarifies the definition of "client" with regard to private investment companies. The proposed rule was altered from the model rule by drafters after discussion with members of the State Bar of Michigan. The alteration allows for changes to client contracts with a client's implied consent with 30 days' prior written notice of a change of control if no reply is received from the client, and the client is given an opportunity to terminate its contract with the investment adviser at no cost. This was included so that one client could not prevent a change of control of an investment adviser through silence, or ignoring its mail. Iowa, Kansas, Minnesota, and Missouri all have requirements for the contents of investment advisory contracts. Adoption of the proposed rule would largely continue current practices in Michigan, and keep Michigan in line with practices of other states, encouraging uniformity.

R 451.4.27 identifies practices that are considered to be dishonest and unethical for broker-dealers and agents. The proposed rule does not have an existing equivalent in Michigan at this time. Iowa, Kansas, and Missouri all have adopted administrative rules which are reasonably similar in the scope of conduct prohibited as being dishonest and unethical. Minnesota has adopted a broader "fair dealing" standard. Adoption of the proposed rule would be in line with three of the four states utilized as models, and is drawn from a NASAA model rule. Adoption of the rule would promote uniformity with other states.

R 451.4.28 prohibits the misleading use of senior-specific certifications and professional designations. The proposed rule is a continuance of current policy adopted by Transition Order 5, Paragraph 4. Iowa, Kansas, Minnesota, and Missouri have all adopted reasonably similar administrative rules. Adoption of the proposed rule would promote uniformity.

R. 451.4.29 creates an exemption from registration as an investment adviser representative for certain persons that are paid as solicitors for investment advisers. Individuals that solicit on behalf of investment advisers fall within the definition of “investment adviser representative” under the Michigan Uniform Securities Act. The proposed rule was modeled after a NASAA model rule on the topic that was never adopted by NASAA’s membership. Iowa, Kansas, and Missouri all have administrative rules that address investment adviser solicitors; Minnesota has no rule on the topic. Both Kansas and Missouri exempt from registration as investment adviser representatives solicitors that meet the requirements of their administrative rules. Iowa’s rule is based on anti-fraud authority, rather than registration authority, and requires investment adviser solicitors to enter into a contract and comply with other regulatory requirements; it does not, however, exempt such solicitors from registration as investment adviser representatives. Michigan currently has no exemption from registration for solicitors, nor does it have any contract or disclosure requirements. The proposed rule has been altered from the unadopted NASAA model rule to limit its application to persons who limit their solicitation activities to not more than 10 client solicitations in a 12-month period. The limitation on the number of clients in a 12-month period was included so that the rule would only exempt those persons whose solicitation activities are merely incidental or occasional. Those persons that act as full-time investment adviser solicitors or that solicit as a material part of their business would be required to register under the proposed rule. The proposed rule is comparable to those adopted by Kansas and Missouri, though slightly more limited in its scope and applicability. The proposed rule is less burdensome than the regulatory scheme for solicitors that exists in Iowa and Minnesota, in that it exempts from registration classes of individuals that would be required to register as investment adviser representatives in those states. The proposed rule is also less restrictive than the current regulatory landscape in Michigan; currently, all solicitors are required to register, unless they would otherwise be exempt. Overall, the proposed rule would minimize regulatory requirements compared to the current regulatory scheme in Michigan for persons that are exempt, would be less burdensome than the regulatory schemes in Iowa and Minnesota, and would be comparable to the regulatory schemes in Kansas and Missouri. It would be beneficial to investors in that it would require solicitors to enter a contract and fully disclose fees they receive for soliciting on behalf of an investment adviser.

Part 6. Administration and Judicial Review.

R 451.6.1 allows the Corporations, Securities & Commercial Licensing Bureau to issue interpretive opinions requested by the public. Current rule R 451.2301 is substantially similar to the proposed rule, with no substantive changes. Iowa, Kansas, and Missouri each have a reasonably similar administrative rule allowing for the issuance of interpretive opinions upon requests by outside parties. Minnesota does not have a similar administrative rule. Iowa, Kansas, and Missouri all specify a fee for the issuance of such an opinion, whereas the proposed rule does not. Adoption of the rule would be reasonably consistent with most of the states whose administrative rules were used as models, encouraging consistency and uniformity. To the

extent it differs, it is in that it does not provide the cost for the administrator to issue such an interpretive opinion.

R 451.6.2 creates copy and certification fees. No equivalent administrative rule currently exists in Michigan. Missouri specifies a copy charge for documents at ten cents per page plus five dollars for certification and two dollars per page for telephone or electronic transmittals. Iowa, Kansas, and Minnesota did not specify any copy fees in their administrative rule sets. The Bureau received 16 document requests between November 2012 and October 2015; the number of requests varies from year to year, but is rarely substantial. The cost of the proposed rule is indeterminable, and will depend on the number of pages any particular requester requests, along with whether or not they need the documents to be certified. The benefit will be recouped costs for the Bureau.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

These rules may duplicate or overlap with Federal and state laws and rules due to the nature of securities regulation. Issuers of securities often offer and sell securities in many states, and therefore must satisfy the regulatory requirements of each state in which an offer or sale is made; similarly, these issuers must comply with any applicable federal rules when they act in interstate commerce. There is duplication and overlap; however, the duplication and overlap are necessary for the protection of Michigan investors and the integrity of securities markets in the state.

Registration Duplications and Overlap

Security Registration Overlap: Section 301 of the Michigan Uniform Securities Act, MCL 451.2301, requires securities in Michigan be sold pursuant to a registration, pursuant to an exemption, or as federal covered securities which the states are preempted from regulating outside of the collection of fees and any filings made with the SEC. Issuers of securities that register in Michigan may sell the securities in other states if they satisfy the other states' securities laws too. To the extent that the issuer sells in multiple states, it is likely that a registration or exemption must be claimed federally and in each state where an offer or sale occurs, creating some overlap. The overlap is necessary to protect investors and capital markets in Michigan, as other states may lack the authority or incentive to address violations of law by bad actors that occur outside of their jurisdictions. The adoption of the rules, while they overlap with rules promulgated by other states, is necessary for the protection of investors and to encourage the formation of efficient capital markets in Michigan.

Notice Filing Duplications and Overlap: Issuers of securities which are federal covered securities are required by Section 302 of the Michigan Uniform Securities Act, MCL 451.2302, to submit a notice-filing and a fee to the Bureau either before or shortly after the first sale of the federal covered security in Michigan; the timing of the filing depends on the type of federal covered security. Most states require similar filings as a means of understanding what securities products are being sold in the state's borders, and to generate revenue with filing fees. The

regulatory overlap created by the notice-filing requirements in multiple states is necessary for the protection of investors, and for encouraging efficient capital market formation in Michigan.

Broker-Dealers: Broker-Dealers are required by Section 401 of the Michigan Uniform Securities Act, MCL 451.2401, to register with the Bureau if they transact business as a broker-dealer in Michigan. Currently, such broker-dealers follow a process created by Transition Order 1 that was issued in September of 2009 during the transition from 1964 PA 265 to 2008 PA 551, which took effect on October 1, 2009. The registration requirement and process will not change; the only difference will be that the process for registration will be implemented by rule, rather than by the Transition Order. Further, as the registration is done through CRD/IARD currently in Michigan, and throughout the country, adoption of the proposed rules which utilize CRD/IARD will reduce regulatory overlap. There is some regulatory overlap in broker-dealer registration, as broker-dealers must register with FINRA and with most states in which they transact business as broker-dealers. However, the duplication is necessary for the protection of investors and for encouraging efficient capital market formation in Michigan.

Agents: Agents are required by Section 402 of the Michigan Uniform Securities Act, MCL 451.2402, to register with the Bureau if they transact business as an agent in Michigan. Currently, agents follow a process created by Transition Order 1 that was issued in September of 2009 during the transition from 1964 PA 265 to 2008 PA 551, which took effect on October 1, 2009. The registration requirement and process will not change; the only difference will be that the process for registration will be implemented by rule, rather than by the Transition Order. Further, as the registration is done through CRD/IARD currently in Michigan, and throughout the country, adoption of the proposed rules which utilize CRD/IARD will reduce regulatory overlap. There is some regulatory overlap in agent registration, as most agents must register with FINRA and with most states in which they transact business as an agent. However, the duplication is necessary for the protection of Michigan investors and for encouraging efficient capital market formation in Michigan.

Investment Advisers: Investment advisers are required by Section 403 of the Michigan Uniform Securities Act, MCL 451.2403, to register with the Bureau if they transact business as an investment adviser in Michigan. Currently, such investment advisers follow a process created by Transition Order 1 that was issued in September of 2009 during the transition from 1964 PA 265 to 2008 PA 551, which took effect on October 1, 2009. The registration requirement and process will not change; the only difference will be that the process for registration will be implemented by rule, rather than by the Transition Order. Further, as the registration is done through CRD/IARD currently in Michigan, and throughout the country, adoption of the proposed rules which utilize CRD/IARD will reduce regulatory overlap. There is some regulatory overlap in investment adviser registration, as investment advisers must register with most states in which they transact business. However, the duplication is necessary for the protection of investors and for encouraging efficient capital market formation in Michigan.

Investment Adviser Representatives: Investment adviser representatives are required by Section 404 of the Michigan Uniform Securities Act, MCL 451.2404, to register with the Bureau if they transact business as an investment adviser representative in Michigan. Currently, such investment adviser representatives follow a process created by Transition Order 1 that was

issued in September of 2009 during the transition from 1964 PA 265 to 2008 PA 551, which took effect on October 1, 2009. The registration requirement and process will not change; the only difference will be that the process for registration will be implemented by rule, rather than by the Transition Order. Further, as the registration is done through CRD/IARD currently in Michigan, and throughout the country, adoption of the proposed rules which utilize CRD/IARD will reduce regulatory overlap. There is regulatory overlap in investment adviser representative registration, as investment adviser representatives must register with most states in which they transact business. However, the duplication is necessary for the protection of investors and for encouraging efficient capital market formation in Michigan.

Prohibited Conduct of Regulated Persons: Prohibitions on conduct by persons regulated under the Michigan Uniform Securities Act are proposed in R 451.4.25 and R 451.4.27. These rules prohibit conduct that is also prohibited by other states; however, the rules are necessary to address potentially dishonest, unethical, fraudulent, or manipulative behavior in this state. Other state regulators, while they regulate the same conduct, may not be in a position to address conduct which occurs within Michigan's borders.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

One purpose of the Michigan Uniform Securities Act is to prohibit fraudulent practices in relation to the offer and sale of securities and the provision of advice regarding securities. The Act seeks to achieve this purpose by regulating the offer and sale of securities, the persons who offer and sell them, and the persons who provide advice on which securities to buy, sell, or hold. The proposed rules by and large maintain the status quo of the current regulatory environment by continuing on practices established by the six Transition Orders issued by the administrator between September of 2009 and March of 2011 after the legislature passed 2008 PA 551. Some of the proposed rules represent a shift from prior regulatory standards in Michigan:

R. 451.1.2 is an exclusion from the definition of broker-dealer for certain persons whose activities fall within the definition of "finder" under section 102(f) of the Michigan Uniform Securities Act, or whose activities are limited to specific enumerated activities in the proposed rule. The proposed rule was modeled after California's exemption from registration as a broker-dealer for persons that meet the definition of "finder" under California law. "Finder" is a unique Michigan addition to the Uniform Securities Act (2002), making other 2002 states poor models for comparison in this context. California, by statute, created a registration scheme for finders, making it more appropriate for comparison purposes. Michigan's legislature defined the term "finder", but did not identify if such persons would be required to register or would be exempt from registration. Many assumed that finders were a class of broker-dealer or agent in Michigan. *See*, e.g., See Moscow, Makens, & Hansen, New Michigan Securities Law Effective October 1, 2009, 88 Mich. B.J. 38, 40 (June 2009). The Court of Appeals found otherwise in *Pransky v Falcon Group, Inc*., 311 Mich App 164 (2015), holding that finders are a distinct class of persons that are not subject to registration under the Michigan Uniform Securities Act. The proposed

rule is intended to bring clarity to applicable requirements for the persons whose activities may fall within the "finder" definition and are not required to register, and to bridge the gap between what activities cause a person to be a finder versus being a broker-dealer required to register. The proposed rule differs from the California statute in that it was crafted to be an exclusion from the definition of broker-dealer, rather than an exemption from registration. Whether structured as an exemption or an exclusion, the functional outcome is essentially the same – the person would not be required to register as a broker-dealer. The desired outcome of the proposed rule is to create clarity on what activities may bring a person within the definition of "finder" not required to register, versus being a "broker-dealer" required to register under the Michigan Uniform Securities Act. The outcome of the proposed rule will be that fewer persons will be subject to the registration provisions of the Michigan Uniform Securities Act.

R 451.2.3 disqualifies certain individuals from relying on certain exemptions in the sale of securities under article 2 of the Michigan Uniform Securities Act. The rule does not have a parallel in the current rule set or the transition orders. The purpose of the rule is to prevent persons with specific events in their pasts from relying on exemptions from registration in the sales of securities that are specified in the rule. The desired outcome of the proposed rules is to protect Michigan investors through the reduction of the number of issuers offering securities who have previously engaged in fraudulent activities, or who have violated securities, insurance, or banking regulations, and by providing an additional deterrent to future fraudulent activities.

R. 451.3.7 is intended to clarify the administrator's ability to deny the effectiveness of a registration statement under section 306(1) of the Michigan Uniform Securities Act, MCL 451.2306(1), if the applicant for registration fails to complete or withdraw the application within 7 months after the date the application for registration is filed. The proposed rule allows Bureau staff to dispose of applications for registration that became stale due to inactivity, rather than allow the application file to remain open indefinitely due to the applicant's neglect.

R 451.4.5 creates an exemption for advisers to private funds. Transition Order 6 addresses custody of client funds and securities by advisers to private funds, but does not address registrations, notice-filings, or reports to be filed. The proposed rule does not have an equivalent in the current rule set or transition orders. The proposed rule exempts certain advisers from registration, but still requires them to report to a securities regulator, be that the SEC, the Bureau, or both. Advisers to private funds qualify for the exemption in the proposed rule assuming they file with the state any report or amendment which they are required to file with the SEC; advise only "3(c)(1) funds" that are not "venture capital funds" whose outstanding securities are held by "qualified clients" under SEC rules; at the time of the sale of its securities, a private fund adviser must make certain disclosures to the buyers of the units; and, the private fund adviser must annual obtain an audit of its financial statements. The proposed rule contains exemptions from registration for investment adviser representatives associated with such advisers, as well as a grandfathering provision for funds in existence before promulgation of the proposed rule and are now non-compliant as a result of its adoption. The proposed rule is intended to protect investors and capital markets by creating oversight of advisers that previously had no reporting requirements. Prior to the enactment of Dodd-Frank by Congress in 2010, many advisers to private funds were exempt from any kind of registration or reporting to the SEC or state securities regulators. Dodd-Frank eliminated certain exemptions and created reporting

requirements for a number of advisers who remained exempt from registration. The proposed rule is Michigan's first attempt to monitor advisers who were brought under regulatory oversight by the Dodd-Frank legislation in 2010. Requiring periodic reporting for advisers who remain exempt provides benefits to investors due to enhanced disclosure and oversight of advisers to private funds, while still not requiring an all-out registration by the advisers. The desired outcome of the proposed rules is to enhance disclosure and oversight, contributing to efficient allocation of capital, and to the protection of investor funds.

R 451.4.13 creates prohibitions and limitations on custody of client funds by investment advisers. The proposed rule defines what constitutes "custody" for purposes of the rule, and deems custody of client funds or securities by an investment adviser to be a fraudulent, deceptive, or manipulative act unless certain safeguards are in place. Safeguards include annual surprise examinations or audited financials pursuant to SEC rules, production of periodic statements by independent custodians of assets, as well as the filing with the state of any of the items required to be filed with the SEC. The purpose of the proposed rule is to protect investors by reducing the opportunity for investment advisers to appropriate funds unbeknownst to the client or a regulator. The enhanced disclosure and oversight contribute the creation of efficient capital markets, and to the protection of investors.

R 451.4.21 creates a regulatory requirement that investment advisers establish, implement, and maintain written procedures relating to a business continuity and succession plan. The purpose of the rule is to minimize the impact of interruptions such as natural disasters, terrorist events, disability, and death. Investment advisers owe a fiduciary duty to clients to mitigate harm in the event of a business interruption, and this proposed rule is intended to address mitigation of the harm. The desired outcome of the proposed rule is to reduce the effect on clients of business disruptions to investment advisers and their employees.

R 451.4.25 clarifies prohibited practices for investment advisers and investment adviser representatives. Michigan does not currently have any rule enumerating what practices are prohibited. The proposed rule identifies certain practices which the administrator considers to be fraudulent, deceptive, or manipulative. The desired outcome of the proposed rule is to put investment advisers and investment adviser representatives on notice of what conduct would violate the Michigan Uniform Securities Act, and to protect investors by reducing the occurrence of such conduct.

R 451.4.27 clarifies dishonest and unethical business practices of broker-dealers and broker-dealer agents. Michigan does not currently have any rule enumerating what practices are prohibited. The proposed rule identifies certain practices which the administrator considers to be fraudulent, deceptive, or manipulative. The desired outcome of the proposed rule is to put broker-dealers and agents on notice of what conduct the administrator considers to be dishonest and unethical, and to protect investors by reducing the occurrence of such conduct.

R. 451.4.29 creates an exemption from registration as an investment adviser representative for certain persons that are paid as solicitors for investment advisers. Individuals that solicit on behalf of investment advisers fall within the definition of "investment adviser representative" under the Michigan Uniform Securities Act. The proposed rule was modeled after a NASAA

model rule on the topic that was never adopted by NASAA's membership. Iowa, Kansas, and Missouri all have administrative rules that address investment adviser solicitors; Minnesota has no rule on the topic. Both Kansas and Missouri exempt from registration as investment adviser representatives solicitors that meet the requirements of their administrative rules. Iowa's rule is based on anti-fraud authority, rather than registration authority, and requires investment adviser solicitors to enter into a contract and comply with other regulatory requirements; it does not, however, exempt such solicitors from registration as investment adviser representatives. Michigan currently has no exemption from registration for solicitors, nor does it have any contract or disclosure requirements. The proposed rule has been altered from the unadopted NASAA model rule to limit its application to persons who limit their solicitation activities to not more than 10 client solicitations in a 12-month period. The limitation on the number of clients in a 12-month period was included so that the rule would only exempt those persons whose solicitation activities are merely incidental or occasional. Those persons that act as full-time investment adviser solicitors or that solicit as a material part of their business would be required to register under the proposed rule. The proposed rule is comparable to those adopted by Kansas and Missouri, though slightly more limited in its scope and applicability. The proposed rule is intended to eliminate the requirement to register for persons whose solicitation activities are merely incidental, reducing the regulatory burden on those persons. The proposed rule is also designed to protect investors by requiring the disclosure of material information regarding solicitation arrangements if investment advisers utilize solicitors to develop business.

5. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) instead of leaving them as currently written?

The proposed rules are intended to reduce fraudulent activity by issuers of securities, investment advisers, broker-dealers, and their employees and associated persons. When these actors commit fraudulent acts, investors lose money; when investors lose money, they also lose confidence in the market's ability to preserve and build wealth. Loss of investor confidence in markets reduces the public's willingness to invest, reducing capital available to businesses.

The proposed rules implement the Michigan Uniform Securities Act, and create an appropriate amount of oversight over issuers, investment advisers, broker-dealers, and their employees and associated persons. Exemptions from registration exist to reduce the regulatory burden where adequate safeguards are available to reduce the risk of financial harm to investors. The proposed rules are intended to protect investors while also encouraging the efficient formation of capital for businesses in Michigan.

The rationale for changing the rules and not leaving them as written is to modernize the rules and bring Michigan in line with standards established by the SEC and other states which have adopted the 2002 Uniform Securities Act. Michigan's administrative rules under the Michigan Uniform Securities Act have not been updated since the 1980's or early 1990's, making many obsolete, or out of step with current practices in the securities industry nationally, and in Michigan.

6. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules enhance regulatory oversight over persons who come within the scope of the Michigan Uniform Securities Act while simultaneously encouraging efficient formation of capital in the state.

Exemptions from registration and reporting requirements exist where risks to investors are reduced. The registration and reporting requirements that do exist are largely already in place pursuant to the Transition Orders and the Michigan Uniform Securities Act itself. Registration and reporting obligations and the reasons underlying changes to those obligations as a result of the adoption of the proposed rules are thoroughly discussed in other items of this Regulatory Impact Statement.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The entirety of the existing rule set, R 451.602.1 through R 451.803.11, would be rescinded upon the adoption of the proposed rules. Similarly, the Transition Orders issued by the administrator would also be rescinded upon the promulgation of the proposed rules.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There should not be a significant fiscal impact as a result of the promulgation of the proposed rules. A discussion of the expected impact on current Bureau functions is addressed below:

Part 1. Definitions

Definitions created by R 451.1.1 were pulled from SEC rules as well as from the rules promulgated by Iowa, Kansas, Missouri, and Minnesota. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R. 451.1.2 creates an exclusion from the definition of broker-dealer for certain individuals that meet the qualifications identified in the rule, which is discussed more thoroughly above. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule. There may be fewer broker-dealer or agent registrations with the Bureau as a result of the proposed rule; however, the fiscal impact is expected to be minimal.

Part 2. Exemptions from Registration

R 451.2.1 adopts the NASSA statement of policy for Not-for-profit securities, creating a "church bond" exemption assuming the issuer complies with various conditions, including payment of a $250.00 filing fee. The Bureau does not currently perform a substantive review of not-for-profit securities registration submissions, and anticipates that the new responsibilities created by this proposed rule, in conjunction with proposed rules 451.3.5 and 451.3.6, will require the addition of one full time employee.

R 451.2.2 identifies recognized securities manuals. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.2.3 creates a disqualification from the ability to utilize exemptions pursuant to the Michigan Uniform Securities Act for certain individuals with civil, criminal, or regulatory events in their pasts. The Bureau may incur costs in responding to requests for waiver of bad actor disqualifications pursuant to subrule (2) of the proposed rule. The additional costs are not anticipated to be substantial.

R 451.2.4 creates an exemption for persons engaged in the oil, gas, and mineral business. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.2.5 clarifies the meaning of "purchaser" for purposes of section 202(1)(n) of the Michigan Uniform Securities Act, MCL 451.2202(1)(n). No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

Part 3. Registration of Securities and Notice Filing of Federal Covered Securities.

R 451.3.1 creates notice filing requirements and identifies documents required to be filed with the administrator. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.3.2 designates the Electronic Filing Database ("EFD") as the depository for registrations, exemptions, notice filings, and amendments, and to collect fees on behalf of the administrator. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.3.3 creates the Small corporate offering registration ("SCOR") pursuant to section 304 of the Michigan Uniform Securities Act. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.3.4 creates prospectus requirements for issuers who register securities by qualification pursuant to section 304(2) of the Michigan Uniform Securities Act, MCL 451.2304(2). No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.3.5 creates report requirements for issuers who register securities by qualification; it also gives the administrator or his designee the ability to examine the issuer's books and records. The Bureau does not currently perform a substantive review of not-for-profit securities

registration submissions, and anticipates that the new responsibilities created by this proposed rule, in conjunction with proposed rules 451.2.1 and 451.3.6, will require the addition of one full time employee.

R 451.3.6 adopts by reference various statements of policy promulgated by NASAA. The Bureau does not currently perform a substantive review of not-for-profit securities registration submissions, and anticipates that the new responsibilities created by this proposed rule, in conjunction with proposed rules 451.2.1 and 451.3.5, will require the addition of one full time employee.

R. 451.3.7 is intended to clarify the administrator's ability to deny the effectiveness of a registration statement under section 306(1) of the Michigan Uniform Securities Act, MCL 451.2306(1), if the applicant for registration fails to complete or withdraw the application within 7 months after the date the application for registration is filed. The proposed rule allows Bureau staff to dispose of applications for registration that became stale due to inactivity, rather than allow the application file to remain open indefinitely due to the applicant's neglect. Bureau staff will be able to dispose of stale registration applications more efficiently because of the proposed rule; however, significant costs or savings are not anticipated as a result of the promulgation of the proposed rule.

Part 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

R 451.4.1 creates a "Canadian exemption" for certain Canadian broker-dealers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.2 creates a "merger and acquisition broker exemption" from registration under Section 401 of the Michigan Uniform Securities Act, MCL 451.2401; the proposed rule would also exempt from registration under Section 402, MCL 451.2402, any agents of broker-dealers that fall within the scope of the rule. The proposed rule would cost the Bureau an indeterminable amount of money in the form of registration fees lost due to brokers becoming exempt from registration and no longer paying fees. The Bureau does not collect or have the means to collect information on the number of broker-dealers currently registered who would come within the scope of the proposed rule, and is therefore unable to identify with certainty the fiscal impact; the Bureau does anticipate that adoption of the proposed rule would reduce Bureau revenue, though not significantly.

R 451.4.3 designates the Central Registration Depository ("CRD") operated by FINRA as the administrator's designee to collect filings and filing fees for registrations by broker-dealers, investment advisers, investment adviser representatives, and federal covered investment advisers. No significant costs are anticipated as a result of the proposed rule as it merely continues current practices in the state.

R 451.4.4 creates a rule regarding electronic signatures. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.5 creates a registration exemption for certain investment advisers to private funds. The Bureau may incur some additional costs of regulation as a result of the proposed rule; however, the impact it may have, if any on the Bureau, is unknown. The Bureau has never gathered information about advisers to private funds; does not gather information about how many private funds have equity holders who do not meet the qualified client definition; it does not know if those funds in existence which have non-qualified clients will take advantage of the grandfathering provision, or instead opt for registration; nor, does it know how many private funds with non-qualified clients will be created in the future – such funds previously would have been exempt, but no longer will be. Any additional costs or revenues for the Bureau are indeterminable at this time.

R 451.4.6 clarifies notice filing requirements for federal covered investment advisers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.7 creates the process for broker-dealer and agent registration applications. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.8 creates the process for Michigan investment market applications. The Bureau will incur costs and revenues as a result of the regulation of Michigan Investment Markets; however, the registration requirements imposed by section 455 of the Michigan Uniform Securities Act, MCL 451.2455, and the fee imposed by section 457, MCL 451.2457, are required by the Michigan Uniform Securities Act, and not by the adoption of these proposed rules.

R 451.4.9 creates broker-dealer and agent examination requirements. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.10 creates the process for investment adviser registrations. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.11 creates the process for investment adviser representative applications. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.12 creates examination requirements for investment advisers and investment adviser representatives. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.13 creates prohibitions, limits, and restrictions on custody of client funds and securities by investment advisers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.14 creates a bond requirement for certain investment advisers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.15 creates minimum financial requirements for broker-dealers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.16 creates minimum financial requirements for Michigan investment markets. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.17 creates minimum financial requirements for investment advisers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.18 creates requirements for financial statements. The Bureau anticipates that the adoption of the proposed rule may require more staff time in reviewing financial statements submitted pursuant to the rule; however, current staffing levels should be adequate to address the increased work. The actual costs are indeterminable.

R 451.4.19 creates requirements for an investment adviser brochure. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule as it merely continues current practices.

R 451.4.20 creates requirements for an investment adviser who exercises voting authority with respect to client securities. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.21 creates requirements for business continuity and succession plans for investment advisers. The Bureau may incur additional costs as a result of the proposed rule, in that it will have to enforce the provision for investment advisers who have not, or refuse to put in place business continuity and succession plans. The amount of these costs is indeterminable because the Bureau does not collect information from investment advisers regarding the status of their business continuity and succession plans at this time; however, the Bureau does not anticipate that additional full time employees will be required as a result of the proposed rule.

R 451.4.22 creates recordkeeping requirements for broker-dealers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.23 creates recordkeeping requirements for Michigan investment markets. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.24 identifies records to be maintained by investment advisers. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.25 identifies prohibited practices for investment advisers and investment adviser representatives. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.26 creates requirements for the contents and substance of investment adviser contracts with clients. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.27 identifies practices that are considered to be dishonest and unethical for broker-dealers and agents. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R 451.4.28 prohibits the misleading use of senior-specific certifications and professional designations. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule.

R. 451.4.29 creates an exemption from registration as an investment adviser representative for certain persons that are paid as solicitors for investment advisers. Individuals that solicit on behalf of investment advisers fall within the definition of "investment adviser representative" under the Michigan Uniform Securities Act. It is unknown at this time how many persons will take advantage of the proposed exemption from registration because the Bureau has no data regarding how many individuals may qualify for the exemption from registration. If significant numbers of individuals qualify for the exemption, there may be fewer registrations and corresponding registration fees. The Bureau has no information to determine how many registrants will qualify for the exemption; therefore, anticipated effects are indeterminable at this time.

Part 6. Administration and Judicial Review.

R 451.6.1 allows the Corporations, Securities & Commercial Licensing Bureau to issue interpretive opinions requested by the public. No significant costs or savings are anticipated as a result of the promulgation of the proposed rule, as this rule already exists in significantly the same form.

R 451.6.2 creates copy and certification fees. The Bureau already charges fees for copies and certifications; however, the proposed rule will clarify what those costs are for individuals and entities requesting copies and certifications.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

Funding for the enforcement of the Michigan Uniform Securities Act and the proposed rules comes from registration and notice-filing fees made pursuant to the statute, fines collected for violations of the statute, and fees charged for interpretive opinions. The fees are established by Sections 202 (MCL 451.2202), 202a (MCL 451.2202a), 302 (MCL 451.2302); 305 (MCL 451.2305), 410 (MCL 451.2410), 457 (MCL 451.2457), 601 (MCL 451.2601), 602 (MCL 451.2602), 603 (MCL 451.2603), 604 (MCL 451.2604), and 605 (MCL 451.2605).

The Bureau believes one additional full time position will be necessary in order to review securities product filings made pursuant to proposed rules 451.2.1, 451.3.5, and 451.3.6. Bureau staff estimates that there are 40 to 50 new filings per year, and that each filing will require approximately 40 hours of work to review, justifying the creation of one full time employee position. The funding necessary to pay for the position should be available in the Bureau's budget, and it is not expected that it would require an additional appropriation from the legislature.

10. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The purpose of the proposed rules is to adopt reasonable registration and conduct standards for persons and products regulated by the Michigan Uniform Securities Act. The proposed rules adopt standards which have been developed by NASAA, or are in use in several other states which compare favorably to Michigan. The adoption of a reasonable set of requirements for persons and products regulated by the Michigan Uniform Securities Act is necessary to protect Michigan investors and to promote the efficient formation and allocation of capital in the state.

Impact on Other State or Local Governmental Units:

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

These rules affect investment advisers, broker-dealers, issuers, and their owners, officers, employees and other associated persons. The rules do not affect state or local government revenues or costs.

12. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

These rules do not impose any duty or responsibility on any city, county, town, village, or school district.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

These rules do not require any additional funds for state or local government units.

Rural Impact:

14. In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

These rules will apply throughout Michigan and will have no direct effect on rural areas that won’t exist in urban areas as well.

Environmental Impact:

15. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

These rules focus on the regulation of the securities industry and will have little, if any impact on the environment.

Small Business Impact Statement:
[Please refer to the discussion of "small business" on page 2 of this form.]

16. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The Bureau did not consider exempting small businesses from the proposed rules because the proposed rules will not disproportionately affect small businesses. The proposed rules will equally affect all to whom they apply, regardless of the size of the business. A small broker-dealer or investment adviser is no more or less likely to defraud an investor than a large one; therefore, the need to protect investors requires equal application across all sizes of business.

Exemptions from many registration and reporting requirements exist so long as appropriate safeguards are in place; these exemptions are available to all affected businesses, large and small. Many of the requirements of the rules are already imposed upon businesses that operate pursuant to the Michigan Uniform Securities Act as a result of Transition Orders 1 through 6 and the currently-existing rule set; the proposed rules, with some exceptions, continue practices currently in place under the Transition Orders.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Small businesses are not specifically exempt from the requirements of the Michigan Uniform Securities Act or the proposed rules because the Bureau does not believe the proposed rules will disproportionately affect small businesses. Further, the Bureau believes that application of the proposed rules to small and large businesses alike is essential to the investor protection purposes of the Michigan Uniform Securities Act.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

According to a report generated from FINRA'S CRD database on April 19, 2017, there are 1,703 effective broker-dealer registrations in Michigan; 48 broker-dealer registrations reflect a home address of Michigan. Broker-dealers vary in size from very large, to small. The number of broker-dealers that fall within the definition of "small business" is not known; however, as noted in Items (16) and (17), the Bureau does not anticipate that the proposed rules will have a disproportionate impact on small businesses.

The same FINRA-generated report states that there are 577 registered investment advisers in Michigan; 454 of the registered investment advisers have a home address in Michigan. There are 1,673 investment advisers notice-filed in Michigan with 182 of them having a home address in the state. The number of investment advisers that fall within the definition of "small business" is not known; however, as noted in Items (16)

and (17), the Bureau does not anticipate that the proposed rules will have a disproportionate impact on small businesses.

The report generated from FINRA'S CRD database also indicates that there are 7 exempt reporting advisers active in Michigan, with 4 having a home address in the state. The number of exempt reporting advisers that fall within the definition of "small business" is not known; however, as noted in Items (16) and (17), the Bureau does not anticipate that the proposed rules will have a disproportionate impact on small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The Bureau did not establish differing compliance or reporting requirements or timetables for small businesses under the proposed rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

The Bureau did not consolidate or simplify the compliance and reporting requirements necessary to comply with reporting requirements. No special skills are necessary for compliance with standards established by the proposed rules.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The proposed rules are not designed to replace design or operation standards.

18. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The Bureau does not anticipate that the proposed rules will have a disproportionate impact on small businesses because of their size or geographic location.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

Proposed R 451.3.5 requires certain reports by issuers of securities which utilize registration by qualification provisions of the Michigan Uniform Securities Act Section 304, MCL 451.2304. The administrator may require an issuer to file a report by an accountant, engineer, appraiser, or other professional. The cost of such report is indeterminable, depending upon the situation of any given issuer, and may be required in advance in an escrow account. The rule also requires an annual audit report of the issuer, covering the last fiscal year. The report must be certified by an independent or certified public account. Costs of this rule are indeterminable, and will depend on the size and complexity of the issuer's business operations.

Proposed R 451.4.5 requires exempt reporting advisers to file with the state any report filed with the SEC pursuant to SEC Rule 204-4, 17 CFR 275.204-4. The SEC's final rule release on the matter, available at http://www.sec.gov/rules/final/2011/ia-3221.pdf, indicates that it expects

the burden on exempt reporting advisers to cost $40 to $225 in filing fees depending on the amount the adviser has under management, along with indeterminable costs (depending on the size of the adviser) associated with collecting, reviewing, reporting, and updating the limited subset of Form ADV items required to be filled out by an exempt reporting adviser. The SEC believes that the information required to be filed by an exempt reporting adviser should be readily available to the adviser, mitigating the costs and burdens of reporting. The rule requires advisers to obtain an annual audit of each 3(c)(1) fund it advises that is not a venture capital fund. The costs of such an audit are indeterminable and will depend on the size and complexity of the 3(c)(1) fund affected by application of the rule. The Bureau recognizes that costs will increase for private fund advisers that do not yet obtain audits of their funds; however, the Bureau believes that it is imperative that investors are provided with this information annually to ensure use of funds is consistent with the investment strategies on which the investors were sold. Costs of audited financial statements may be avoided if the fund only accepts qualified clients that are presumably sophisticated enough to understand the investment without such information, and are able to better withstand a loss should the fund fail.

Proposed R 451.4.13 requires investment advisers who maintain custody of client assets to file with the administrator all items required to be filed with the SEC according to SEC Rule 206(4)-2, 17 CFR 275.206(4)-2. The SEC's final rule release for its custody rule, available at https://www.sec.gov/rules/final/2009/ia-2968.pdf, indicates that it expects the largest burden on advisers who maintain custody to be the requirement of obtaining an annual surprise examination by a certified public accountant. The SEC in its rule release anticipated that the cost of the surprise examination would be approximately $10,000 for small advisers and approximate $20,000 for medium advisers; specific costs are indeterminable, and will depend upon the number of clients for whom an adviser has custody. The SEC's custody rule is largely already applicable to advisers in Michigan pursuant to Transition Order 6, with limited exceptions.

20. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

Small businesses affected by the proposed rules would likely not have any costs for equipment or supplies.

Labor and administrative costs may increase as a result of any proposed rules which require the collection, review, reporting, and updating of information with the administrator. Many of the registration and reporting requirements are imposed by the Michigan Uniform Securities Act, and not by the proposed rules. In many instances, the requirements established by the proposed rules are already in place as a result of existing rules or Transition Orders. See Item (19) for a discussion of reporting costs the administrator anticipates may result from adoption of the proposed rules.

Additionally, proposed rule 451.4.21 requires investment advisers to establish business continuity and succession plan. The proposed rule does not require that these plans be filed with or submitted to the administrator. Bureau staff already recommends as a best practice that investment advisers adopt such plans, and broker-dealers are required by FINRA rules to

have such plans in place. The costs of the plans are indeterminable, and will depend upon the size and complexity of the adviser and its preferred planning methods.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

As discussed in Item (20), many of the requirements imposed by the proposed rules already exist pursuant to rule or order of the administrator. Legal, consulting, and accounting costs already exist for issuers, investment advisers, broker-dealers, and the individuals employed by and associated with them. These costs are imposed by the Michigan Uniform Securities Act, existing administrative rules, and the Transition Orders.

See Items (19) and (26) for discussion of accounting fees which may result from proposed rules 451.3.5, 451.4.5 and 451.4.13

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

All issuers, broker-dealers, agents, investment advisers, and investment adviser representatives are held to the same standard, and may avail themselves of applicable exemptions from registration requirements; no economic harm or advantage exists for large or small businesses.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

No additional costs for the Bureau would be incurred by the adoption of lesser standards.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

There could be a large negative impact on the public if small businesses were exempt or held to a lesser standard than large businesses in the securities industry. The standards established by the proposed rules are intended to protect Michigan investors and to encourage efficient allocation of capital in the state, regardless of the size of the businesses involved. The Bureau does not believe that differing compliance or reporting requirements or blanket exemption from their application would be consistent with the investor protection purposes of the Michigan Uniform Securities Act. Because the protections of the Michigan Uniform Securities Act are intended to apply to investors who utilize large and small advisers and brokers, it would be inconsistent with the legislation to specifically adopt different requirements for small businesses under the proposed rules.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small businesses were involved in the development of the rule(s), please identify the business(es).

The Bureau received feedback from attorneys who practice in securities law. To the extent these attorneys represent small businesses as part of their practices, they could provide insight as to the potential impact on these small business clients. No small businesses were directly involved in the development of the rules. The attorneys contacted were members of the State Bar of Michigan’s Business Law Section.

Cost-Benefit Analysis of Rules (independent of statutory impact):

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

Part 1. Definitions

R 451.1.1 creates a number of definitions applicable to the rule set as a whole. The Bureau does not anticipate additional costs or burdens to businesses or groups as a result of the proposed definitions in this rule.

R. 451.1.2 creates an exclusion from the definition of broker-dealer for certain individuals that meet the qualifications identified in the rule, which is discussed more thoroughly above. The Bureau does not anticipate that the proposed rule will impose costs or burdens upon businesses or groups in this state; rather, the proposed rule would save those who fall within its scope the costs of registration and maintaining a registration with the State of Michigan.

Part 2. Exemptions from Registration

R 451.2.1 adopts the NASSA statement of policy for Not-for-profit securities, creating a "church bond" exemption so long as the issuer complies with various conditions, including payment of a $250.00 filing fee. Offerings which seek to raise $500,000.00 or less are entitled to a self-executing exemption with no filing requirements to the Bureau. The costs associated with this proposed rule include the preparation of the request for authorization to rely upon the exemption, associated documents required to be filed with the administrator, a filing fee of $250, and a renewal fee of $250 should the offering last for more than one year. The costs of preparing the request for authorization are indeterminable, and will depend upon the size of the offering and the complexity of the documents which must be filed with the administrator, if any.

R 451.2.2 identifies recognized securities manuals for purposes of exemption from registration for securities transactions which comply with the requirements of Section 202(1)(b)(iv) of the Michigan Uniform Securities Act, MCL 451.2202(1)(b)(iv). Issuers who utilize the exemption identified are exempt from the requirements of Sections 301 to 306 of the Michigan Uniform Securities Act, MCL 451.2301 to MCL 451.2306. The proposed rule does not create any costs or burdens for an issuer of securities, but only identifies manuals which the administrator recognizes for purposes of the statutory exemption from registration.

R 451.2.3 creates a disqualification from the ability to utilize exemptions pursuant to the Michigan Uniform Securities Act for certain individuals with civil, criminal, or regulatory events in their pasts. This proposed rule may create some compliance costs for businesses or groups in Michigan, as it prevents certain individuals with disqualifying events in their past from relying on exemptions to sell securities pursuant to the Michigan Uniform Securities Act. Businesses which have individuals with such disqualifications will be required to register their

securities rather than sell them pursuant to an exemption, which may create costs. The costs are indeterminable, and will depend upon the business and the complexity of its operations.

R 451.2.4 creates an exemption for persons engaged in the oil, gas, and mineral business. The proposed rule does not create costs or burdens for persons who rely upon it for exemptions from registration of certain oil, gas, or mining securities pursuant to Section 301 of the Michigan Uniform Securities Act, MCL 451.2301.

R 451.2.5 clarifies the meaning of "purchaser" for purposes of section 202(1)(n) of the Michigan Uniform Securities Act, MCL 451.2202(1)(n). The proposed rule should not impose any costs or burdens upon businesses in Michigan; the proposed rule merely clarifies the definition of "purchaser" for purposes of the 202(1)(n) exemption.

Part 3. Registration of Securities and Notice Filing of Federal Covered Securities.

R 451.3.1 creates notice filing requirements and identifies documents required to be filed with the administrator in relation to offerings of federal covered securities under the Investment Company Act of 1940. The proposed rule does not impose costs and burdens on issuers, as the filing fee of $500 is imposed by the Michigan Uniform Securities Act. The costs and burdens should be minimal to issuers, as the bulk of the documentation is required to be filed with the SEC pursuant to federal law, and the Bureau will require only copies and a filing fee.

R 451.3.2 designates the Electronic Filing Database ("EFD") as the depository for registrations, exemptions, notice filings, and amendments, and to collect fees on behalf of the administrator. Presently, the EFD only accepts Form D filings; however, the administrator anticipates that EFD will accept other filings in the future. Filers may submit non-Form D filings pursuant to currently-existing standards until EFD accepts other filings and the administrator designates EFD to accept them with 30 days' notice to the public, as contemplated in subrule (3). Filers must pay a $150.00 fee to EFD in order to utilize the system; this fee is imposed by EFD and is in addition to any filing fees imposed by the state. One benefit of the rule will be the public availability over the internet of all filings made on the EFD system, allowing the public easier access to filings made with the Bureau via the EFD. As of the drafting of this document, 42 of the 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Island utilize EFD. A summary of states using EFD is available at: https://www.efdnasaa.org/AboutEFDStates.

R 451.3.3 creates the Small corporate offering registration ("SCOR") pursuant to section 304 of the Michigan Uniform Securities Act. SCOR is a securities registration currently available to issuers in Michigan pursuant to R 451.803.11 which was promulgated in 1993. The proposed rule will not impose any costs or burdens which are not already imposed upon issuers who sell securities pursuant to R 451.803.11. Costs to issuers will include the filing fee imposed by Section 305 of the Michigan Uniform Securities Act, MCL 451.2305; the costs incurred in preparation of the SCOR registration statement and exhibits to it; the cost of an attorney's opinion letter; and the cost to submit these documents to the Bureau. The Bureau anticipates that the costs and burdens to businesses will remain the same under the proposed rule as they

exist under the current rule because the rule is essentially being maintained as it has always operated.

R 451.3.4 creates prospectus requirements for issuers who register securities by qualification pursuant to section 304(2) of the Michigan Uniform Securities Act, MCL 451.2304(2). The proposed rule establishes a time frame by which an issuer must provide a prospectus to person to whom offers are made. The rule should not impose any costs upon issuers above those costs created by the Michigan Uniform Securities Act. The rule merely identifies when materials required by the Michigan Uniform Securities must be provided to offerees.

R 451.3.5 creates report requirements for issuers who register securities by qualification; it also gives the administrator or his designee the ability to examine the issuer's books and records. The proposed rule would allow the administrator to require a report by an accountant, engineer, appraiser, or other professional as a condition of registration. This would only create costs to the extent the administrator required such a report, and the cost would depend upon the nature of the report required. These costs, to the extent they would be incurred, are indeterminable due to the varying nature of the reports.

R 451.3.6 adopts by reference various statements of policy promulgated by NASAA. The proposed rule is not anticipated to impose costs upon businesses or groups in Michigan, as it merely adopts statements of policy which have been promulgated by NASAA.

R. 451.3.7 is intended to clarify the administrator's ability to deny the effectiveness of a registration statement under section 306(1) of the Michigan Uniform Securities Act, MCL 451.2306(1), if the applicant for registration fails to complete or withdraw the application within 7 months after the date the application for registration is filed. The rule would impact issuers that do not follow up after filing applications for securities product registrations. The rule may impose costs on issuers that wish to complete an application after it has been withdrawn pursuant to the proposed rule; however, issuers will be able to avoid these costs by simply completing their materials within 7 months, a perfectly reasonable timeframe. The more likely application of the rule is to an issuer that has abandoned its registration without any intent of completing the process, which would allow the Bureau to dispose of such stale applications for registration more efficiently than it currently can.

Part 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.

R 451.4.1 creates a "Canadian exemption" for certain Canadian broker-dealers. The Bureau does not anticipate that the proposed rule will impose costs upon businesses or groups in the state. The proposed rule creates an exemption from broker-dealer registration for certain Canadian broker-dealers that satisfy a number of conditions. The Bureau does not anticipate that these broker-dealers will incur costs as a result of the proposed rule.

R 451.4.2 creates a "merger and acquisition broker exemption" for certain broker-dealers and agents employed by those brokers. The Bureau does not anticipate that the proposed rule will impose costs or burdens upon businesses or groups in this state; rather, the proposed rule would

save those who fall within its scope the costs of registration and maintaining a registration with the State of Michigan.

R 451.4.3 designates the Central Registration Depository ("CRD") operated by FINRA as the administrator's designee to collect filings and filing fees for registrations by broker-dealers, agents, and investment adviser representatives. The proposed rule merely continues current practices for registration applications and fee payments. The Bureau does not believe that the adoption of the proposed rule will lead to added costs or burdens for registration applicants.

R 451.4.4 creates a rule regarding electronic signatures. The proposed rule should not create any additional costs or burdens for businesses or groups in Michigan, as it merely adopts standards of interpretation for electronic signatures in the context of the Michigan Uniform Securities Act.

R 451.4.5 creates a registration exemption and notice filing requirement for certain investment advisers to private funds. The proposed rule will only affect a small set of investment advisers; however, the Bureau recognizes that there may be costs involved for advisers that are subject to the rule. The Bureau is unable to estimate the number of advisers who will be affected by the proposed rule, as there are not currently any applicable registration or reporting requirements in place in Michigan. Transition Order 6, Paragraph 3 currently clarifies the 403(2)(c) private fund investment adviser exemption by defining "institutional investor" to mean a qualified client or an accredited investor. "Accredited investor" status is an easier threshold to meet compared with "qualified client".

The proposed rule will allow both qualified clients and accredited investors to invest in private funds similar to current policy under Transition Order 6; however, funds that accept accredited investors will be required to have audited financial statements prepared and distributed to investors on an annual basis. Funds that only accept qualified clients will be able to exempt themselves from the audited financial statement requirement if the qualified clients are notified in writing before investing in the fund that no audited financial statements will be distributed annually, but that other similarly-situated funds may provide such information. Funds that accept accredited investors will be required to take on the added cost of obtaining an audit of the fund on an annual basis. The Bureau recognizes that this may be a new cost for such funds, but believes that it is consistent with practices in other similarly-situated states, and that it is necessary to achieve the investor protection goals of the Michigan Uniform Securities Act.

Proposed subrule (2)(b) requires a private fund adviser to file with the state any reports filed with the SEC pursuant to 17 CFR 275.204-4. The SEC, when it proposed the parallel federal rule for exempt reporting advisers, stated the following (please note the SEC's footnotes are omitted):

> While we believe that our approach to implementing the Dodd-Frank Act's reporting provisions applicable to exempt reporting advisers will minimize costs inherent in such reporting, we acknowledge that it will impose costs on these advisers. These costs include filings fees, although not significant, paid for

> submitting initial and annual filings through IARD. We anticipate that filing fees, which the Commission will consider separately, will be the same as those for registered investment advisers, which currently range from $40 to $225 based on the amount of assets an adviser has under management…
>
> In addition to filing fees, exempt reporting advisers will incur internal costs associated with collecting, reviewing, reporting, and updating a limited subset of Form ADV items in Part 1A, including Items 1, 2.B, 3, 6, 7, 10, 11 and corresponding schedules. We expect this cost to be substantially less than that incurred by registered advisers because exempt reporting advisers are not required to complete the remainder of Part 1A or Part 2 of Form ADV. The costs of completing the relevant items of Form ADV will vary from adviser to adviser, depending in large part on the number of private funds an adviser manages.
>
> We believe, and several commenters confirmed, that the information these items require should be readily available to any adviser (particularly the identifying, private fund and control person information required by Items 1, 3, 7.B. and 10), which mitigates the costs and burdens of reporting…
>
> ***
>
> … Exempt reporting advisers are only required to complete a limited subset of Part 1A of Form ADV. As noted above, this part of the form generally calls for readily available information to be reported as approximate numerical responses, as short answers, or by checking a box. Unlike Part 2 of Form ADV, which requires free-form narrative responses, we do not believe that advisers will require outside legal advice in order to provide the factual information that Part 1A requires…

The SEC asserted that much of the information required to be filed is readily available to advisers and should not present much of a burden to the advisers affected by it. The proposing release may be found online at: http://www.sec.gov/rules/final/2011/ia-3221.pdf

Proposed subrule (3) creates additional requirements for advisers to 3(c)(1) funds which are not venture capital funds. For advisers to 3(c)(1) funds which are not venture capital funds, there are additional requirements, including: (a) the 3(c)(1) fund shall only be beneficially-owned by qualified clients or accredited investors; (b) the adviser must disclose in writing the services to be provided, the duties owned by the adviser, and any other material information affecting rights and responsibilities of beneficial owners; and (c) the adviser must obtain an audit on the financial statements for the 3(c)(1) fund annually unless exempted from the requirement by subrule 3(d). The Bureau recognizes that the requirements of subrule (3) are new and may create costs and burdens for those advisers affected. The actual costs are indeterminable, and will depend upon the size of the fund, the investments it holds, and its current practices regarding disclosures to its investors. Some advisers may already obtain annual audits and provide the relevant information to its investors; these advisers will not face substantial additional costs as a result of the proposed rule. Other advisers, however, may not be providing this information to

investors or may not be maintaining GAAP-compliant financial statements; these advisers may face costs in developing procedures to comply with the information and audit requirements going forward. The costs which will be incurred will depend on numerous factors, and cannot be quantified without additional information about each fund affected.

Proposed subrule (4) provides that SEC registered investment advisers to private funds are not eligible for the exemption, and must notice-file with the Bureau pursuant to section 405 of the Michigan Uniform Securities Act. This proposed subrule should not impose any new costs or burdens upon businesses or groups, as it merely clarifies a class of advisers not eligible for the newly-created exemption, and directs that those advisers comply with the legislature's policy as laid out in section 405 of the Michigan Uniform Securities Act, MCL 451.2405.

The Bureau is conscious of the change in policy represented by this proposed rule, and has proposed a grandfathering provision in subrule (8). The adviser may continue to be exempt from registration pursuant to the private fund adviser exemption if: the fund was in existence before the effective date of the rule; it ceases accepting non-qualified clients as investors; it begins to provide the information required by subrule (3) of the rule; and, it begins to provide audited financial statements, unless exempted from the requirement by subrule 3(d).

The proposed rule imposes requirements not currently applicable in Michigan which may result in additional costs for investment advisers subject to the rule. The Bureau recognizes these costs, and has made attempts to mitigate the effect they may have on capital formation in Michigan, while still maintaining appropriate investor protections, consistency with treatment of registered investment advisers, and consistency with requirements in other similarly-situated states.

Advisers subject to the proposed rule will face new costs as a result of its promulgation, such as notice-filing fees, costs of financial statement audits for firms that are not excepted from the requirement, and the costs of submission to the Bureau of any documents filed with the SEC. The Bureau believes these costs are outweighed by the benefit of enhanced investor protection resulting from the Bureau being aware of the activities of a subset of advisers over which it previously had no oversight. Further, the public will be more informed regarding private funds, given that they will be subject to some limited reporting requirements to the CRD/IARD for the first time in Michigan. The costs that result from the proposed rule exist and are recognized by the Bureau; however, staff believes that the costs are outweighed by the benefits described in this Regulatory Impact Statement.

Initial drafts of the proposed rule did not allow investments by accredited investors and required audited financial statements to be prepared and distributed annually for all funds; this is the practice in the vast majority of states. The rule was amended after discussions with members of the State Bar of Michigan's Business Law Section Securities Regulation Subcommittee. The amendments were intended to reduce burdens on businesses by allowing investments in private funds by accredited investors so long as those investors are provided with audited financial statements annually. The audited financial statement requirement was eased with respect to funds that only accept qualified client investors that are presumably sophisticated enough to look out for their own interests, and are able to absorb a significant financial loss should a private

fund fail. In an attempt to be less burdensome to business than most other states, drafters altered the proposed rule substantially from the NASAA model rule on the topic, which is in place in each of Iowa, Kansas, Minnesota, and Missouri. None of these states would exempt private funds that accept accredited investors, and all would require any such fund to provide audited financial statements annually to all investors, without exception. The Bureau's proposed rule balances capital formation and investor protection, ensures reasonable consistency with treatment of registered investment advisers, and is significantly less burdensome on advisers than rules in similarly-situated states.

R 451.4.6 clarifies notice filing requirements for federal covered investment advisers. The Bureau does not anticipate that the proposed rule will create any costs or burdens which do not already exist for advisers affected by it.

R 451.4.7 creates the process for broker-dealer and agent registration applications. The Bureau does not anticipate that the proposed rule will create any costs or burdens which do not already exist for broker-dealers and agents affected by it.

R 451.4.8 creates the process for Michigan investment market applications. The proposed rule will create costs for Michigan Investment Markets; however, the costs created by the rule are unknown and indeterminable. Michigan Investment Markets are a recently-created statutory market participant intended to create secondary market liquidity for securities issued pursuant to the Michigan Invests Locally Exemption. The Bureau believes that much of the information required for a Michigan Investment Market application pursuant to the proposed rule should be readily available to the applicant. However, some of the requirements will impose costs, including proposed subrule (1)(j) which requires proof of compliance with sections 5 and 6 of the Securities Exchange Act of 1934; subrule (1)(l) requires unconsolidated financial statements for affiliates; subrule (q) requires audited financial statements. These costs will depend upon the services required and the skill sets of the officers for the Michigan Investment Market. Costs which may be imposed by the proposed rule are indeterminable at this time.

R 451.4.9 creates broker-dealer and agent examination requirements. The Bureau does not anticipate that the proposed rule will create any costs or burdens which do not already exist for broker-dealers and agents affected by it.

R 451.4.10 creates the process for investment adviser registrations. The Bureau does not anticipate that the proposed rule will create significant costs or burdens which do not already exist for advisers affected.

R 451.4.11 creates the process for investment adviser representative applications. The Bureau does not anticipate that the proposed rule will create any costs or burdens which do not already exist for adviser representatives affected.

R 451.4.12 creates examination requirements for investment advisers and investment adviser representatives. The proposed rule clarifies that sole proprietor investment advisers must comply with the examination requirements for an investment adviser representative. This may

impose costs on sole proprietor investment advisers who have not satisfied the examination requirement for licensure. The cost would be the fee to take the S65 exam or the combination of the S7 exam and S66 exam.

R 451.4.13 creates prohibitions, limits, and restrictions on custody of client funds and securities by investment advisers. The proposed rule would alter investment adviser custody standards in Michigan by eliminating the private fund adviser custody exception from Transition Order 6, paragraph 7(b). Instead, advisers to private funds would be required to comply with the SEC's custody rule, 17 CFR 275.206(4)-2; or, would need to otherwise have authority to have custody by rule or order of the administrator. An adviser to private funds may otherwise have custody as contemplated in proposed rule 451.4.5 and 17 CFR 275.206(4)-2; please see discussion of this proposed rule for anticipated costs and burdens placed upon advisers to private funds by the proposed rule.

R 451.4.14 creates a bond requirement for certain investment advisers. The Bureau does not currently require bonds for investment advisers pursuant to existing administrative rules or the Transition Orders. The proposed rule will impose costs and burdens on investment advisers who become subject to bonding requirements where none previously existed. The costs are indeterminable, and will depend upon the amount of funds over which an adviser has custody or discretionary authority, as the bond amount will be based upon those dollar values. The proposed rule will only affect those investment advisers who have custody or discretionary authority.

R 451.4.15 creates minimum financial requirements for broker-dealers. The proposed rule imposes upon broker-dealers the minimum net worth standards which are already applicable to them pursuant to current R 451.602.6 and Transition Order 3, paragraph 6. The Bureau does not anticipate that the proposed rule will impose any costs or burdens upon broker-dealers than those which already exist pursuant to the Transition Orders.

R 451.4.16 creates minimum financial requirements for Michigan investment markets. The proposed rule will create costs and burdens for Michigan Investment Markets; however, the costs created by the rule are unknown and indeterminable. Michigan Investment Markets are a recently-created statutory market participant intended to create secondary market liquidity for securities issued pursuant to the Michigan Invests Locally Exemption. The minimum financial requirements imposed by the proposed rule are intended to mirror the financial requirements rule for broker-dealers, making the burdens and costs to Michigan Investment Markets the same as those which affect broker-dealers pursuant to proposed rule 451.4.15.

R 451.4.17 creates minimum financial requirements for investment advisers. Current rules do not have any specific net worth requirement, except that an investment adviser must have a positive net worth. The proposed rules requires an investment adviser with custody to maintain a net worth of $35,000.00 with certain exceptions; an investment adviser with discretionary authority must maintain a net worth of $10,000.00; and an adviser who accepts prepayment of more than $500.00 per client six or more months in advance must maintain a positive net worth. There are no other net worth requirements in the proposed rule; Bureau staff notes that Section 412(4)(g) requires that registrants and applicants for registration must be solvent. The exact amount of costs associated with the proposed rule are indeterminable, as some advisers may

already be in compliance with these net worth standards, while others may not. The costs to specific investment advisers will vary, depending on the adviser's financial condition.

R 451.4.18 creates requirements for financial statements. Current rules do not specify requirements for financial statements, nor do the Transition Orders. The proposed rule would enumerate which statements constitute "financial statements"; would require compliance with generally-accepted accounting principles; would require that financial statements must be consolidated unless otherwise required; but, would not require that financial statements are audited. The administrator has discretion to waive any of the requirements upon a written request from a filer of financial statements, and conversely, may require a filer to submit audited financial statements. The nature of the costs and burdens are indeterminable and will depend upon the complexity of the financial statements which must be prepared. The Bureau believes, however, that reasonable exceptions will be available to those who request waivers of the requirements the proposed rule, mitigating costs to those who cannot afford to bear them.

R 451.4.19 creates requirements for an investment adviser brochure. Transition Order 3, paragraph 10 currently prescribes requirements for the provision of a brochure to investors by an investment adviser. The Transition Order requires that the brochure be given to a prospective client at least 48 hours before the client and the adviser enter into the contract, and that the client has the right to terminate the contract within 5 business days after entering into the contract, without penalty. The proposed rule eliminates the 48-hour rule, as well as the 5 business day cancellation period; these provisions were removed upon the recommendation of the Business Law Section of the State Bar of Michigan. The 48-hour rule was a burden to advisers and investors, as the investor would have to schedule a second meeting with an adviser two days after an initial meeting in order to retrieve the documents and sign contracts. Advisers would wait until after the 5 business day waiting period to begin working for clients due to the fact that the work may be in vain if the client decided to cancel the contract. These waiting periods created inefficiencies which the Bureau recognizes, and has chosen to eliminate. The proposed brochure rule also requires an adviser to deliver updates at the end of each fiscal year and upon material changes in the adviser's business. There are certain clients who are not required to receive the brochure, and standards that an adviser must satisfy in order to deliver the brochure electronically. The Bureau believes that the proposed rule should alleviate some costs and burdens currently imposed upon advisers by Transition Order 3, paragraph 10.

R 451.4.20 creates requirements for an investment adviser who exercises voting authority with respect to client securities. The proposed rule would make it a fraudulent, deceptive, or manipulative act for an investment adviser to exercise voting authority over client securities unless the adviser has written policies designed to ensure that the adviser votes the client securities in the client's best interests; discloses to clients how to get information about how the adviser voted; and, describes to clients the adviser's proxy voting policies. The proposed rule will impose indeterminable costs and burdens upon advisers. The Bureau anticipates that the costs of the proposed rule will include the development and implementation of the written procedures for firms who do not yet have any in place, as well as the time it takes to disclose the policies and procedures to clients. These costs are indeterminable; however, the Bureau does not anticipate the costs to be substantial.

R 451.4.21 creates requirements for business continuity and succession plans for investment advisers. The proposed rule will create costs and burdens for advisers who have not yet implemented a written business continuity plan. The Investment Adviser Association, a trade group which represents investment advisers, conducted a survey in 2015 that indicated 97% of federal covered investment advisers reported having a business continuity plan in place. The Investment Adviser Association's website has detailed reports regarding its surveys, at www.investmentadviser.org. Anecdotally, Bureau staff conducting exams of Michigan-registered investment advisers report that some advisers have continuity and succession plans in place; however, staff estimates that fewer than half currently have such a plan. Staff has for several years been recommending as a "best practice" that investment advisers establish, implement, and maintain such plans. The Bureau recognizes that some investment advisers will incur costs as a result of the proposed rule, but believes that the costs are necessary for the protection of investors should an adviser suffer from death, disability, or other inability to service a client's account.

R 451.4.22 creates record-keeping requirements for broker-dealers. The proposed rule is intended to maintain current practices prescribed by Transition Order 3, paragraph 8(a). The Bureau does not anticipate that the proposed rule will impose any costs and burdens not already applicable to broker-dealers in Michigan.

R 451.4.23 creates record requirements for Michigan investment markets. The proposed rule will create costs and burdens for Michigan Investment Markets; however, the costs created by the rule are unknown and indeterminable. Michigan Investment Markets are a recently-created statutory market participant intended to create secondary market liquidity for securities issued pursuant to the Michigan Invests Locally Exemption. The record-keeping rule is intended to mirror the record-keeping rule for broker-dealers, making the burdens and costs to Michigan Investment Markets the same or similar to those which affect broker-dealers pursuant to proposed rule 451.4.22.

R 451.4.24 identifies records to be maintained by investment advisers. The proposed rule would adopt a slightly-modified version of the NASAA model rule for investment adviser recordkeeping, rather than continue the practice of relying on SEC regulations pursuant to Transition Order 3, paragraph 9. The proposed rule is very similar to SEC Rule 204-2, 17 CFR 275.204-2, with much of the language mirroring the language in the SEC's investment adviser recordkeeping rule. The Bureau does not anticipate significant costs or burdens being imposed upon investment advisers or their staff as a result of the proposed rule's promulgation.

R 451.4.25 identifies prohibited practices for investment advisers and investment adviser representatives. The Bureau does not anticipate that the proposed rule will impose significant costs or burdens upon investment advisers or investment adviser representatives. Rather, the Bureau believes that the proposed rule will clarify for investment advisers the forms of conduct which would violate the Michigan Uniform Securities Act.

R 451.4.26 creates requirements for the contents and substance of investment adviser contracts with clients. The Bureau does not anticipate significant costs or burdens to be imposed upon investment advisers as a result of the promulgation of the proposed rule. Transition Order 1,

paragraph 12 currently requires that investment advisers have written contracts with their clients. A number of the Transition Order 1, paragraph 12 requirements are carried forward to the proposed rule. The proposed rule also creates standards for advisers to follow if they base fees upon capital gains in clients' accounts, which is currently covered by Transition Order 6. The Bureau does not anticipate that the proposed rule will create costs or burdens to advisers, as most of the requirements already exist pursuant to the Transition Orders.

R 451.4.27 identifies practices that are considered to be dishonest and unethical for broker-dealers and agents. The Bureau does not anticipate that the proposed rule will impose significant costs or burdens upon broker-dealers or their agents. Rather, the Bureau believes that the proposed rule will clarify for broker-dealers and agents the forms of conduct which would violate the Michigan Uniform Securities Act.

R 451.4.28 prohibits the misleading use of senior-specific certifications and professional designations. The proposed rule continues current practices regarding senior-specific certifications and professional designations which already exist pursuant to Transition Order 5, paragraph 4. The Bureau does not anticipate that the proposed rule will create and costs or burdens which do not already exist for persons engaged in activities which fall within the scope of the Michigan Uniform Securities Act.

R. 451.4.29 creates an exemption from registration as an investment adviser representative for certain persons that are paid as solicitors for investment advisers. Individuals that solicit on behalf of investment advisers fall within the definition of "investment adviser representative" under the Michigan Uniform Securities Act. The proposed rule will reduce costs of registration for those persons that become exempt from registration as investment adviser representatives. Solicitors may incur costs to develop and maintain a client contract if they do not yet enter into contracts with clients and potential clients that they refer to investment advisers. Use of a solicitor contract is a best practice, and may already be utilized by many investment adviser solicitors. Those who do not yet use such a contract will incur a cost to develop the document. The Bureau believes that the additional costs are justified for the protection of not only investors, but also the protection of investment advisers and solicitors that receive compensation to solicit investment adviser clients. The Bureau notes that many sample agreements are available through online searches such as Google.

Part 6. Administration and Judicial Review.

R 451.6.1 allows the Corporations, Securities & Commercial Licensing Bureau to issue interpretive opinions requested by the public. The Bureau does not anticipate that the proposed rule will create any costs or burdens for those persons subject to the Michigan Uniform Securities Act; rather, it will create a process by which interested requestors may seek the administrator's interpretation of the law.

R 451.6.2 creates copy and certification fees. The proposed rule will create indeterminable costs for those who request copies or certifications. The costs will vary depending on the size and nature of any request made pursuant to the proposed rule.

27. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping. How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Please see the discussion in Item 26.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

Please see the discussion in items 26 and 27. The proposed rules should not create large cost reductions for businesses, individuals, or governmental units.

The proposed mergers and acquisition broker exemption, proposed rule 451.4.2, should significantly reduce or eliminate registration and reporting costs for those entities and individuals who engage in the activity covered by the proposed rule. Similarly, the exclusion from the definition of "broker-dealer" at proposed rule 451.1.2 and the rule 451.4.29 investment adviser representative exemption from registration for solicitors should reduce registration costs, including time and fees associated with the applications, for persons that are the subjects of those rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules are intended to protect investors, to reduce fraud in the offer and sale of securities and investment advice, and to encourage efficient capital formation in the State of Michigan.

Reducing the occurrences of fraud in the securities markets reduces the amount of capital lost to fraud; this increases the amount of capital available for legitimate businesses to operate and grow, and allows for increased investor confidence in Michigan's securities markets. Increased confidence leads to greater investments, which leads to greater economic growth in the state. These benefits are immeasurable, but very important to efficient capital formation and economic growth in Michigan.

30. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The Bureau does not anticipate a significant impact on small business growth or job creation/elimination in Michigan as a result of the proposed rules.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rules will apply equally to all individuals and businesses that fall within their scope, regardless of the industry, sector, segment of the public, business size, or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a

proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The Bureau looked to rules and regulations promulgated by the SEC, available for free online through www.gpoacess.gov; the Bureau reviewed NASAA model rules and commentary related to those rules, which are also available online for free, at www.nasaa.org; the Bureau looked to the statutes enacted by and rule sets promulgated by other states, including Iowa, Kansas, Minnesota, and Missouri; all of these states publish their administrative rules for free on their respective websites.

The Bureau reviewed rule releases published by the SEC in situations where the rule was based on or similar to an SEC rule. Hyperlinks to applicable rule releases are located in the relevant portions of the Regulatory Impact Statement & Cost Benefit Analysis.

The Bureau also reviewed industry information published by the Investment Adviser Association, which is also linked where relevant.

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

The Bureau does not believe that there are "reasonable" alternatives to the proposed rules. The only alternative would be to continue using the Transition Orders to implement the Michigan Uniform Securities Act; however, the Transition Orders were put in place between 2009 and 2011 to operate as a temporary solution until administrative rules could be promulgated after the transition from 1964 PA 265 to 2008 PA 551. The Bureau believes it would be imprudent and a disservice to the securities industry and to investors to continue with this approach.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The Bureau is not aware of any private market-based mechanisms in other states and does not believe it would be feasible to establish such a regulatory program in Michigan.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Bureau did not consider significant alternatives to the proposed rules. As discussed in Items 1 through 7, the Bureau based its proposed rules on a combination of SEC administrative rules, NASAA model rules, and the rule sets promulgated in Iowa, Kansas, Minnesota, and Missouri. The proposed rules are intended to be reasonably similar to the rules promulgated by these other securities regulators, and to largely be consistent with current practices in Michigan. As noted in multiple items above, there are certain changes from current practices; however, the Bureau

believes the changes are necessary for the protection of investors and for the efficient allocation of capital in Michigan.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rule(s), if applicable.

The securities industry is a heavily regulated area of business in Michigan, the United States, and across the world. The Bureau provides as much information as it possibly can, including rules and the Transition Orders, on its website, www.michigan.gov/securities; however, where issues of compliance with the Michigan Uniform Securities Act or rules or orders promulgated thereunder are unclear, it is suggested that the person affected speak with a competent securities law attorney.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

9-15-2017

Date RIS approved:	**11/15/2017**
ORR assigned rule set number:	**2015-027 LR**

Date of disapproval:	Explain:
More information needed:	Explain: