State Budget Office
Office of Regulatory Reinvention
111 S. Capitol Avenue; 8th Floor, Romney Building
Lansing, MI 48933
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AGENCY REPORT TO THE JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at **orr@michigan.gov**.

1. Agency Information:

Agency name:	Department of Licensing and Regulatory Affairs
Division/Bureau/Office:	Corporations, Securities, and Commercial Licensing Bureau
Name, title, phone number, and e-mail of person completing this form:	Stephen Brey, Administrative Law Specialist (517) 241-9212 breys@michigan.gov
Name of Departmental Regulatory Affairs Officer reviewing this form:	Liz Arasim

2. Rule Set Information:

ORR assigned rule set number:	2015-027 LR
Title of proposed rule set:	Securities Rules

3. Purpose for the proposed rules and background:

The Uniform Securities Act (2002), 2008 PA 551, as amended ("the Act"), repealed and replaced the predecessor Michigan Uniform Securities Act, 1964 PA 265, as amended. The proposed rules, in conjunction with the Act, seek to achieve dual goals of investor protection and maintaining an environment of efficient capital formation in the state. The Act and the proposed rules seek to achieve these dual purposes 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, to a large extent, maintain the status quo of the current regulatory environment by continuing many practices established by the six Transition Orders issued by the administrator between September of 2009 and March of 2011 after the legislature passed the Act. Some proposed rules are departures from current practices, and are intended to modernize implementation of the Act to be more consistent with practices in similarly-situated jurisdictions that have adopted the 2002 version of the Uniform Securities Act.

4. Summary of proposed rules:

Rule 451.1.1 creates definitions for the rule set as a whole. Definitions come from U.S. Securities & Exchange Commission ("SEC") rules, and from other 2002 Uniform Securities Act states.

Rule 451.1.2 creates a definitional exclusion from the Act's definition of "broker-dealer" for persons that limit their activities within the securities industry. The definition is intended to bridge the gap between what the Act considers to be a "finder" and what it considers to be a "broker-dealer." The rule was based on a similar statutory scheme developed in California. The exclusion from the definition of "broker-dealer" does not currently exist in Michigan, and will create a new

class of persons who will not be required to register as broker-dealers.

Rule 451.2.1 adopts the North American Securities Administrators Association ("NASAA") statement of policy for not-for-profit securities, creating a "church bond" exemption from registration which is subject to several conditions, including a filing fee for the exemption filing. The rule generally continues current policy under Transition Order 5, Order No. 10-097-M, issued November 1, 2010; however, the proposed rule does allow for a more substantive review of filings by Bureau staff.

Rule 451.2.2 identifies recognized securities manuals for the Act's "manual exemption" from securities registration for securities which are listed in approved securities manuals.

Rule 451.2.3 creates a disqualification from the ability to utilize specific classes of exemptions pursuant to the 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.

Rule 451.2.4 creates an exemption from registration for persons engaged in the oil, gas, and mineral business, and continues current practice under Transition Order 3, Paragraph 3.

Rule 451.2.5 clarifies the definition of "purchaser" under section 202(1)(n) of the Act, MCL 451.2202(1)(n).

Rule 451.3.1 creates notice filing requirements for issuers of federal covered securities, and identifies documents required to be filed with the administrator, along with the fees to be paid.

Rule 451.3.2 designates NASAA's Electronic Filing Database ("EFD") as the depository for registrations, exemptions, notice filings, and amendments, and to collect fees on behalf of the administrator.

Rule 451.3.3 establishes the small corporate offering registration pursuant to section 304 of the Act, which is a simplified form of securities registration for small offerings of securities.

Rule 451.3.4 creates prospectus requirements for issuers that register securities by qualification under section 304(2) of the Act, MCL 451.2304(2).

Rule 451.3.5 creates report requirements for issuers who register securities by qualification; it also gives the administrator or his or her designee the ability to examine the issuer's books and records.

Rule 451.3.6 adopts a number of NASAA statements of policy for securities product registration reviews. The statements of policy establish criteria for Bureau staff to apply to proposed securities offerings to make sure that they meet minimum standards for registration.

Rule 451.3.7 clarifies the administrator's ability to consider a securities product registration application abandoned under section 306(1) of the Act, MCL 451.2306(1), if the applicant fails to complete or withdraw the application within seven months of filing.

Rule 451.4.1 creates an exemption from broker-dealer registration for certain Canadian broker-dealers and agents associated with or employed by those Canadian broker-dealers.

Rule 451.4.2 creates an exemption from broker-dealer registration for certain "merger and

acquisition" brokers that limit their activities to those allowed within the scope of the rule.

Rule 451.4.3 establishes the Financial Industry Regulatory Authority's ("FINRA's") Central Registration Depository ("CRD") and the SEC's Investment Adviser Registration Depository ("IARD") to receive registration filings for broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers, as applicable.

Rule 451.4.4 establishes rules applicable to electronic signatures under the Act pursuant to section 105 of the Act, MCL 451.2105.

Rule 451.4.5 creates an exemption from registration for investment advisers to private funds.

Rule 451.4.6 requires federal covered investment advisers to file relevant notice-filing documents required by section 405 of the Act, MCL 451.2405, with the SEC's IARD.

Rule 451.4.7 creates the application and renewal processes and requirements for broker-dealers and agents applying for registration in Michigan.

Rule 451.4.8 creates application requirements for Michigan Investment Markets.

Rule 451.4.9 establishes broker-dealer and agent examination requirements.

Rule 451.4.10 creates the application and renewal processes and requirements for investment advisers.

Rule 451.4.11 creates the application and renewal processes and requirements for investment adviser representatives.

Rule 451.4.12 creates examination requirements for investment advisers and investment adviser representatives.

Rule 451.4.13 establishes prohibitions, limits, and restrictions on custody of client funds and securities by investment advisers.

Rule 451.4.14 creates a bond requirement for certain investment advisers, namely, advisers that have custody or discretionary authority over client assets.

Rule 451.4.15 creates minimum financial requirements for broker-dealers which are consistent with federal requirements imposed by the SEC.

Rule 451.4.16 establishes minimum financial requirements for Michigan Investment Markets which mirror those applicable to broker-dealers, given the similarity in service provided.

Rule 451.4. 17 establishes minimum financial requirements for investment advisers.

Rule 451.4.18 creates requirements for financial statements which are required to be filed under the Act.

Rule 451.4.19 establishes requirements for investment advisers to furnish clients and prospective clients with a brochure, which may be Part 2A of its Form ADV.

Rule 451.4.20 establishes rules related to proxy voting by investment advisers.

Rule 451.4.21 creates a requirement that investment advisers establish, implement, and maintain written procedures addressing business continuity and succession planning.

Rule 451.4.22 identifies records to be maintained by broker-dealers, pointing to the records required by SEC rules.

Rule 451.4.23 identifies records to be maintained by Michigan Investment Markets, pointing to the records required by SEC rules.

Rule 451.4.24 identifies records to be maintained by investment advisers.

Rule 451.4.25 identifies a non-exclusive list of prohibited activities for investment advisers and investment adviser representatives.

Rule 451.4.26 establishes requirements related to contracts that investment advisers enter into with advisory clients.

Rule 451.4.27 establishes a non-exclusive list of conduct that the administrator considers to be dishonest or unethical for purposes of section 412(4)(m) of the Act, MCL 451.2412(4)(m).

Rule 451.2.28 clarifies the allowable (and unallowable) uses of senior-specific certifications and professional designations.

Rule 451.2.29 creates an exemption from investment adviser representative registration for certain investment adviser solicitors that limit the frequency and scope of their activities in the securities industry.

Part 5 is reserved and intentionally blank.

Rule 451.6.1 establishes the procedures for requests and issuances of interpretive opinions under section 605(4) of the Act, MCL 451.2605(4).

Rule 451.6.2 creates copy and certification fees.

5. List names of newspapers in which the notice of public hearing was published and publication dates (attach copies of affidavits from each newspaper as proof of publication).

- Flint Journal on March 8, 2018 (Exhibit 1);
- Marquette Mining Journal on February 27, 2018 (Exhibit 2); and
- Kalamazoo Gazette on March 8, 2018 (Exhibit 3).

6. Date of publication of rules and notice of public hearing in *Michigan Register:*

The rules and notice of public hearing were published in the Michigan register on March 15, 2018, Issue Number 4.

7. Time, date, location, and duration of public hearing:

The hearing began at 8:30 a.m. on March 27, 2018 at the Library of Michigan at 702 W. Kalamazoo Street, Lansing, Michigan 48915, in the Forum on the first floor. Department staff allowed one hour for public comment in the event somebody showed up late; having no one in attendance, staff closed

the hearing at approximately 9:30 a.m. (Exhibit 4).

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

http://www.michigan.gov/documents/lara/Securities_Proposed_Admin_Rule_Reg_Impact_Statement_619371_7.pdf

9. List of the name and title of agency representative(s) attending public hearing:

Stephen Brey, Administrative Law Specialist
Shawn Gillingham, Departmental Analyst

10. Persons submitting comments of support:

Patrick J. Haddad, an attorney with the law firm of Kerr Russell and Weber, PLC, on behalf of the Rules Review Subcommittee of the Regulation of Securities Committee of the Business Law Section of the State Bar of Michigan submitted correspondence on April 3, 2018 which provided general commentary on the Securities Rules. (Exhibit 5). The April 3, 2018 comment letter represents the position of the Rules Review Subcommittee, and is not the position of the Business Law Section or the State Bar of Michigan, which did not submit a position on the proposed rules.

The comments and suggestions by the Rules Review Subcommittee, attached to this JCAR Report as Exhibit 5, are summarized below, along with the Bureau's rationale for changing, or not changing the rules as proposed:

Proposed Change to Rule 451.1.1. The rule does not include a definition for "ADV-E" as a defined form.

Bureau Response: This proposed change will not be made, as Rule 451.1.1 is a definitional rule which identifies defined terms used in the rules. The form "ADV-E" is not mentioned in the rules, so its inclusion as a definition is unnecessary. Further, Rule 451.4.13(2)(b) requires any items filed with the SEC in connection with SEC Rule 206(4)-2, 17 CFR 275.206(4)-2, to be filed with the Administrator. In relevant circumstances, that would include the Form ADV-E.

Proposed Change to Rule 451.1.2. The scope of the definitional exclusion from "broker-dealer" created by the rule should allow those who rely on it to deliver issuer disclosure documents to investors; to enter into a contract separately with issuers and investors, rather than concurrently; and, to receive transaction-based compensation for introducing issuers and investors.

Bureau Response: The Bureau will maintain the rule as proposed. "Finder" under section 102(i) of the Act, MCL 451.2102(i), is not limited to the safe harbor definitional exclusion from "broker-dealer" created by the rule; it is a classification of person in and of itself. The proposed rule identifies a subset of persons that Bureau staff believe fall outside the definition of "broker-dealer", under section 102(d) of the Act, MCL 451.2102(d). In short, as a safe harbor, one does not have to comply with this rule to be a finder exempt from broker-dealer registration, but those who do comply with it likely are finders exempt from registration.

The Bureau does not believe that it would be in the public interest, or consistent with SEC treatment of broker-dealers to exclude persons who deliver disclosure documents to potential investors on behalf of an issuer. The activity goes beyond "locating, introducing, or referring potential purchasers or sellers" as finders are permitted to do by section 102(i). Providing disclosure materials is an "important part of the securities transaction", which is a key factor in the SEC's and the Bureau's analysis of whether a person falls within the definition of broker-dealer. Categorically

excluding a class of persons who engage in this activity is not in the best interests of investors in Michigan.

Similarly, the SEC views transaction-based compensation as the hallmark of broker-dealer activity. While transaction-based compensation is not the only factor to be taken into consideration to determine whether a person's activities fall within the definition of broker-dealer, it is one of, if not the most important considerations at both the federal and the state level. Sound policy under the Act demands consistency of treatment of persons at both the federal and state level; the proposed changes to the rule would not further that policy goal.

Finally, as to the proposal to loosen the contract requirements for persons subject to the exclusion, the Bureau addresses those changes in Item 12, below.

Proposed Change to Rule 451.2.1. The exemption's $500,000 cap should be raised to $1,000,000.

Bureau Response: The Bureau intends to leave the exemption as is. Other exemptions without upper limit dollar amount caps exist for issuers in the not-for-profit category to approach wealthy donors. Rule 451.2.1 is a limited exemption from registration for limited not-for-profit entities seeking to raise smaller amounts of capital.

Proposed Change to Rule 451.4.5. This rule, exempting certain advisers to private funds, should provide a longer transition period than the generally-applicable six months.

Bureau Response: This suggested change is addressed in Item 12, below.

Proposed Change to Rule 451.4.19. The rule should only require delivery of a Form ADV Part 2B supplement for the five investment adviser representatives with the most significant responsibility for the day-to-day advice provided to the client. The rule should also require prompt delivery to clients of "other than annual" amendments related items reportable on Item 9 of Form ADV Part 2A or Item 3 of Form ADV Part 2B. Finally, the rule should clarify that a client may consent to electronic delivery of an investment adviser's brochure in a contract or other client-signed documents rather than a stand-alone consent form.

Bureau Response: The Bureau incorporated these changes into the rules as discussed in Item 12, below.

Proposed Change to Rule 451.4.21. The rule requiring business continuity and succession plans should apply only to investment advisers registered or required to be registered, and not to exempt investment advisers such as private fund advisers.

Bureau Response: The Bureau did not incorporate these proposed changes. The comment letter suggests that business continuity and succession plans are not necessary for private fund advisers because their frequency of trading, account reporting, investor communications, and other operational considerations are limited. However, these operational activities are unrelated to the policy and intent of the rule, which is to create a plan for continuing the operations of an adviser in the event of an emergency such as a natural disaster or the death or incapacity of the adviser. The fact that most private funds rely on a single person or a small group of people makes the possibility of the adviser becoming unable to service its investors that much more concerning; if something happens to that person or small group, a plan should be in place to address the continued operation of the adviser and the fund it advises. Where would investors turn if the representative for the adviser suddenly died or became unable to perform its duties for the fund? The answer to this

question should be clear before that interruption occurs. Having an emergency plan in place for an unanticipated business interruption is particularly important for not only the adviser, but for the investors in the fund the adviser services. For this reason, the Bureau does not believe that excluding exempt advisers, such as private fund advisers, from the business continuity and succession plan rule is in the best interests of the investing public in Michigan.

Proposed Change to Rule 451.4.24. The proposed investment adviser recordkeeping rule should not require advisers to maintain access person records, which are associated at the SEC level with a code of ethics requirement which is not required by the rules under the Act. The recordkeeping rule should also be amended to not require an investment adviser that votes proxy to maintain a record of how the adviser voted proxies.

Bureau Response: The Bureau believes that investment advisers should maintain access person records despite the fact that these rules do not currently require a code of ethics. The purpose of the access person recordkeeping requirement, at its core, is to document that the investment adviser's access persons are adhering to fiduciary duties owed to clients by putting clients' interests above their own. Despite the fact that there is no code of ethics requirement imposed by the rules, investment advisers are still fiduciaries to clients, and the maintenance of access person records will allow Bureau examiners to review adviser activities as they relate to those fiduciary duties.

The Bureau intends to retain the recordkeeping requirement related to proxy voting by investment advisers. Transition Order 3, paragraph (9)(a), has required Michigan investment advisers to maintain such records since December 19, 2009. Paragraph (9)(a) adopted SEC Rule 204-2, 17 CRF 275.204-2 – the SEC's investment adviser recordkeeping requirements. SEC Rule 204-2(c)(2)(iii) contains the same requirements as those imposed by the rule; advisers in Michigan should be complying with this requirement now, and it should not be a new burden imposed upon them. Bureau staff has not received complaints regarding the requirement, nor has the practice of voting proxies for clients been eliminated as the comment letter suggests might occur. Given this background surrounding the requirement, the Bureau sees no need to remove it from the rules.

Proposed Change to Rule 451.4.25. Subrules (f) and (g) include absolute prohibitions on borrowing from or loaning money to clients. The rules should include exceptions for loaning to and borrowing from family members. Subrule (i) requires disclosure when a report or recommendation has been prepared by some other person "without disclosing that fact". It may be clearer to prohibit the misrepresentation or omission of material information about the authorship or sourcing of investment-related publications, reports, or similar communications.

Bureau Response: The Bureau addresses these proposed changes in Item 12, below.

Proposed Change to Rule 451.4.26. Subrule (3)(a) of the rule should be changed so as to not require a contract between an investment adviser and a client to have a specific term of the contract; in practice, such service contracts are for an indefinite period of time, unless terminated in accordance with the agreement. Subrule (3)(d) of the rule should include a reference to limited liability companies, as most investment adviser firms are organized in this manner, rather than as partnerships. Subrules (3)(c) and (4) both prohibit performance-based fees; subrule (5) creates an exception to subrule (3)(c), but should also apply to subrule (4)(b). Subrule (5)(b)(i) allows performance based fees if the client entering into the contract is a "qualified client" under 17 CFR 275.205-3; however, many private fund advisers currently operating under Transition Order 6 have qualified client and "accredited investor" (a lower standard than qualified client) investors. These funds were organized in reliance upon Transition Order 6, and may not be able to comply with the rule once it is implemented.

Bureau Response: On suggested changes to subrule (3)(a), the Bureau addresses the changes made in Item 12, below.

Suggested changes to subrule (5)(b) are addressed in Item 12, below. The Bureau will not otherwise alter the rule. Subrule (5) only applies to new contracts, or the extension or renewal of an existing contract. As the Securities Rules Subcommittee notes in its April 3, 2018 correspondence, advisory contracts tend to be for a perpetual term, and are not renewable on a periodic basis. To the extent a new contract is entered into moving forward, that contract would be subject to the new rules, and not to Transition Order 6. Since advisory contracts are perpetual, there is no apparent practical need for the extension or renewal of advisory contracts, which would make any exemptive or transitional relief unnecessary. To the extent an adviser relied on Transition Order 6 and, in good faith, had a need to extend or renew an advisory contract, that adviser could seek no-action relief from the Administrator. The likely application of exemptive or transitional relief for such advisers by administrative rule seems remote, and could be addressed on a merit-based case-to-case basis.

Proposed Change to Rule 451.4.27. Subrule (3)(a) prohibits an agent associated with a broker-dealer from borrowing from or lending money to a customer. The rule should include an exception for borrowing from or loaning to family members.

Bureau Response: See Item 12, below.

Proposed Change to Rule 451.4.29. The rule should clarify its application to corporate solicitors and third-party solicitors for federal covered investment advisers, and should waive the Series 65 examination for investment adviser representatives that limit their activities to solicitation on behalf of investment advisers.

Bureau Response: See Item 12, below.

11. Persons submitting comments of opposition:

See Discussion in Item 10.

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12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments Made at Public Hearing	Written Comments	Agency Rationale for Change	Rule Number & Citation Changed
1.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 1.2 should not require a potential investor to enter a contract with an issuer and a person relying on the rule to be excluded from the definition of broker-dealer. Delivery of the contract to a potential investor before an introduction would be sufficient.	The proposed change to Rule 1.2 would make the rule more effective for those who rely on it without adversely affecting investor protection goals of the Act.	451.1.2(1)(b)(ii), (iii), and (iv)
2.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.5 should have a longer transition period than the generally applicable 6-month transition contemplated by the rules.		New subrule 451.4.5(1) is added and all other subrules are moved down one numeral, with cross-references updated.
3.	SBM, Business Law Section, Securities Regulation Committee,	N/A	Rule 4.19(1)(a) should address the situation where an investment adviser has a	The proposed change minimizes burdens on investment advisers	451.4.19(1)(a)

	Rules Subcommittee		committee of supervised persons that provides advice to any given client. The rule should only require delivery of the Form ADV Part 2B of the five supervised persons with the most significant responsibility for day-to-day advice to any given client.	and investment adviser representatives without negatively affecting investor protection in this state. Given that the requirement exists under SEC rules, it will continue current practices in Michigan.	
4.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.19(3) should clarify that either the updated firm brochure or a summary of material changes must be delivered to clients within 120 days of the end of the adviser's fiscal year.	The proposed change clarifies the timing of delivery to clients of either the firm brochure or the summary of material changes.	451.4.19(3)(b)
5.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.19(4) should be moved to Rule 4.19(5), and replaced with a subrule that requires non-periodic delivery of information by investment advisers to clients in the event that the investment adviser is subject to disciplinary events that require disclosure on Form ADV.	The proposed change encourages investor protection without being an undue burden on investment advisers.	451.4.19(4)
6.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.19(4) should be moved to Rule 4.19(5), and Rule 4.19(5) should become Rule 4.19(6). Each of 4.19(6)(a) and (b) should identify that a client may sign in their contract	The proposed changes clarify investment adviser responsibilities and reduce the number of documents clients must review and sign. There does not appear	451.4.19(5)-(6)

			or other document that electronic delivery is acceptable to clarify such a consent need not be provided in a separate writing.	to be an adverse effect on investor protection interests as a result of the rule.	
7.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	In conjunction with shifting Rule 4.19(4), Rule 4.19(6) became Rule 4.19(7).	This is a renumbering to accommodate the addition of new subrule 4.19(4).	451.4.19(6)-(7)
8.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.25(2)(f) should include a "family exception" for borrowing money from a client that is a closely-related family member.	The Bureau understands the purpose of the suggestion, and supports such a change with appropriate investor protection measures put in place with the amended rule. Borrowing from a closely-related client is acceptable only when safeguards included in the amended rule are employed.	451.4.25(2)(f)
9.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.25(2)(g) should include a "family exception" for lending money to a client that is a closely-related family member.	The Bureau understands the purpose of the suggestion, and supports such a change with appropriate investor protection measures put in place with the	451.4.25(2)(g)

				amended rule. Lending to a closely-related client is acceptable only when safeguards included in the amended rule are employed.	
10.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.25(2)(i) should clarify the phrase "that fact" when referring to the identity of the preparer of a report or recommendation that an investment adviser makes to a client when the adviser is not the preparer of the report.	The phrase "that fact" is not as clear as it could be, and is changed in the amended rule.	451.4.25(2)(i)
11.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.26(3)(a) as written requires a contract between an investment adviser and a client to specify the "term" of the contract; however, in practice, most such service agreements lack an end date and are perpetual until terminated by their terms. The rule should reflect this reality.	The Bureau agrees with the proposed change, and it has been incorporated into Rule 4.26(3)(a).	451.4.26(3)(a)
12.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.26(3)(d) should refer not only to partnerships, but to limited liability companies, as LLCs are the most frequently-used form of business entity by advisers. The notification required by the rule should be	The rule was amended to reflect current practices of investment advisers using LLCs more frequently than partnerships. Staff did not amend the 25% change of ownership	451.4.26(3)(d)

			required when a 25% change in ownership or control occurs.	or control provision; it does not seem onerous to notify clients of changes in ownership which may materially alter the decision to continue engaging the services a particular investment adviser when an owner of the firm leaves.	
13.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.26(5) creates an exception to the ban on performance based compensation in subrule 4.26(3)(c); it should also cross-reference subrule 4.26(4)(b). It should also reference exceptions for federal covered investment advisers.	Subrule 4.26(5) was amended to cross-reference subrule 4.26(4)(b). The rule does not apply to federal covered investment advisers, and therefore, was not amended to adopt exceptions at 17 CFR 275.2050-3.	451.4.26(5)
14.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.27(3)(a) should allow for agent lending or borrowing from or to family members, consistent with FINRA rules.	The rule was amended to allow for lending or borrowing to or from family members by agents of a broker-dealer assuming adequate safeguards are in place. Safeguards include limiting the classes of family members eligible, existence and application of broker-dealer firm	451.4.27(3)(a)

				procedures, obtaining broker-dealer firm approval, and recordkeeping regarding any lending or borrowing arrangement.	
15.	SBM, Business Law Section, Securities Regulation Committee, Rules Subcommittee	N/A	Rule 4.29 should clarify its application to corporate solicitors and third-party solicitors for federal covered investment advisers, and should waive the Series 65 examination for investment adviser representatives that limit their activities to solicitation on behalf of investment advisers.	The rule is removed from the rule set. The rule as proposed invites confusion for and imposes significant burdens upon investment advisers, federal covered investment advisers, investment adviser representatives, and those that solicit on behalf of each of these categories of persons under the Act. As written, it advances investor protection by requiring additional disclosure regarding fees paid by advisers to solicitors, but does so at the expense of those subject to significant regulatory burdens imposed. The Bureau believes that it is prudent to	451.4.29

				maintain the status quo regarding investment adviser solicitors, and not adopt a rule addressing the topic at this time. That is not to say the Bureau will not revisit the issue in the future – it intends to – but it does mean that the rule is not ready for implementation and should not be adopted with the current rule set. Sound public policy for the operation of efficient capital markets and the protection of investors demands clarity of intent and a rational understanding of the effects of rules implementing the policy; Rule 451.4.29 is not sufficiently clear to justify its implementation as written.	

13. Date report completed:

May 15, 2018

EXHIBIT 1

STATE OF MICHIGAN)
County of Genesee) ss Julie Branch

Being duly sworn deposes and say he/she is Principal Clerk of

THE FLINT JOURNAL
DAILY EDITION

a newspaper published and circulated in the County of Genesee and otherwise qualified according to Supreme Court Rule; and that the annexed notice, taken from said paper, has been duly published in said paper on the following day(days)

March 8 A.D. 20 18

Sworn to and subscribed before me this 8th day of March 2018

Janice M. DeGraaf
JANICE M. DEGRAAF
NOTARY PUBLIC, STATE OF MI
COUNTY OF KENT
MY COMMISSION EXPIRES Oct 3, 2020
ACTING IN COUNTY OF Kent

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

SECURITIES RULES
Rule Set 2015-027 LR

NOTICE OF SECOND PUBLIC HEARING

TUESDAY, MARCH 27, 2018
702 W. Kalamazoo Street, Lansing, Michigan 48915
Forum, 1st Floor, 8:30 AM

The Department of Licensing and Regulatory Affairs will hold a public hearing on Tuesday, March 27, 2018, at the Library of Michigan, 702 W. Kalamazoo Street, Lansing, Michigan 48915 in the Forum on the first floor at 8:30 a.m. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for the Michigan Uniform Securities Act.

The proposed rule set (2015-027 LR) will revise the current rules to conform to the requirements set forth in Public Act 551 of 2008, MCL 451.2101 et seq.

These rules are promulgated by the authority conferred on the Department of Licensing and Regulatory Affairs by sections 201, 202, 202a, 203, 304, 306, 401, 403, 405, 406, 410, 411, 412, 502, 504, and 605 of 2008 PA 551, MCL 451.2201, 451.2202, 451.2202a, 451.2203, 451.2304, 451.2306, 451.2401, 451.2403, 451.2405, 451.2406, 451.2410, 451.2411, 451.2412, 451.2502, 451.2504, and 451.2605, and Executive Reorganization Order No. 2012-6, MCL 445.2034.

These rules will take effect 180 days after filing with the Secretary of State.

The rules (2015-027 LR) are published on the Office of Regulatory Reinvention's website at www.michigan.gov/orr and in the March 15, 2018 issue of the Michigan Register. Comments may be submitted to the following address by 4:30 P.M. on Tuesday, April 3, 2018.

Department of Licensing and Regulatory Affairs
Stephen Brey, Corporation, Securities, and Commercial Licensing Bureau
P.O. Box 30018
Lansing, MI 48909-7518
Phone: 517-241-9212
Fax: 517-241-7539
E-mail: breys@michigan.gov

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Bureau at 517-241-9212 at least 14 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

8552040-01

EXHIBIT 2

The Mining Journal

Upper Michigan's Largest Daily Newspaper

249 W. Washington St. P.O. Box 430, Marquette, Michigan 49855. Phone (906)228-2500. Fax (906)228-3273.

RECEIVED

MAR 05 2018

Securities & Audit Division
Registration Section

AFFIDAVIT OF PUBLICATION

STATE OF MICHIGAN

For the County of **MARQUETTE**

In the matter of: Notice of Second Public Hearing
Department of Licensing and Regulatory Affairs
Corporations, Securities, and Commercial Licensing Bureau
Securities Rules
Rule Set 2015-027 LR

Cost: $94.00

State of **MICHIGAN,** County of Marquette ss.

JAMES A. REEVS

being duly sworn, says that he is

PUBLISHER

of **THE MINING JOURNAL**

a newspaper published and circulated in said county and otherwise qualified according to Supreme Court Rule; that annexed hereto is a printed copy of a notice which was published in said newspaper on the following date, or dates, to-wit

February 27, 2018

James A Reevs

JAMES A. REEVS

Subscribed and sworn to before me this 27th day of February 2018.

Holly Gasman

HOLLY GASMAN
Notary Public for MARQUETTE County, Michigan
Acting in the County of Marquette
My commission expires: May 25, 2018

AFFIDAVIT OF PUBLICATION

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

SECURITIES RULES
Rule Set 2015-027 LR

NOTICE OF SECOND PUBLIC HEARING
TUESDAY, MARCH 27, 2018
702 W. Kalamazoo Street, Lansing, Michigan 48915
Forum, 1st Floor, 8:30 AM

The Department of Licensing and Regulatory Affairs will hold a public hearing on Tuesday, March 27, 2018, at the Library of Michigan, 702 W. Kalamazoo Street, Lansing, Michigan 48915 in the Forum on the first floor at 8:30 a.m. The hearing will be held to receive public comments on proposed changes to the Administrative Rules for the Michigan Uniform Securities Act.

The proposed rule set (2015-027 LR) will revise the current rules to conform to the requirements set forth in Public Act 551 of 2008, MCL 451.2101 et seq.

These rules are promulgated by the authority conferred on the Department of Licensing and Regulatory Affairs by sections 201, 202, 202a, 203, 304, 306, 401, 403, 405, 406, 410, 411, 412, 502, 504, and 605 of 2008 PA 551, MCL 451.2201, 451.2202, 451.2202a, 451.2203, 451.2304, 451.2306, 451.2401, 451.2403, 451.2405, 451.2406, 451.2410, 451.2411, 451.2412, 451.2502, 451.2504, and 451.2605, and Executive Reorganization Order No. 2012-6, MCL 445.2034). These rules will take effect 180 days after filing with the Secretary of State.

The rules (2015-027 LR) are published on the Office of Regulatory Reinvention's website at www.michigan.gov/orr and in the March 15, 2018 issue of the Michigan Register. Comments may be submitted to the following address by 4:30 P.M. on Tuesday, April 3, 2018. Copies of the draft rules may also be obtained by mail or electronic transmission at the following address:

Department of Licensing and Regulatory Affairs
Stephen Brey,
Corporation, Securities, and Commercial Licensing Bureau
P.O. Box 30018
Lansing, MI 48909-7518

Phone: 517-241-9212
Fax: 517-241-7539
E-mail: breys@michigan.gov

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Bureau at 517-241-9212 at least 14 days prior to the hearing date. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. Information at this meeting will be presented by speakers and printed handouts.

1 time
02-27-2018

EXHIBIT 3

STATE OF MICHIGAN)
County of Kalamazoo ss Dawn Suttorp

Being duly sworn deposes and say he/she is Principal Clerk of

THE KALAMAZOO GAZETTE
DAILY EDITION

a newspaper published and circulated in the County of Kalamazoo and otherwise qualified according to Supreme Court Rule; and that the annexed notice, taken from said paper, has been duly published in said paper on the following day(days)

March 8 A.D. 20 18

Sworn to and subscribed before me this 8th day of March 2018

Janice M. DeGraaf
JANICE M. DEGRAAF
NOTARY PUBLIC, STATE OF MI
COUNTY OF KENT
MY COMMISSION EXPIRES Oct 3, 2020
ACTING IN COUNTY OF Kent

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

SECURITIES RULES
Rule Set 2015-027 LR

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EXHIBIT 4

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

CORPORATIONS, SECURITIES AND COMMERCIAL LICENSING BUREAU

P U B L I C H E A R I N G

Tuesday, March 27, 2018

8:30 a.m.

Library of Michigan

702 West Kalamazoo Street

Forum, 1st Floor

Lansing, Michigan

Present for Department of Licensing and Regulatory Affairs:

Stephen Brey

Shawn Gillingham

Reported by Tamara S. Heckaman, CSR-3443

Lansing, Michigan

Tuesday, March 27, 2018

9:30 a.m.

R E C O R D

MR. BREY: This is a public hearing on proposed administrative rules pursuant to the Michigan Uniform Securities Act, administered by the Corporations, Securities, and Commercial Licensing Bureau within the State of Michigan's Department of Licensing and Regulatory Affair.

This hearing is being called to order at approximately 9:30 a.m., on Tuesday, March 27th, 2018, at 702 West Kalamazoo Street, Lansing, Michigan 48915, in the Forum on the first floor, pursuant to the notice of public hearing published in three newspapers of general circulation as follows:

Flint Journal on or around March 8th, 2018; Marquette Mining Journal on or around February 27, 2018; and Kalamazoo Gazette on or around March 8th, 2018.

The proposed rules were published in the March 15th, 2018, issue of the Michigan Register and were posted to the Office of Regulatory Reinvention website at

www.michigan.gov/orr. A link is also available on the CSCL website.

This hearing is being conducted under the authority conferred upon the Department of Licensing and Regulatory Affairs by sections 102 and 605 of 2008 PA 551, and MCL 451.2102 and MCL 451.2605; Executive Reorganization Order Number 2012-6, MCL 445.2034, and in accordance with 1969 PA 306, the Administrative Procedures Act.

My name is Steven Brey from the Corporations, Securities, and Commercial Licensing Bureau. I'm conducting the public hearing today.

We're here to receive comments and recommendations on the proposed rules. Testimony and written comments presented at this hearing or received in writing will be reviewed for consideration of any useful changes or additions to the proposed rules and will become a part of the public record.

Following the hearing the rules will be submitted to the Corporations, Securities, and Commercial Licensing Bureau and the Office of Policy and Legislative Affairs for review and any possible changes in response to public comments.

They will then go to the Office of Regulatory Reinvention and the Legislative Service Bureau for certification and will be forwarded to the Joint Committee on Administrative Rules of the legislature.

After final approvals the rules will be filed with the Secretary of State and will take effect 180 days after filing.

Please sign in and include your name and address so that your attendance can be included in the public record of this hearing.

If you wish to testify, please complete one of the testimony cards and give it to me or Shawn Gillingham. Please identify yourself by name, address, and the name of any organization that you represent. To help us prepare the hearing report, please leave a copy of your written comments with staff. If you did not bring a prepared statement, the record will remain open until 4:30 p.m. on Tuesday, April 3rd, 2018, for additional written comments which may be submitted to me by e-mail at breys@michigan.gov.

In making suggestions for any changes to the proposed rules please give reasons such a change would be in the public interest. If

you support the rules as written, you may make a statement to that effect.

Seeing no one in attendance at the hearing, we will adjourn at this time.

(Whereupon Hearing concluded at 9:34 a.m.)

STATE OF MICHIGAN)
) SS
COUNTY OF CLINTON)

I, Tamara Staley Heckaman, Certified Shorthand Reporter and Notary Public in and for the County of Clinton, State of Michigan, do hereby certify that the foregoing Public Hearing was taken before me at the time and place hereinbefore set forth.

I further certify that the testimony then given was reported by me stenographically; subsequently with computer-aided transcription, produced under my direction and supervision; and that the foregoing is a full, true, and correct transcript of my original shorthand notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of March, 2018.

Tamara Staley Heckaman, CSR-3443,
Certified Shorthand Reporter,
and Notary Public, County of
Clinton, State of Michigan.

My Commission Expires: 5-20-18

EXHIBIT 5

KERR RUSSELL
Attorneys and Counselors

Kerr, Russell and Weber, PLC
201 W. Big Beaver Rd., Suite 260
Troy, Michigan 48084
(248) 740-9820 telephone
(248) 740-1863 facsimile

Patrick J. Haddad
phaddad@kerr-russell.com

Comments on Proposed Administrative Rules (Securities) Published in the Michigan Register on September 1, 2016, Submitted by and on behalf of the Rules Review Subcommittee of the Regulation of Securities Committee of the Business Law Section, State Bar of Michigan

THE BUSINESS LAW SECTION, INCLUDING THE REGULATION OF SECURITIES COMMITTEE AND THE RULES REVIEW SUBCOMMITTEE, IS NOT THE STATE BAR OF MICHIGAN ITSELF, BUT RATHER A SECTION WHICH MEMBERS OF THE STATE BAR CHOOSE VOLUNTARILY TO JOIN, BASED ON COMMON PROFESSIONAL INTEREST.

THE POSITION EXPRESSED IS THAT ONLY OF THE RULES REVIEW SUBCOMMITTEE OF THE REGULATION OF SECURITIES COMMITTEE OF THE BUSINESS LAW SECTION AND IS NOT THE POSITION OF THE STATE BAR OF MICHIGAN.

THE STATE BAR OF MICHIGAN HAS NOT SUBMITTED A POSITION ON THIS MATTER.

THE TOTAL MEMBERSHIP OF THE BUSINESS LAW SECTION IS 3,180 MEMBERS.

THE POSITION WAS ADOPTED AFTER DISCUSSION AND VOTE AT A SCHEDULED MEETING. THE NUMBER OF MEMBERS IN THE DECISION-MAKING BODY IS 13. THE NUMBER WHO VOTED IN FAVOR OF THIS POSITION WAS 12. THE NUMBER WHO VOTED OPPOSED TO THIS POSITION WAS 0. THE NUMBER WHO DID NOT PARTICIPATE IN THE VOTE WAS 1.

April 3, 2018

Via E-mail Only– breys@michigan.gov
Michigan Department of Licensing and Regulatory Affairs
Corporations, Securities & Commercial Licensing Bureau
Attn: Stephen Brey
2501 Woodlake Circle
Okemos, MI 48864

Re: Supplemental Comments on Proposed Administrative Rules (Securities) Published in the Michigan Register on March 15, 2018 ("MUSA Rules"), by the Rules Review Subcommittee of the Regulation of Securities Committee of the Business Law Section, State Bar of Michigan

Dear Ms. Dale and Mr. Brey:

Enclosed please find our supplemental comments submitted by and on behalf of the Rules Review Subcommittee of the Regulation of Securities Committee of the Business Law Section, State Bar of Michigan, relative to the proposed administrative rules (securities) published in the Michigan Register on March 15, 2018.

On behalf of our Rules Review Subcommittee, thank you again for taking the time to consider our comments on the proposed MUSA Rules. We appreciate the dialog and changes that have already been incorporated into the prior versions of the Rules. This is a final supplement to comments we previously submitted on January 20, 2017, and October 10, 2016. As with all of our submissions and communications, these comments reflect the views only of the Rules Review Subcommittee and do not reflect a formal position taken by the Business Law Section of the State Bar of Michigan, nor are they the position of the State Bar of Michigan. These comments are necessarily subject to the same qualifications and limitations as specified in our prior-dated comments.

We have greatly appreciated the opportunity to work with the Corporations, Securities, and Commercial Licensing Bureau ("Bureau") on these MUSA Rules. We hope you will find our handful of remaining supplemental comments to be helpful in finalizing the Rules. We would be pleased to answer any questions or provide clarification to any of the points we have raised. Our supplemental comments to the proposed rules appear in sequential order.

1. *R 451.1.1 Definitions*. "Form ADV-E" is not listed among the recognized regulatory filing forms. This form is used by independent public accountants to electronically file reports of their custody-related surprise inspections on the FINRA WebCRD System.

2. *R 451.1.2 Broker-dealer definition exclusion*. The MUSA includes the concept of a "finder" to facilitate small businesses in raising capital on an intrastate basis through personal relationships that extend beyond family members. We offer three proposed changes:

First, to be effective, introductions need to allow a finder to deliver at least some information about the issuer. Ideally, to avoid any inconsistencies, that should include the issuer's disclosure documents. This is a natural part of an introductory process. Subrule 1.2(b)(i)(D) should be adapted to allow offering-related disclosure delivery.

We believe most prospective investors would be apprehensive about entering into any type of agreement with the finder and the issuer concurrent with an introduction. At that point, the prospective investor would not have sufficient information to make any such decision. A written agreement between the finder and the issuer would be appropriate, but should not include the prospective investor. Instead, a prospective investor could be provided with a "finder's disclosure brochure" similar in content to an investment adviser's solicitor's disclosure brochure. That brochure could explain the finder's contractual relationship with the issuer, conflicts of interest, and the finder's financial motivation in making an introduction. A prospective investor would then be informed at the time of the introduction and before proceeding.

Finally, we believe the prohibition on transaction-based compensation is unnecessarily restrictive. We believe the prohibition is not required to comply with the "finders" provisions in the MUSA nor is it necessary to comply with the holding in *Pransky v. Falcon Group, Inc., Inc.* (June 18, 2015). In balancing investor protections with the importance of enabling start-ups and small businesses to raise capital, a finder should familiarize himself or herself with the issuer and the offering, and should be compensated for those efforts. This is an important investor protection. Moreover, by their very nature, start-up and small businesses typically do not have cash to pay non-contingent compensation. The value of the introduction should bear some relationship to the finder's compensation. Prohibiting transaction-based compensation would significantly diminish, if not completely eviscerate, this rule's effectiveness to support start-ups and small business capital raising efforts.

3. *R 451.2.1 Not-for-profit securities*. Subrule 2.1(a) limits the self-executing exemption to sales to an issuer's members, a size cap of $500,000, and prohibits selling compensation. We believe religious and non-profit organizations commonly to turn to their wealthier members for support as they are familiar with the organization; however, we believe the borrowing cap is significantly lower than is necessary for many organizations. For example, acquiring, remodeling, or constructing a meeting space, tenant improvement, or building would commonly exceed this limitation.

We suggest that the size cap be raised, perhaps to $1,000,000 and indexed for inflation on a five-year cycle in view of the inherently lengthy rulemaking process. A higher limit (or limits) could be tied to a requirement that all prospective investor/members satisfied accredited investor and/or qualified purchaser standards.

4. *R 451.4.5 Registration exemption for investment advisers to private funds*. Private fund advisers have been operating in Michigan under the MUSA's Sixth Transition order since March 11, 2011. While understanding the public policy underlying audited financial statements, we believe that corporate governance-related requirements, as well as accounting records and systems, for some existing funds may be challenges for timely obtaining and delivering financial audits as required by subrule 4.5(3)(c). Notwithstanding the generally applicable six-month transition period, we ask that consideration be given to rule-specific transitional relief to address

these challenges and mitigate potential unintended consequences such as the termination and liquidation of some existing funds.

5. *R 451.4.19 Investment adviser brochure*. Unlike SEC Rule 204-3, Rule 4.19 does not address scenarios when multiple supervised persons may be involved in determining investment advice for a client. For example, larger firms may have an investment committee and one or more persons supervising and/or implementing that advice. We suggest adding language from SEC Rule 204-3 as computer-marked below:

> (a) A brochure which may be a copy of part 2A of its Form ADV or written documents containing the information required by part 2A of Form ADV; a copy of its part 2B brochure supplement for each individual providing investment advice and having direct contact with clients in this state, or exercising discretion over assets of clients in this state, even if no direct contact is involved; a copy of its part 2A appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account; a summary of material changes, which may be included in part 2 of Form ADV or given as a separate document; and such other information as the administrator may require. If investment advice for a client is provided by more than five supervised persons, a brochure supplement need only be delivered to that client for the five supervised persons with the most significant responsibility for the day-to-day advice provided to that client.

We also believe a formatting adjustment is needed to make the annual updating amendment applicable to the delivery of either a fully updated firm brochure or a summary of material changes within 120 days of the adviser's fiscal year-end:

(3) An investment adviser, except as provided in subrules (4) and (5) of this rule, shall deliver within 120 days of the end of its fiscal year~~shall do~~ either of the following:

> (a) Deliver~~, within 120 days of the end of its fiscal year,~~ a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes.
>
> (b) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. Advisers are not required to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.

SEC Rule 204-3 includes an "other than annual" requirement for "prompt delivery" of certain disclosures related to disciplinary events. Adapted from SEC Rule 204-3, the following language may be appropriate, together with related numbering changes:

(4) An investment adviser shall promptly deliver disclosure of an event, or materially revising information already disclosed about an event, in response to Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (Disciplinary Information), respectively, in either (i) the amended brochure or brochure supplement, as applicable, along with a statement describing the material facts relating to the change in disciplinary information, or (ii) a statement describing the material facts relating to the change in disciplinary information.

(5) Delivery of the brochure and related brochure supplements required by subrules (2), ~~and~~ (3), and (4) of this rule do not need to be made to any of the following:

* * *

Finally, for added clarity, the Bureau may wish to expressly allow for client verification and consents of electronic delivery to be incorporated into other client-signed documents, rather than a single purpose document. For example:

(~~5~~6) Delivery of the brochure and related supplements may be made electronically if the investment adviser does all of the following:

(a) In the case of an initial delivery to a potential client, obtains verification that a readable copy of the brochure and supplements were received by the client. This verification may be included in client-signed contract forms or other client-signed documents.

(b) In the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically. This consent may be included in other client-signed documents.

6. *R 451.4.21 Business continuity and succession planning*. As drafted, Rule 4.21 requires a business continuity and succession plan from every investment adviser. We believe this requirement should apply only to those investment adviser who are registered or required to be registered as such, not to those investment advisers that are exempt from registration. For example, typically private equity or venture capital fund advisers would not have the frequency of securities trading (if any), account reporting, investor communications, or other operational considerations as is relevant to the broad range of activities generally permitted by a registered investment adviser. For exempt investment advisers the cost/benefit of this rule would be substantially different than registered investment advisers.

7. *R 451.4.24 Records to be maintained by investment advisers*. Subrule 4.24(1) defines and "access person" and subrule (2)(k) prescribes related records to be made and maintained for access persons' securities transactions. These required records are not associated with any corresponding rule instructing investment advisers what should be done with these

records. The origin of these recordkeeping requirements is in the SEC's Code of Ethics Rule 204A-1 but there is nothing comparable in the MUSA ruleset. These recordkeeping requirements might be deferred until a comparable ethics rule is promulgated.

Recordkeeping subrule (2)(aa)(iii) requires investment advisers exercising proxy voting authority to make and maintain a record of each vote cast on behalf of the client. Because of the burden and costs associated with making and maintaining these voting records, this could lead advisers to discontinue proxy voting services, leaving that responsibility to fall upon their clients, who may not be interested, sufficiently informed, or capable of proxy voting securities in their portfolios. A cost-benefit consideration of this recordkeeping requirement could include the Bureau's intended regulatory use for proxy voting records.

8. *R 451.4.25 Prohibited practices of investment advisers and investment adviser representatives*. Subrules 4.25(f) and (g) include absolute prohibitions on borrowing or lending money or securities from/to clients. The Bureau may wish to include permitted exceptions for family members in both subrules. Grandparents, parents, in-laws, and siblings commonly lend to their children (including step- and adopted children), not limited to living in the same household, for a host of purposes. Young financial professionals commonly borrow from their family to get started in life. The unintended consequence of this rule would be to prohibit family lenders from obtaining the professional services of their family members or prohibit family members from financially aiding their relatives.

Subrule 4.25(i) requires disclosure when a report or recommendation has been prepared by some other person "without disclosing that fact". While there are exceptions for "published research reports or statistical analyses" that are ordered "in the normal course of providing service", many investment advisers obtain a variety of third-party subscriptions to receive various investment strategies, models, and other investment-related resources, and incorporate the guidance provided by those sources into their own investment advice. Moreover, it is unclear what "fact" is to be disclosed and under what other circumstances. Perhaps a more focused way of addressing the core concern would be to prohibit the misrepresentation or omission of material information about the authorship or sourcing of investment-related publications, reports, or similar communications.

9. *R 451.4.26 Investment adviser contracts*. Subrule 4.26(3)(a) prescribes certain contractual provisions in client service agreements. Notably, subparagraph (a) requires disclosure of the "term of the contract". In our experience, examiners have on multiple occasions read this requirement literally, as in the contract must state a specified period of time. Legally, a contract's "term" can be for an indefinite duration. Indeed, professional service contracts rarely specify a duration. Most commonly, a professional services contract is terminable at will, commonly with some period of prior notice (the SEC accepts 30 days' notice). We recommend that the word "term" be replaced with language explaining how the contract is terminable. If the Bureau desires to impose a prior notice period, we request that this also be explicitly stated in the rule.

Subrule 4.26(3)(d) requires client notification for any changes in the members of a partnership, assuming that is how an investment adviser may be organized. In our experience, a limited liability company is a more common form of legal structure today. Moreover, we suggest that client notification occur when there are partnership or membership changes at or above 25% legal or beneficial ownership or the right to receive 25% or more of the profits or distributions upon liquidation.

Subrules 4.26(3)(c) and (4) both prohibit performance-based compensation in an investment adviser contract. Subrule (5) only provides an exception to the prohibition in paragraph (3)(c). We believe subrule (5)'s exception should also cross-reference and thereby provide an exception for subrule (4)(b). For federal covered investment advisers, it should also reference the exceptions permitted by SEC Rule 205-3 and related guidance.

Subrule (5)(b)(i) permits performance-based compensation if, among other requirements, the client entering into the contract is a "qualified client", as defined by rule 205-3 under the investment advisers act of 1940, 17 C.F.R §275.205-3. The Sixth Transition Order permitted private funds to receive performance-based compensation from both "accredited investors" and "qualified clients". Existing private funds and their corporate governance documents will have been created on that basis. The Bureau should consider exemptive or transitional relief for existing private funds organized in reliance upon the Sixth Transition Order.

10. *R 451.4.27 Dishonest or unethical business practices of broker-dealers and agents.* Subrule 4.27(3)(a) prohibited agents from lending money or securities to or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer. For the reasons explained in our Comment 7 about Subrules 4.25(f) and (g), above, we believe an exception should be included for family members.

11. *R 451.4.29 Solicitor exemption from investment adviser representative registration.* We commend the Bureau for including Rule 4.29 in the ruleset. We believe it will substantially clarify the confusion about the scope of the MUSA's definition of "investment adviser representative" as it applies to solicitors and solicitation activities. We would make three additional suggestions to further clarify the treatment of (1) corporate entities acting as "solicitors" (e.g., a CPA firm); (2) third-party solicitors for federal covered investment advisers (i.e., those who are not "supervised persons" of a federal covered investment adviser); and (3) waivers for registered solicitors from the Series 65 Uniform Investment Adviser Law Examination. The treatment of corporate and third-party solicitors is important due to a widespread misunderstanding about the investment adviser representative registration requirement for solicitors of both state- and SEC-registered investment advisers.

Subrule 4.29(1) defines a "solicitor" to include any "person or entity" engaged in soliciting, referring, offering, or otherwise negotiating for the sale or selling of investment advisory

services. Of course, only an individual can be registered as an investment adviser representative. If applicable, corporate entities would have to become registered as an investment adviser, but then subject to all of the extensive generally applicable requirements provided elsewhere in these rules. Since solicitor activities are, by definition, narrowly limited, substantially all of those requirements other than registration would be largely irrelevant to investor protection and unnecessarily burdensome.

Subrule 4.29(5) provides that a solicitor is not required to register as an "investment adviser" but bear in mind that MUSA's definition does not expressly include solicitation activities; some clarification of this exemption would be helpful. By comparison, the SEC's Cash Referral Fee Rule (a/k/a solicitor's rule) provides that a solicitor (corporate or natural makes no difference) is not deemed to be an investment adviser when performing solicitation activities consistent with the SEC's rule—no registration is required.

Alternatively, subrule 4.29(2)(a) could more simply provide that for corporate solicitors the individual(s) actually performing the solicitation services on its behalf must be registered as an investment adviser representative, rather than the corporate entity, notwithstanding that the solicitor's agreement is typically just one corporate-level agreement covering all associated individuals and the solicitor's compensation is typically paid at the corporate level, rather than to individual(s). As now, the registration responsibility would remain with the investment adviser for whom the solicitation services are being performed.

As written, Rule 4.29(2)(a) only applies to solicitors for state-registered investment advisers. It does not address if or how third-party solicitors for federal covered investment advisers are to be regulated. According to the SEC's adopting release implementing the National Securities Markets Improvement Act ("NSMIA"), federal preemption does not extend to third-party solicitors for federal covered investment advisers and allows for registration in a state where a solicitor has a place of business. The MUSA's definition of an investment adviser representative picks up third-party solicitors who are not "supervised persons" of a federal covered investment adviser. Subrule (2)(a) could clarify the treatment of third-party solicitors for federal covered investment advisers.

Subrule (5) creates a very limited exemption from registration for solicitors and allows for registration waivers upon application for an order. The Bureau could consider categorically exempting certain types of solicitors (corporate and natural) and their individual agents such as broker-dealers (and their agents) registered in Michigan, financial institutions (including banks, trust banks, thrifts, credit unions), and insurance companies.

Finally, we request that the Bureau consider granting Series 65 examination waivers for those persons whose only investment adviser activities are limited to acting as solicitors. While not particularly difficult, the Series 65 exam covers many, many subjects that are well beyond the very narrow scope of solicitation-related activities. We believe the Series 65

exam is unnecessary when all investment-related services are to be performed by a registered investment adviser and its investment adviser representatives.

In conclusion, thank you again for your consideration of these remaining supplemental comments. We hope you find them useful as you finalize the MUSA Rules.

Very truly yours,

KERR, RUSSELL AND WEBER, PLC

Patrick J. Haddad
Chair of the Rules Review Subcommittee,
Regulation of Securities Committee of the Business
Law Section, State Bar of Michigan

PJH:msb

cc: Shane B. Hansen, Esq.
Raymond W. Henney, Esq.
Hugh H. Makens, Esq.
Michael P. Marsalese, Esq.
David R. Millar, Esq.
Cyril Moscow, Esq.
Peter Sugar, Esq.