COVER DRAWING

*Michigan State Capitol:*

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

*Capitol Dome:*

The architectural rendering of the Michigan State Capitol’s dome is the work of Elijah E. Myers, the building’s renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers’ fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers’ designs for the Capitol were found in the building’s attic in the 1950’s. As part of the state’s 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

*East Elevation of the Michigan State Capitol:*

When Myers’ drawings were discovered in the 1950’s, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building’s recent restoration (1989-1992), this drawing was commissioned to recreate the architect’s original rendering of the east (front) elevation.

(Michigan Capitol Committee)
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Jeff Bankowski, Executive Director, Office of Performance and Transformation; Deidre O’Berry, Administrative Rules Specialist for Operations and Publications.
Rick Snyder, Governor

Brian Calley, Lieutenant Governor
PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Office of Regulatory Reform publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.

Sec. 8.

(1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.
Sec. 203.

(1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs of preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of the Michigan register at a price determined by the office of regulatory reform not to exceed the cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, “Michigan register” means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER
The Michigan Register is cited by year and issue number. For example, 2001 MR 1 refers to the year of issue (2001) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE
The deadlines for submitting documents to the Office of Regulatory Reinvention for publication in the Michigan Register are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the Michigan Register.

The Office of Regulatory Reinvention is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Office of Regulatory Reinvention, Romney Building – Eight Floor, 111 S. Capitol, Lansing, MI 48909
RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE
The Michigan Administrative Code (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the Michigan Register. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the Register during a given calendar year. Emergency rules published in an issue of the Register are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION
The Michigan Register, a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: Office of Regulatory Reinvention, Romney Building –Eight Floor, 111 S. Capitol Avenue, Lansing, MI 48909. Checks Payable: State of Michigan. Any questions should be directed to the Office of Regulatory Reinvention (517) 335-8658.

INTERNET ACCESS
The Michigan Register can be viewed free of charge on the Internet web site of the Office of Regulatory Reinvention: www.michigan.gov/orr.

Issue 2000-3 and all subsequent editions of the Michigan Register can be viewed on the Office of Regulatory Reinvention Internet web site. The electronic version of the Register can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Jeff Bankowski, Executive Director,
Office of Performance and Transformation
2018 PUBLICATION SCHEDULE

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MCL 24.208 states in part:

“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state.”
ADMINISTRATIVE RULES

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF MINERALS MANAGEMENT

LEASING STATE-OWNED METALLIC MINERAL RIGHTS

Filed with the Secretary of State on February 2, 2018

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of natural resources by sections 502 and 504 of 1994 PA 451, MCL 324.502 and MCL 324.504)

R 299.4001, R 299.4002, R 299.4003, R 299.4004, R 299.4006, and R 299.4007 of the Michigan Administrative Code are amended as follows:

R 299.4001 Definitions.

Rule 1. As used in these rules:

(a) "Auction lease" means a lease issued as the result of competitive bidding at public auction.
(b) "Bonus" means a payment by the lessee to the lessor at the time of the auction or direct lease as part of the consideration for acquisition of a metallic minerals lease.
(c) "Department" means the Michigan department of natural resources.
(d) "Direct metallic minerals lease" means a lease issued as the result of individual negotiations with the department.
(e) "Land" means any property in which the state owns any metallic mineral rights.
(f) "Lessee" means the working interest owner of a lease as shown in the records of the department as the person or entity responsible for the lease.
(g) "Lessor" means director of the Michigan department of natural resources, or the director’s designee, for the state of Michigan.
(h) "Metallic minerals" means all metallic minerals, metallic mineral products, ores, and concentrates as defined in the metallic minerals lease document approved by the department.
(i) "Metallic minerals development lease" means a lease that allows the use of state lands for metallic mineral exploration, mining, and production.
(j) "Nonleasable lands" means lands that will not be leased for metallic mineral exploration, mining, or production.
(k) "Performance bond" means a surety bond, irrevocable letter of credit, certificate of deposit, or cash to guarantee that the lessee and the lessee's heirs, executors, administrators, successors, and assigns shall faithfully perform the covenants, conditions, and agreements specified in the lease and the laws and rules of the state of Michigan.
(l) "Qualified party" means an individual of the age of majority or a co-partnership, corporation, or other legal entity qualified to do business in the state of Michigan.
R 299.4002   Lease applications; notice of land location and classification; manner of leasing approved lands.
   Rule 2. (1) Any qualified party may submit applications identifying state lands desired for metallic mineral leasing. The department may also identify and nominate lands for leasing.
   (2) Applications for state lands desired to be offered for leasing must be in writing on a form designated by the department and must be submitted to the department at the address listed on the form.
   (3) The minimum application fee must accompany the written application and must be in accordance with the fee schedule approved by the lessor.
   (4) After receipt of properly submitted lease applications, the department shall conduct a field review to determine the appropriate classification recommendations. For lease auctions, the department shall publish a notice describing the general location of the lands recommended for leasing, the recommended classification, and the date, time, and place of public auction in a newspaper, as defined in section 1461 of the revised judicature act of 1961, MCL 600.1461, not less than 30 days before the auction. This notice must be published at least once in a newspaper published in the county where the lands are situated. If a newspaper is not published in the county where the lands are situated, the notice must be published in a newspaper published in a county adjoining the county in which the lands are located.
   (5) The lessor shall offer lands approved by it for leasing at public auction or may enter into leases under R 299.4005.

R 299.4003   Notice of direct lease request; list of lands offered for leasing at public auction or by direct lease.
   Rule 3. (1) A notice of direct lease request must be published by the lease applicant at least once in a newspaper, as defined in section 1461 of the revised judicature act of 1961, MCL 600.1461, not less than 30 days before the lessor takes final action on the lease request. The newspaper must be published in the county where the lands are situated. If a newspaper is not published in the county where the lands are situated, the notice must be published in a newspaper published in a county adjoining the county in which the lands are located. A notice must describe the general location of lands recommended for lease and recommended lease classification.
   (2) Any party may request from the department the form of lease to be used and a list of lands being offered for leasing at public auction or considered for direct lease. The list must include all of the following information pertaining to leasing by auction:
      (a) The date, time, and place of lease auction.
      (b) The conditions of auction.

R 299.4004   Offer at public auction; procedure.
   Rule 4. (1) Metallic mineral lease rights in state lands may be offered at public auction.
   (2) The lessor shall stipulate the terms and conditions under which lands may be offered for lease auction.
   (3) Any qualified party may make a bid on metallic mineral rights offered for lease.
   (4) The full amount of the bonus must be paid or arrangements which are satisfactory to the lessor must be made for the payment of the bonus on the same date on which the lease rights are bid. Bidders may establish credit with the department through prior leasing activity or by filing 3 references acceptable to the department, 1 of which shall be a bank, in which case total payment may be made by personal or company check. Bidders who do not have an established credit rating with the department shall pay not less than 1/2 of the total bonus bid in cash or by certified check or money order. All remittances must be made payable to: "State of Michigan."
(5) Failure of the successful bidder to pay the total bid at the time of auction or make arrangements satisfactory to the lessor for payment thereof at the time of the auction shall result in the forfeiture of the bonus and the lease rights to the lands involved.

(6) The lessor reserves the right to reject any bid or stop the auction of any offered lease rights at any time for good and sufficient reasons.

(7) Lands for which no bids are received must not be offered at lease auction unless applied for again. The lessor, in its discretion, may include the unbid land in a future lease auction.

(8) Available on which bids were not accepted or where the successful bidder defaults must be offered at the following lease auction unless withdrawn from auction for any stated reason, or leased under R 299.4005.

R 299.4006  Awarding of leases.

Rule 6. (1) Lessor approval is required before any lease may be issued. Approval may be withheld for good and sufficient reasons.

(2) The department may group lease rights for which issuance of leases has been approved into 1 or more leases, depending on the location of the lease rights and any special lease conditions.

(3) Before a lease is executed for any state lands, the successful bidder or proposed direct lessee shall file a performance bond acceptable to the lessor, unless waived by the lessor. The amount of performance bond, maximum acreage covered, and when and how the bond may be drawn upon must be specified by the lessor.

(4) The department shall provide 1 lease instrument to the proposed lessee for signature. Unless otherwise agreed to in writing by the lessor, the proposed lessee shall return all leases, properly executed, with proper performance bond and payment, within 30 days from the date the department sent the leases.

(5) If the proposed lessee is unable to return the lease forms, payment, and performance bond within the time specified, the lessor may, upon request of the lessee, authorize additional time if the lessor determines that the delay is not the fault of the proposed lessee. Failure of the proposed lessee to comply within time limits authorized must result in forfeiture of the entire amount paid. Lands on which lease rights have been forfeited must be offered for leasing at the earliest possible date, unless withdrawn for any stated reason by the lessor or unless leased under R 299.4005.

(6) The department shall return the original of the fully executed lease retain a copy.

(7) Without the written consent of the department, no operations on any leased lands will be conducted until a fully executed lease has been received by the lessee.

(8) All leases are subject to all present and future applicable federal and state laws and rules.

(9) The lessor may require any lease applicant or the successful bidder or assignee under any lease to submit the following information:

(a) If an individual, proof of attainment of legal age.

(b) If a co-partnership, a copy of the “Certificate of Co-partnership” or “Certificate of Persons Conducting Business Under Assumed Name” approved by the county clerk in the county where the leased lands are located.

(c) If a corporation or other legal entity, copies of the documents showing qualifications to do business in the state of Michigan.

R 299.4007  Leases; form; lessor to determine terms; issuance in name of successful bidder required; responsibility for compliance with terms of lease.

Rule 7. (1) A lease must be on a form prescribed by the lessor.

(2) The lessor shall determine the royalty and rental rates, primary lease term, and other lease terms.
(3) A lease on land offered at public auction must be issued in the name of the successful bidder or bidders at the time of auction or the party or parties designated by them at the time of auction.
(4) The lessee is responsible for compliance with all terms and conditions of the lease.
These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of natural resources by sections 502 and 504 of 1994 PA 451, MCL 324.502 and MCL 324.504)

R 299.4051, R 299.4052, R 299.4053, R 299.4054, and R 299.4055 of the Michigan Administrative Code are amended as follows:

R 299.4051  Definitions.

   Rule 1. As used in these rules:
   (a) "Bonus payment" means a payment by the lessee to the lessor at the time of leasing as part of the consideration for acquisition of a gas storage lease.
   (b) "Department" means the Michigan department of natural resources.
   (c) "Development lease" means a lease that allows the use of the surface of state lands for gas storage activities.
   (d) "Development plan" means a gas storage field plan that includes proposed locations for surface equipment, well locations, pipelines, and roads.
   (e) "Gas" (natural gas) means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in subsurface reservoirs, often in association with petroleum.
   (f) "Land" means any property description in which the state owns any gas storage rights.
   (g) "Lease" means a direct underground gas storage lease issued as the result of individual negotiations with the department.
   (h) "Lessee" means the person or entity that has the exclusive right under lease to store natural gas as shown in the records of the department.
   (i) "Lessor" means the director of the Michigan department of natural resources, or the director’s designee, for the state of Michigan.
   (j) "Nondevelopment lease" means a lease that does not allow any use of the land surface for gas storage activities without separate authorization from the department.
   (k) "Nonleasable lands" means lands that will not be leased for gas storage purposes.
   (l) "Performance bond" means a surety bond, irrevocable letter of credit, certificate of deposit, or cash to guarantee that the lessee and the lessee’s heirs, executors, administrators, successors, and assigns shall faithfully perform the covenants, conditions, and agreements specified in the lease and in the laws and administrative rules of the state of Michigan.
(m) "Qualified party" means an individual who is not less than the age of majority or a, co-partnership, corporation, or other legal entity that is qualified to do business in the state of Michigan.

R 299.4052 Lease applications; notice of location and classification of lands.
   Rule 2. (1) Any qualified party may submit applications identifying lands desired for gas storage leasing.
   (2) Applications for leasing lands must be in writing on a form designated by the department and must be submitted to the department at the address listed on the form. Applications must include a development plan.
   (3) An application fee must accompany the written application and must be in accordance with the fee schedule approved by the department.
   (4) The department shall identify all available lands requested for leasing and the recommended lease classifications of development, nondevelopment, or nonleasable. The lease applicant shall publish a notice describing the general location of the lands requested for leasing and the recommended classification in a newspaper, as defined in section 1461 of the revised judicature act of 1961, MCL 600.1461, not less than 30 days before the department takes final action on the lease request. This notice must be published at least once in a newspaper in the county where the lands are situated. If a newspaper is not published in the county where the lands are situated, the notice must be published in a newspaper in a county adjoining the county in which the lands are located.

R 299.4053 Direct lease; terms and conditions of lease; request by qualified party; payment of bonus payment.
   Rule 3. (1) The department may enter direct leases.
   (2) The department shall stipulate the terms and conditions under which lands may be leased.
   (3) Any qualified party may request a lease.
   (4) The proposed lessee shall pay the full amount of the bonus payment upon receipt of a billing invoice from the lessor.

R 299.4054 Department approval of lease; lessee performance bond; signing and return of lease copies; effect of federal and state laws and rules on lease; required information.
   Rule 4. (1) Department approval is required before any lease is granted. The department reserves the right to deny all lease requests and shall state the reasons for denial.
   (2) Any lease issued must include all state-owned surface descriptions within the development plan as approved by the department.
   (3) Before a lease is executed, the proposed lessee shall file a performance bond acceptable to the lessor. The department shall specify the amount of the performance bond, the maximum acreage covered, and when and how the bond may be drawn upon.
   (4) The department shall provide 1 copy of each lease instrument to the proposed lessee for signature. Unless otherwise agreed to in writing by the lessor, the proposed lessee shall return the lease instrument(s), properly executed, with a proper performance bond and payment, within 30 days from the date the lease instrument was sent by the department.
   (5) If the proposed lessee is unable to return the lease forms, payment, and performance bond within the time specified, the lessor may, upon request of the proposed lessee, authorize additional time if the lessor determines that the delay is not the fault of the proposed lessee. Failure of the proposed lessee to comply within time limits authorized must result in forfeiture of the entire bonus payment.
   (6) The department shall return the original of the fully executed lease to the lessee and retain a copy.
   (7) Operations on any state-owned land must not begin until a fully executed lease has been received by the lessee.
(8) All leases are subject to all applicable federal and state laws and administrative rules. Administrative rules promulgated after the approval of a lease shall not operate to affect the primary term of the lease, the rental rate, or the acreage included in the lease, unless agreed to by both parties.
(9) The department may require a lease applicant to submit the following information, as applicable:
(a) If an individual, proof of attainment of legal age.
(b) If a co-partnership, a copy of the “Certificate of Co-partnership” or “Certificate of Persons Conducting Business Under Assumed Name” approved by the county clerk in the county where the leased lands are located.
(c) If a corporation or other legal entity, documentation that demonstrates a corporation's or legal entity’s qualifications to do business in the state of Michigan.

R 299.4055 Lease terms and conditions.
Rule 5. (1) Lease terms and conditions must be on a lease form prescribed by the department.
(2) A lease for gas storage on any lands must not preclude other leases for oil, gas, or metallic and nonmetallic minerals where such joint operations might prove feasible.
(3) The lessee and the lessor are separately responsible for compliance with their respective obligations pursuant to the terms and conditions of the lease.
MCL 24.242(3) states in part:

“... the agency shall submit a copy of the notice of public hearing to the Office of Regulatory Reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the Office of Regulatory Reform.”

MCL 24.208 states in part:

“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

*   *   *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.”
PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CONSUMER AND INDUSTRY SERVICES BUREAU OF
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU
AND LAND DEVELOPMENT
MOBILE HOME AND LAND RESOURCES DIVISION
SECURITIES

Filed with the Secretary of State on

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


PART 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS

R 451.602.1 Application for broker-dealer registration. Rescinded.

Rule 602.1. An application for broker-dealer registration shall contain the information specified in form BD. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.

Rule 602.2. (1) An application for agent registration shall contain the information specified in U-4. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted. The fingerprint requirement in section 202(g) of the act is waived for an agent of a broker-dealer that is either registered with the Securities and Exchange Commission or a member of the National Association of Securities Dealers.

(2) A notice of agent termination shall contain the information specified in U-5. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.

R 451.602.3 Application for investment adviser registration. Rescinded.

Rule 602.3. An application for investment adviser registration shall contain the information specified in form MADV. In the alternative, with the permission of the administrator, another form, with any necessary supplement, may be submitted.

R 451.602.4 Fees; payment; filing. Rescinded.

Rule 602.4. (1) The annual fees required by section 202(b) of the act shall be paid during the month of December.

(2) Filing and annual fees for all agents may be filed on an agent's behalf by a broker-dealer or issuer with whom the agent is registered.


Rule 602.6. (1) A securities broker-dealer registered with the United States securities and exchange commission shall maintain net capital and ratio of aggregate indebtedness to net capital in accordance with rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978) under the securities exchange act of 1934, 15 U.S.C. §78a et seq.

(2) A securities broker-dealer not registered with the United States securities and exchange commission shall have the net capital necessary to comply with the following conditions:

(a) The aggregate indebtedness, as that term is defined in rule 15c3-1, 17 C.F.R. §240.15c3-1 (1978) under the securities exchange act of 1934, 15 U.S.C. §78a et seq. hereinafter termed "indebtedness" of a broker-dealer that has been registered with the administrator for at least 1 year shall not exceed 2,000% of its net capital, as that term is defined in rule 15c3-1 under the securities exchange act of 1934, hereinafter termed "net capital". The aggregate indebtedness of a broker-dealer that has been registered with the administrator for less than 1 year shall not exceed 1,000% of its net capital.

(b) Except as provided by subdivisions (c) and (d) of this subrule, a broker-dealer shall have and maintain net capital of not less than $10,000.00.

(c) Notwithstanding the provisions of subdivision (b) of this subrule, a broker-dealer shall have and maintain net capital of not less than $5,000.00. If the broker-dealer does not hold funds or securities for, or owe money or securities to, customers, and does not carry accounts of or for customers, except as provided for in paragraph (v) of this subdivision, and if the broker-dealer conducts business in accordance with 1 or more of the following conditions, and does not engage in any other securities activities:

(i) Introduces and forwards as a broker all transactions and accounts of customers to another broker or dealer who carries such accounts on a fully disclosed basis, and the introducing broker-dealer promptly forwards all of the funds and securities of customers received in connection with its activities as a broker-dealer.
(ii) Participates in underwritings on a "best efforts" or "all or none" basis in accordance with the provisions of rule 15e2-4(b)(2), 17 C.F.R. §240.15e2-4(b)(2) (1978) under the securities exchange act of 1934, and promptly forwards to an independent escrow agent customers' checks, drafts, notes, or other evidences of indebtedness received in connection therewith which shall be made payable to the escrow agent.

(iii) Promptly forwards subscriptions for securities to the issuer, underwriter, sponsor, or other distributor of such securities and receives checks, drafts, notes, or other evidences of indebtedness payable solely to the issuer, underwriter, sponsor, or other distributor who delivers the securities purchased directly to the subscriber.

(iv) Effects an occasional transaction in securities for the broker-dealer's own investment account with or through another registered broker-dealer.

(v) Acts as broker or dealer with respect to the purchase, sale, and redemption of redeemable shares of registered investment companies, and promptly transmits all funds and delivers all securities received in connection with such activities.

(vi) Introduces and forwards all customer and all principal transactions with customers to another broker-dealer who carries such accounts on a fully disclosed basis, and promptly forwards all funds and securities received in connection with its activities as a broker-dealer, and does not otherwise hold securities or funds for, or owe money or securities to, customers, and does not otherwise carry proprietary accounts, except as provided in paragraph (iv) of this subdivision, or customer accounts, and the broker-dealer's activities as dealer are limited to holding firm orders of customers and in connection therewith does either of the following:

(A) In the case of a buy order, prior to executing the customer's orders, purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another broker or dealer.

(B) In the case of a sell order, prior to executing the customer's order, sells as principal the same number of shares, or a portion thereof, which shall be cleared through another broker or dealer.

(vii) Effects, but does not clear, transactions in securities as a broker on registered national securities exchange for the account of another member of that exchange.

(d) Notwithstanding the provisions of subdivision (b) of this subrule, a broker-dealer shall have and maintain net capital of not less than $2,500.00 if the broker-dealer engages in no other securities activities except those prescribed in this subdivision and meets all of the following conditions:

(i) The broker-dealer's transactions are limited to both of the following:

(A) The purchase, sale, and redemption of redeemable shares of registered investment companies, except that the broker-dealer may also effect an occasional transaction in other securities for its own investment account with or through another registered broker dealer.

(B) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies.

(ii) The broker-dealer promptly transmits all funds and delivers all securities received in connection with its activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(3) A commodity issuer registered with the administrator and a broker-dealer registered with the administrator transacting business primarily in commodity contracts shall have the net capital and cash reserve necessary to comply with the following conditions:

(a) The aggregate indebtedness to all other persons of a registrant who has been registered for at least 1 year shall not exceed 1,500% of its net capital. The aggregate indebtedness to all other persons
of a registrant who has been registered for less than 1 year shall not exceed 1,000% of its net capital.

(b) A commodity issuer and a broker-dealer shall have and maintain net capital of not less than $25,000.00.

(c) A commodity issuer and a broker-dealer shall have and maintain a reserve of not less than $10,000.00 in a checking or savings account in a bank or savings institution organized under the laws of the United States or of any state or in a certificate of deposit issued by a bank or savings institution so organized.

(4) The administrator, by order which may apply individually or to a class, may establish a lower net capital requirement, a lower cash reserve requirement, or a higher maximum ratio of aggregate indebtedness to net capital, either unconditionally or upon special terms or conditions, for a registrant who satisfies the administrator that because of the special nature of its business, its financial condition, and the safeguards that have been established for the protection of customers' funds, investors would not be adversely affected.

(5) A registrant not in compliance with the aggregate indebtedness, net capital, or cash reserve requirements shall cease soliciting new business and shall immediately notify the administrator in writing.

(6) For the purposes of this rule, and to insure uniform interpretation, the terms "aggregate indebtedness" and "net capital" shall have the respective meanings as defined in rule 15c3-1, 17 C.F.R. § 240.15c3-1 (1978) under the securities exchange act of 1934. A copy of any pertinent subordination agreement shall be filed with the administrator within 10 days after the agreement has been entered into and shall meet the requirements of a "satisfactory subordination agreement" as that term is defined in rule 15c3-1, 17 C.F.R. § 240.15c3-1 (1978).


Rule 602.7. A broker-dealer whose net capital as defined by rule, regardless of whether or not he is exempt from that rule, does not exceed $50,000.00 shall file with the administrator a surety bond in the amount of $10,000.00 on a form provided by the administrator and shall maintain such bond in that amount at all times while registered as a broker-dealer. If a suit is brought to enforce any liability on the bond, the broker-dealer as principal shall promptly notify the administrator thereof; and if the bond principal amount is reduced by any recovery against it, the bond shall be immediately restored to $10,000.00. In addition to causes of action under section 410 of the act, the bond shall also be for the use and benefit of any persons who may have a cause of action in this state by reason of any embezzlement, defalcation or misappropriation of securities or funds by the principal, its agents and employees. The administrator may exempt a registered broker-dealer from this bond requirement or may vary its terms, only if justified and appropriate under special circumstances.

R 451.602.8 Broker-dealers' bonds; cash or securities. Rescinded.

Rule 602.8. In lieu of the bond required under R 451.602.7, a broker-dealer may make a deposit of $10,000.00 or a deposit of securities having a market value of $12,500.00 on the date of deposit which shall be restored to $12,500.00 in the event of any recovery. Such deposit shall consist of securities which are the obligations of and are guaranteed as to both principal and interest by the government of the United States, the government of a state, or a municipality within the United States. The deposit of cash or securities shall be held in trust or in escrow with a state or national bank within Michigan, and subject to an agreement satisfactory to the administrator with the same coverage as is required in a surety bond under R 451.602.7.
Rule 603.1. (1) A broker-dealer shall make and keep current the following books and records relating to his business:

(a) Blotters, or other records of original entry, containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and all other debits and credits.

(b) Ledgers, or other records, reflecting all assets and liabilities, and income, expense, and capital accounts.

(c) Ledger accounts, or other records, itemizing separately as to each cash and margin account of every customer and of such member, broker, or dealer and the partners thereof, all purchases, sales, receipts, and deliveries of securities and commodities for that account and all other debits and credits of that account.

(d) Ledgers, or other records, reflecting the following:
   (i) Securities in transfer.
   (ii) Dividends and interest received.
   (iii) Securities borrowed and securities loaned.
   (iv) Monies borrowed and monies loaned, together with a record of the collateral therefor and any substitutions in such collateral.
   (v) Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance date of "long" or "short" positions, including securities in safekeeping, carried by each member, broker, or dealer for his account or for the account of his customers or partners, and showing the location of all securities long and the offsetting position to all securities short and, in all cases, the name or designation of the account in which each position is carried.

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.

(g) A memorandum of each purchase and sale of securities for the account of such member, broker, or dealer, showing the price and, to the extent feasible, the time of execution.

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such member, broker, or dealer.

(2) A broker-dealer shall preserve, for not less than 6 years, all records required to be made pursuant to subdivisions (a), (b), (c), and (e) of subrule (1), and, for not less than 3 years, all records required to be made pursuant to subdivisions (d), (f), (g), and (h) of subrule (1).

(3) A registered commodities issuer and a broker-dealer transacting business primarily in commodity contracts shall make and keep true, accurate, and current the following books and records relating to its business:

(a) Journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in a ledger.

(b) General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(c) A memorandum of each order given by the registrant for the purchase or sale of any commodity contract, of any instruction received by the registrant from a client concerning the purchase, sale, receipt, or delivery of a particular commodity contract, and a memorandum of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation, shall identify the person
connected with the registrant who recommended the transaction to the client and the person who placed the order, and shall show the account for which entered, the date of the entry, and the registrant by or through whom executed where appropriate. An order entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, cancelled checks, and cash reconciliations of the registrant.

(e) All bills or statements, or copies thereof, paid or unpaid, relating to the business of the registrant.

(f) All trial balances, financial statements, and internal audit working papers relating to the business of the registrant.

(g) A financial ledger record which shows separately for each customer all charges against and credits of a customer's account, including, but not limited to, funds or securities deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions.

(h) A record of transactions which show separately for each account, including house accounts, all commodity contract transactions executed for the account, including the date, price, quantity, market, commodity, and, when applicable, the delivery date, option expiration date, or other relevant date.

(i) A record or journal which shows separately for each business day complete details of all commodity contract transactions executed on that day, including the date, price, quantity, market, commodity, future if applicable, and the person for whom the transaction was made.

(j) A record of all securities and property received from customers in lieu of money to margin, guarantee, or secure the commodity trades and contracts of the customers. The records shall show separately for each customer a description of the securities or property received, the name and address of the customer, the dates when the securities or property were received, the identity of the depositories or other places where the securities or property are segregated, the dates of deposits and withdrawals from the depositories, and the dates of return of the securities or property to the customer, or other disposition thereof, together with the facts and circumstances of the other disposition.

(k) Originals of all written communications received, and copies of all written communications sent, by the registrant relating to any recommendation made, or proposed to be made, and any advice given, or proposed to be given; any receipt, disbursement, or delivery of funds, commodity contracts, securities, or other property; the placing or execution of any order to purchase or sell any commodity contract; or market information or conditions that affect, or tend to affect, the price of a commodity. The registrant is not required to keep any unsolicited market letters and other similar communication of general public distribution not prepared by or for the registrant.

(l) A record, in permanent form, which shows for each customer the customer's full name, home address, home telephone number, business address, business telephone number, social security number, occupation, marital status, approximate age, approximate income, approximate net worth, investment objectives, other information concerning the customer's financial situation and needs, and the name and address of any other person guaranteeing the account.

(m) A file for each agent who is or has been employed by the registrant, copies of the agents' application for registration with the administrator, copies of all correspondence sent to or received from the administrator with respect to the agent, a record of disciplinary actions which have been taken against the agent by the registrant, and all administrative, civil, or criminal proceedings in which the agent has been named as a respondent or defendant in connection with commodity or securities activities.

(n) Minutes and other appropriate records with respect to meetings of the board of directors.
A copy of each advertisement used, showing the dates and publications in which the advertisement appeared.

A copy of each notice, circular, investment letter, bulletin, report, analysis, brochure, disclosure document, prospectus, form letter, or other sales literature circulated by the registrant.

A file with a copy of each complaint letter received from customers, together with a copy of the response.

A copy of every confirmation and every statement sent to a customer.

A consolidation record of all commodity transactions outstanding, showing, as to each appropriate classification of each commodity, the position of the registrant and its aggregate liability to its customers.

A registrant shall preserve, for not less than 6 years, all records required to be made pursuant to subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (q), (r), and (s) of subrule (3), and, for not less than 3 years, all records required to be made pursuant to subdivisions (o) and (p) of subrule (3).

R 451.603.2 Broker-dealers’ confirmations. Rescinded. Rule 603.2. A confirmation of each transaction for or with a customer shall be sent to the customer before the close of the next full business day after the transaction is made, unless unusual circumstances are present in which event it shall be sent as promptly as possible. The confirmation shall set forth with particularity all pertinent information including all charges and shall clearly show in what capacity the broker-dealer acted.

R 451.603.5 Investment adviser; books and records. Rescinded. Rule 603.5. (1) An investment adviser shall make and keep current such books and records relating to the investment adviser’s business as are required by the securities and exchange commission to be made and kept current by registered investment advisers under the investment advisers act of 1940, 15 U.S.C. S80b et seq., and such other books and records relating to the investment adviser’s business as the administrator may reasonably require.

(2) An investment adviser, when acting as a finder, shall make and keep current such books and records relating to the investment adviser’s business activity as a finder as are reasonably necessary to demonstrate compliance with section 102(c) of the act.

(3) An investment adviser, when acting solely as a finder and engaging in no other activities as an investment adviser, shall only be required to make and keep current such books and records as are required by subrule (2) of this rule.

R 451.604.1 Failure to complete or withdraw application for registration. Rescinded. Rule 604.1. If an applicant for registration as a broker-dealer, agent, or investment adviser fails to complete or withdraw an application within 90 days from the date of filing, the administrator may withdraw the application or commence proceedings to deny the application on the basis of section 204(a)(1)(A) of the act.

R 451.604.2 Unethical business practices by broker-dealer or agent. Rescinded. Rule 604.2. Unethical business practices by a broker-dealer or agent within the purview of section 204(a)(1)(G) of the act, include, but are not limited to, the following:

(a) Failure to segregate and earmark customers’ free securities or securities in safekeeping.

(b) In the offer of a commodity contract or security, failure to reveal the existence of a markup over cost charged by the seller.
R 451.604.3 Examination of applicants. Rescinded.

As a condition to obtaining registration, an applicant for registration as a broker-dealer shall take and pass a written examination testing the person's knowledge of the securities business, the act, and the rules thereunder. The test shall be evidence of the person's qualifications as to training and knowledge. This examination and the minimum passing grade may be varied for any class of applicants. The administrator may waive this examination requirement in the case of applicants who were registered within the past 2 years or who have passed this examination within the past 2 years. The administrator may waive this examination requirement, in whole or in part, in the case of applicants who have passed a comparable examination within the past 2 years, applicants who meet certain standards of experience, or applicants whose activities will be so restricted as to make imposition of the examination requirements inappropriate.

(2) As a condition to obtaining a registration, an applicant for registration as a broker-dealer which is a proprietorship transacting business primarily in commodities and an applicant for registration as a commodities agent or commodities investment adviser shall take and pass a written examination testing the person's knowledge of the commodities business, the act, and the rules thereunder. The test shall be evidence of the person's qualifications as to training and knowledge. This examination and the minimum passing grade may be varied for any class of applicants. The administrator may waive this examination requirement in the case of applicants who were registered within the past 2 years or who have passed this examination within the past 2 years. The administrator may waive this examination requirement, in whole or in part, in the case of applicants who have passed a comparable examination within the past 2 years, applicants who meet certain standards of experience, or applicants whose activities will be so restricted as to make imposition of the examination requirements inappropriate.

PART 3. REGISTRATION OF SECURITIES

R 451.704.1 Registration by qualification; prospectus. Rescinded.

In the case of a registration by qualification, unless the administrator in a specific instance permits otherwise, a prospectus prepared in accordance with prospectus instructions (form PI) and previously filed with the administrator shall be sent or given to each prospective purchaser within a reasonable time before a commitment to purchase is made. If the prospectus or any part thereof becomes misleading as to any material fact, or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, it shall be revised or supplemented, and the revision or supplementation shall be submitted to the administrator prior to use. A prospectus shall not be used if the administrator has informed the registrant of an objection thereto. A prospectus shall not be used without revision or supplementation for more than 13 months from its date.

R 451.704.2 Registration by qualification; reports and investigations. Rescinded.

As a condition of registration by qualification, the administrator may require that a report by an accountant, engineer, appraiser or other professional person be filed, and may require that the estimated cost of such report be deposited in advance by the registrant in an escrow account. The administrator may also designate an employee to make an investigation of the books, records and affairs of any applicant for registration by qualification and may require the
estimated—cost thereof to be deposited in advance by the applicant in an escrow account. Unless waived by the administrator, a registrant by qualification shall submit a complete audit report of the issuer covering the last fiscal year, certified by independent or certified public accountants.

R 451.705.4 Reports by registrants. Rescinded.

-Rule 705.4. So long as a securities registration statement is effective a registrant shall file reports as required by order of the administrator.

R 451.705.6 Distribution of preliminary prospectus. Rescinded.

-Rule 705.6. In the case of the filing of a registration statement under section 304 of the act or a filing of a request for an exemption order under section 402 of the act pursuant to the provisions of section 307(b) of the act, all of the following requirements shall be complied with:

(a) The applicant shall provide the administrator with written notice of his intent to distribute a preliminary prospectus and any amendments thereof.

(b) Any preliminary prospectus distributed pursuant to section 307(b) of the act shall contain on its cover a legend in substantially the following form: "THIS PRELIMINARY PROSPECTUS AND THE INFORMATION CONTAINED THEREIN ARE SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES SHALL NOT BE SOLD NOR SHALL OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE PROSPECTUS IS DELIVERED IN FINAL FORM. UNDER NO CIRCUMSTANCES SHALL THIS PRELIMINARY PROSPECTUS CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION, OR SALE IS UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE."

(c) Recipients of a preliminary prospectus distributed pursuant to section 307(b) of the act shall have 48 hours after receipt of a final prospectus in which to rescind the purchase of the securities being offered and shall be notified in writing of such right at the time of receipt of a final prospectus.

(d) Recipients of a preliminary prospectus distributed pursuant to section 307(b) of the act shall be notified in writing at the time of receipt of a final prospectus that such final prospectus may materially differ from the preliminary prospectuses previously distributed.

R 451.706.1 Incomplete registration statements. Rescinded.

-Rule 706.1. If a registrant fails to complete or withdraw a registration statement within 7 months from the date of filing, the administrator may commence proceedings to deny on the basis of section 306(a)(1) and 306(a)(2)(A) of the act.

R 451.706.2 Debt securities and preferred stock; junior equity. Rescinded.

-Rule 706.2. An offering of debt securities or preferred stock may be deemed to be on unfair terms within the meaning of section 306(a)(2)(E) of the act unless there are junior securities and surplus of an amount equal to at least 50% of the class of securities being offered. This requirement will be waived only when justified by the normal debt-capital ratios prevailing in the particular industry, the history of interest or dividend coverage, the participation in earnings and management, or the restricted nature of the offering.

R 451.706.4 Contractuals; 30-day letter. Rescinded.
Rule 706.4. A securities registration statement covering mutual fund periodic payment plan certificates will be deemed to tend to work an imposition and be an offering upon unfair terms unless the registrant furnishes an undertaking to send or cause to be sent by first class mail to each purchaser, at the time the certificate is issued or prior thereto, (a) a separate printed statement showing the sales load, fees, deductions and other charges to be deducted from each installment payment, (b) a duplicate copy of any application or request letter signed by the purchaser at the time he applied for or agreed to purchase, and (c) a letter specifically calling attention to the statement of charges. The letter shall also advise the purchaser that if after making his initial payment, whether for 1 or more installments, he shall for any reason whatever elect to surrender his certificate for cancellation, he will be refunded the full amount paid in by him, if the written request for such cancellation is made within 30 days, or any longer period indicated, after the mailing of such letter, or after the mailing of the certificate when the letter advises the certificate will be mailed at a later date. In lieu of the foregoing, the administrator may accept a satisfactory alternative undertaking. The requirement of this rule is in addition to, and does not preclude the purchaser from pursuing, any remedy afforded by section 410 of the act.

R 451.706.8 Warrants and stock purchase options. Rescinded.

Rule 706.8. (1) A registration statement covering an offering of capital stock involving warrants or stock purchase options to others than all the purchasers of securities will generally be regarded as not being in the public interest and as being objectionable under subparagraphs (E) and (F) of section 306(a)(2) of the act unless the requirements hereinafter set forth are met and justify the issuance of the warrants or stock options.

(2) Options to management in the nature of restricted or qualified stock options for incentive purposes will be considered justified if reasonable in number and method of exercise.

(3) Options to employees, or their nominees, pursuant to stock purchase plans or profit sharing plans will be considered justified if reasonable in number and method of exercise.


Rule 706.24. Unless the administrator by order determines otherwise, the condition set forth in section 402(b)(9)(C) of the act, that a commission is not paid or given directly or indirectly for soliciting any prospective purchaser in this state, except to a broker-dealer who is not affiliated with the issuer or its affiliates, shall be waived as to a broker-dealer who has been continuously registered pursuant to this act for not less than 2 years.

R 451.706.26 Definitions; corporation equity securities registration. Rescinded.

Rule 706.26. (1) As used in this rule:

(a) "Accredited investors" means those investors defined in regulation D, 17 C.F.R. §230.501(a)(1) to (3)(1982).

(b) "Continuing commitment of key management" means either of the following:

(i) After completion of the offering, key management continues to have equity ownership in the issuer of 10% of the shares outstanding;

(ii) Key management either places in escrow for a term of 3 years all of the shares of stock of the issuer which are directly or indirectly owned by key management or key management places in escrow the number of shares in combination with the amount of investment identified in paragraph (i) of this subdivision which would equal 10% of the offering. The escrow required under this paragraph shall be, for a period of 3 years, with an independent escrow agent approved by the
administrator. Shares will be released before the 3 years if the stock maintains a market price on the American or New York stock exchange or national association of securities dealers automated quotation (NASDAQ) equal to the offering price for 90 consecutive days or if the administrator so orders.

(c) "Developmental company" means a company making an initial public offering where there is either no established market value for the securities of the company or where the company has no significant earnings.

(d) "Firm underwriting" means that the underwriter or underwriters agree to purchase all of the securities being offered for their own account.

(e) "Key management" means those officers, directors, or employees of the issuer who the issuer holds out as essential to the continuing management of the company, and, therefore, their continued role in the management of the company is considered material to the investment.

(f) "Qualified underwriter" means a managing underwriter registered with the New York stock exchange or another underwriter determined by the administrator to be qualified upon consideration of factors such as the following:

(i) Number of underwriters involved.

(ii) Whether the underwriters are purchasing for their own account.

(iii) Size and experience of underwriter staff.

(iv) Independence of underwriter.

(v) Past history of underwriter.

(vi) Total size of offering.

(g) "Qualified venture capital company" means a person who satisfies 1 of the following provisions:


(ii) Has $1,000,000.00 worth of assets, not more than 20% of which is invested in the securities of the issuer whose primary business is investing in developmental stage companies or "eligible small business companies," as defined in the regulations of the small business administration, and has not less than $100,000.00 invested in the securities of the issuer.

(iii) Has $5,000,000.00 worth of assets, not more than 20% of which is invested in the securities of the issuer, and the company has invested not less than $100,000.00 in the securities of the issuer.

(2) In the registration of the equity securities of a corporation, if the following conditions are satisfied, and in the absence of unusual circumstances, the offering shall not be deemed to be on unfair terms; have unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation; or have unreasonable amounts of promoter's compensation or participation:

(a) The offering is made through a firm underwriting by a qualified underwriter and all of the following requirements are satisfied:

(i) There is full and fair disclosure of dilution and promoter's compensation and participation. This condition is presumed to be satisfied if the securities being offered are reviewed and cleared by the securities and exchange commission.

(ii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).

(iii) The total amount of the offering is $1,000,000.00 or more.

(b) The offering is made through other than a firm underwriting by a qualified underwriter and satisfies all of the following conditions:

(i) There is full and fair disclosure of dilution and promoter's compensation and participation.

(ii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).
(iii) Investors satisfy any of the following requirements:

(A) Twenty-five percent or more of the offering is purchased by accredited investors and all other investors purchase on the same terms as those accredited investors.

(B) Both before and after the offering, 25% of the outstanding shares are owned by qualified venture capital companies.

(C) Any combination of subparagraphs (A) and (B) of this paragraph.

(c) The offering is made by a developmental company and neither subdivision (a) nor subdivision (b) of this subrule is applicable and all of the following conditions are satisfied:

(i) Provision is made for the continuing commitment of key management.

(ii) There is full and fair disclosure of dilution and promoter's compensation and participation.

(iii) The offering is made in compliance with the rules of fair practice of the national association of securities dealers (NASD).

(iv) Unless the securities are sold through a registered broker/dealer, the offering will be considered unacceptable under this rule if the class of equity securities offered to the public has no voting rights or has less than equal voting rights and no preferential treatment as to dividends and liquidation is provided or the differentiation is not otherwise justified.

(v) The initial offering price to the public is not less than $5.00 per share.

PART 4. GENERAL PROVISIONS

R 451.801.3 Persons excluded from definition of "agent." Rescinded.

Rule 801.3. A person, when representing an issuer, broker-dealer, or any other person in effecting transactions in certificates of interest, participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in other securities involving oil, gas, or mining ventures exempted by section 402(b)(9)(D)(1)(ii) of the act, whether or not any commission is paid or given for soliciting any person in this state, shall be excluded from the definition of "agent" contained in section 401(b) of the act.

R 451.801.4 Persons excluded from definition of "broker-dealer." Rescinded.

Rule 801.4. (1) A person, when effecting transactions in certificates of interest, participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in other securities involving oil, gas, or mining ventures exempted by section 402(b)(9)(D)(1)(ii) of the act, shall be excluded from the definition of "broker-dealer" contained in section 401(c) of the act.

(2) The definition of the word "broker-dealer" shall exclude those individuals excluded by order of the administrator from the definition of "agent," unless the order expressly states otherwise.

R 451.802.2 Recognized securities manuals. Rescinded.

Rule 802.2. The administrator recognizes the following securities manuals under section 402(b)(2)(A) of the act:

- Moody's industrial manual
- Moody's transportation manual
- Moody's public utility manual
- Moody's bank and finance manual
- Moody's municipal and government manual
- Moody's OTC industrial manual
- Standard and Poor's corporation records
R 451.803.3 "Consulting fee" defined; offering circular; delivery; rescission of agreement. Rescinded.

Rule 803.3 (1) As used in section 402(a)(8) of the act, the term "consulting fee" means any payment or oral or written promise or contract to pay which is provided to any person in return for advice or assistance rendered, or to be rendered, to a nonprofit person in connection with the offer or sale of a security. The term shall not include advice or assistance rendered by the following licensed or otherwise regulated persons so long as performance of these services is solely incidental to the practice of his or her profession: attorneys, certified public accountants, or officers or employees of a financial institution whose securities are exempt pursuant to section 402(a)(3), (4), or (5) of the act.

(2) Any person designated by section 402(a)(8) of the act as being required to file an offering circular shall, 10 days before the offer or sale of the security, file with the administrator the offering circular. Offers and sales of the securities shall not be made subsequent to an order by the administrator disallowing the exemption.

(3) The offering shall be made upon such conditions and with information and provisions in the offering circular as may be determined by the administrator so that the offering does not work or tend to work a fraud, deception, or imposition and so that the offering is not made on unfair terms.

(4) The offering circular shall be delivered to each purchaser not less than 48 hours before the sale to the purchaser.

(5) As an alternative to subrule (4) of this rule, the issuer may elect, upon clear written disclosure, to provide a period of not less than 48 hours subsequent to delivery of the offering circular and confirmation in which the purchaser may rescind the agreement without prejudice.

R 451.803.5 Intra-industry exemption for persons engaged in oil, gas, and mineral business. Rescinded.

Rule 803.5 (1) Pursuant to section 402(b)(9)(D)(1)(ii) of the act, sales of certificates of interest, participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or of other securities relating to oil, gas, or mining ventures may be made to any number of either of the following:

(a) Persons who are engaged on a full-time basis in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading of oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in any combination of the foregoing businesses and who have not less than 3 years of experience in any such business or combination thereof.

(b) Corporations or any subsidiaries of such corporations, any of the stock of which is listed on the New York stock exchange or the American stock exchange, that are engaged in any business specified in subdivision (a) of this subrule, or combination thereof, as a principal line of business.

(2) As used in this rule, "engaged on a full-time basis," when applied in relation to the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; payments out of production under such titles or leases; or any combination of the foregoing businesses shall mean that the person is engaged in such business as his or her principal business activity and, in the case of an individual,
that the person is engaged in any such business in a management capacity and either maintains an office for the conduct of such business or is employed by a person maintaining such office.

(3) For the purpose of this rule, a person shall be deemed to have had 3 years of experience in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading oil, gas, or mining titles or leases; or payments out of production under such titles or leases, if such person was engaged in any such business, or combination thereof, on a full-time basis during the period in question. However, a corporation, partnership, association, or other business entity that was engaged in any such business on a full-time basis during the period in question shall nonetheless be deemed to have had 3 years of experience in any such business or combination thereof, if such entity had at least 1 officer or partner, or person of similar status, who was engaged in any such business, or combination thereof, on a full-time basis during the period in question.

(4) The numerical limitation on sales provided for in section 402(b)(9)(D)(1)(ii) of the act shall not be applicable to sales in compliance with this rule. Sales may be made hereunder to an unlimited number of purchasers described in subrule (1) of this rule without affecting the availability of the exemption provided for in section 402(b)(9)(D)(1)(ii) of the act.

(5) Any compensation paid to full-time salaried employees effecting sales which are in compliance with this rule shall not be deemed to be a commission under sections 401(b) and 402(b)(9)(C) of the act.

R 451.803.8 Multijurisdictional disclosure system offerings. Rescinded.

Rule 803.8. (1) This rule shall apply to the registration by coordination pursuant to the provisions of section 303 of the act in Michigan of securities that are registered with the securities and exchange commission in accordance with the multijurisdictional disclosure system adopted in securities and exchange commission release no. 33-6902, 56 F.R. 30036 (July 1, 1991).

(2) Pursuant to section 303(d) of the act, the 20-day registration statement and 10 day amendment filing requirements set forth in section 303(c)(2) of the act shall be reduced to 7 days for a class of offering for which a registration statement has been filed with the administrator on a form designated as form F-7, F-8, F-9, or F-10 by the securities and exchange commission.

(3) Under the grant of authority to the administrator in section 412(c) of the act, the administrator has determined that financial statements which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement which has been filed with the administrator pursuant to the provisions of section 303 of the act and which has been designated as form F-7, F-8, F-9, or F-10 by the securities and exchange commission if 1 of the following provisions is satisfied:

(a) The securities that are the subject of a registration statement designated as form F-7 by the securities and exchange commission are offered for cash upon the exercise of rights granted to existing security holders.

(b) The securities that are the subject of a registration statement designated as form F-8 by the securities and exchange commission are securities to be issued in an exchange offer, merger, or other business combination.

(c) The securities that are the subject of the registration statement designated as form F-9 by the securities and exchange commission are either nonconvertible preferred stock or nonconvertible debt and which shall be rated in 1 of the 4 highest rating categories by 1 or more nationally recognized statistical rating organizations. Preferred stock and debt securities that are not convertible
for at least 1 year from the date of effectiveness of the registration statement will be deemed to meet the requirement of this subdivision.

(d) The securities that are the subject of a registration statement designated as form F-10 by the securities and exchange commission are offered and sold pursuant to a prospectus in which the securities and exchange commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

R 451.803.10 Exempt securities listed or approved for listing on the Chicago board options exchange. Rescinded.

 Rule 803.10. A security that is listed or approved for listing upon notice of issuance on the Chicago board options exchange and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of these securities shall be exempt from sections 301 and 403 of the act. The administrator may, after giving notice of hearing to all interested parties, provide an opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:

(a) Deny or revoke this exemption by order for a specific issue of securities.

(b) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.

(c) Decertify the exchange by order if the administrator determines that the exchange's requirements are so changed, or insufficiently applied, that the public interest and protection of investors contemplated by the requirements is no longer afforded.


 Rule 803.11. (1) This rule offers an optional method of registration pursuant to the provisions of section 304 of the act for corporations issuing securities that are exempt from registration with the federal exemption, regulation D, 17 C.F.R. S230.504, adopted in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 16, 1982), and as amended in release nos. 33-6758, 53 F.R. 7866 (March 10, 1988), and 33-6825, 54 F.R. 11369 (March 20, 1989), or pursuant to the provisions of section 3(a)(11) of the securities act of 1933, 15 U.S.C. S77c(a)(11). Issuers eligible for this method of registration shall use a registration form approved by the administrator as the disclosure document for the offering. This method of registration shall be known as SCOR registration.

(2) Both of the following provisions apply to SCOR applications:

(a) Applications shall be in compliance with the provisions of this rule; however, the provisions of this rule may be modified or waived by the administrator.

(b) Where individual characteristics of specific offerings warrant modification from the provisions of this rule, they will be accommodated, insofar as possible, while still being consistent with the spirit of this rule.

(3) All of the following provisions apply to the availability of SCOR registration:

(a) SCOR registration is intended to allow small corporations to conduct limited offerings of securities. SCOR registration uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR registration format and will, therefore, be unable to utilize SCOR registration. SCOR registration shall not be utilized by the following issuers and programs unless written permission is obtained from the administrator based upon a showing that adequate disclosure can be made to investors using the SCOR registration format:
(i) Holding companies, companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

(ii) Portfolio companies, such as real estate investment trusts.

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

(b) SCOR registration is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements shall be met:

(i) The issuer shall be a corporation that is organized under the laws of one of the states or possessions of the United States.

(ii) The issuer shall not engage in petroleum exploration or production or mining or other extractive industries.

(iii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(iv) The offering price for common stock; the exercise price if the securities offered are options, warrants, or rights for common stock; and the conversion price if the securities are convertible into common stock shall be equal to or more than $5.00 per share.

(v) The aggregate offering price of the securities offered, within or outside this state, is not more than $1,000,000.00, less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under federal exemption, regulation D, 17 C.F.R. 230.504, adopted in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 16, 1982), and as amended in release nos. 33-6758, 53 F.R. 7866 (March 10, 1988), and 33-6825, 54 F.R. 11369 (March 20, 1989), in reliance on any exemption pursuant to the provisions of section 3(a)(11) and (b) of the securities act of 1933, 15 U.S.C. S77c(a)(11) and (b) or in violation of section 5(a) of the securities act of 1933, 15 U.S.C. S77e(a).

(e) SCOR registration is not available to investment companies that are subject to the investment company act of 1940, 15 U.S.C. S80(a) et seq., nor is it available to issuers that are subject to the reporting requirements of section 13 or section 15(d) of the securities exchange act of 1934, 15 U.S.C. S78m and 78o(d).

(d) SCOR is available for registration of debt offerings only if the issuer can demonstrate a reasonable ability to service its debt.

(d) SCOR registration shall not be available for the securities of any issuer if any of the following provisions applies to that issuer or any of its officers, directors, 10% stockholders, promoters, or any selling agents of the securities to be offered or any officer, director, or partner of such selling agent:

(a) The individual has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the filing of the SCOR registration application.

(b) The individual has been convicted, within 5 years before the filing of the SCOR registration application, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following:

(i) Forgery.

(ii) Embezzlement.

(iii) Obtaining money under false pretenses.

(iv) Larceny.

(v) Conspiracy to defraud.
(c) The individual is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within 5 years before the filing of the SCOR registration application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within 5 years before the filing of the SCOR registration application.

(d) The individual is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.

(e) The individual is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily, or permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the securities and exchange commission entered within 5 years before the filing of the SCOR registration application. However, the prohibition of this paragraph and paragraphs (a), (b) and (c) of this subdivision shall not apply if the person who is subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD that is filed in this state discloses the order, conviction, judgment, or decree relating to the person. A person who is disqualified pursuant to the provisions of this subdivision shall not act in any capacity other than that for which the person is licensed or registered. Any disqualification pursuant to the provisions of this subdivision is automatically waived if the state securities administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

(5) By filing for SCOR registration in this state, the registrant agrees with the administrator that the registrant will not split its common stock or declare a stock dividend for 2 years after the effectiveness of the registration without the prior written approval of the administrator.

(6) In addition to filing a properly completed form and filing fee required pursuant to the provisions of section 305(b) of the act, an applicant for SCOR registration shall file all of the following exhibits with the administrator:

(a) The form of selling agency agreement.

(b) The issuer's articles of incorporation or other charter documents and all amendments thereto.

(c) The issuer's bylaws, as amended to date.

(d) Copies of any resolutions by directors setting forth terms and provisions of capital stock to be issued.

(e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.

(f) A specimen of the security to be offered, including any legend restricting resale.

(g) Consent to service of process accompanied by an appropriate corporate resolution.

(h) Copies of all advertising or other material that is directed, or to be furnished to investors in the offering.

(i) The form of escrow agreement for escrow of proceeds.

(j) Consent to inclusion in disclosure document of accountant's report.

(k) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences.

(l) Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel.
(m) The form of any subscription agreement for the purchase of securities in the offering.
(n) An opinion of an attorney who is licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid and nonassessable, and binding on the issuer in accordance with their terms.
(o) A schedule of residence street addresses of officers, directors, and principal stockholders.
(p) Additional information as the administrator requires by rule or order.

PART 1. DEFINITIONS

R 451.1.1 Definitions.

Rule 1.1. As used in these rules and in the act, if applicable:
(a) “3(c)(1) fund” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the investment company act of 1940, 15 U.S.C. §80a-3(c)(1).
(c) “Agency cross transaction for an advisory client” means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction.
(d) “Impersonal advisory services” means any contract relating solely to the provision of investment advisory services under any of the following:
   (i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts.
   (ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security.
   (iii) Any combination of the services in subrules (d)(i) and (d)(ii) of this rule.
(e) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through 1 or more controlled companies, more than 25% of the voting securities of a company is presumed to control that company.
(f) “CRD” means the central registration depository operated by FINRA.
(g) "Discretionary authority" does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.
(h) “EDGAR” means the electronic data gathering, analysis, and retrieval system operated by the SEC.
(i) “EFD” means the electronic filing depository operated by the North American Securities Administrators Association, Inc.
(j) “Entering into”, in reference to an investment advisory contract, does not include an extension or renewal without material change of any contract that is in effect immediately prior to an extension or renewal.
(l) “FINRA” means the Financial Industry Regulatory Authority.
(m) “Form ADV” means the uniform application for investment adviser registration.
(n) “Form ADV-W” means the notice of withdrawal from registration as investment adviser.
(o) “Form BD” means the uniform application for broker-dealer registration.
(p) “Form BDW” means the uniform request for broker-dealer withdrawal.
(q) “Form U4” means the uniform application for securities industry registration or transfer.
(r) “Form U5” means the uniform termination notice for securities industry registration.
(s) “Form U-7” means the small company offering registration form.
(t) “IARD” means the Investment Adviser Registration Depository operated by FINRA.
(u) "Investment supervisory services" means giving of continuous advice about the investment of funds on the basis of the individual needs of each client.
(v) “NASAA” means the North American Securities Administrators Association, Inc.
(w) “NASDAQ” means the NASDAQ Stock Market, LLC (formerly an acronym for the national association of securities dealers automated quotations system).
(x) “Private fund adviser” means an investment adviser who provides advice solely to 1 or more qualifying private funds.
(y) “Qualifying private fund” means a private fund that meets the definition of a qualifying private fund in SEC rule 203(m)-1, 17 C.F.R. §275.203(m)-1.
(z) “SCOR” means a small corporate offering registration.

R 451.1.2 Broker-dealer definition exclusion.

Rule 1.2. (1) As used in these rules and in the act, if applicable, “broker-dealer” does not include any of the following:

(a) A “finder” as that term is defined by section 102(i) of the act, MCL 451.2102(i).
(b) A person whose participation in an offer or sale of securities, for direct or indirect compensation, is limited to introducing 1 or more accredited investors, as that term is defined in SEC rule 501, 17 C.F.R. § 230.501, who are residents of this state to an issuer incorporated or organized in this state, or introduces an issuer incorporated or organized in this state to 1 or more accredited investors who are residents of this state, solely for the purpose of a potential offer or sale of the issuer’s securities in an issuer transaction in this state, and who complies with all of the following:

(i) The person shall not engage in any of the following activities:

(A) Provide introductions to an issuer for a transaction or a series of related transactions in connection with the offer or sale of the issuer’s securities that exceeds a purchase price of $15,000,000.00 in the aggregate.

(B) Participate in negotiating any of the terms of the offer or sale of the securities.

(C) Advise any party to the transaction regarding the value of the securities or the advisability of investing in, purchasing, or selling the securities.

(D) Participate in the preparation, delivery, or execution of the issuer’s disclosure documents, offering circulars, contracts, or other documents related to the transaction except as provided for in subrule (1)(b)(iii) of this rule.

(E) Conduct any due diligence on behalf of an issuer or on behalf of a potential purchaser of an issuer’s securities.

(F) Sell or offer to sell in connection with the issuer transaction any securities of the issuer that are owned, directly or indirectly, by the person.
(G) Receive, directly or indirectly, possession or custody of any funds or securities in connection with an issuer transaction for which the person is engaged.

(H) Receive compensation in connection with any introduction that results in the offer or sale of securities without reasonable grounds to believe the offer or sale complies with section 301 of the act, MCL 451.2301.

(I) Receive transaction-based compensation.

(ii) The person, the issuer, and any potential purchaser of securities shall enter into a written agreement concurrent with any introduction facilitated by the person in connection with the potential offer or sale of the issuer’s securities. The agreement must include the following:

(A) The type and amount of compensation that has been or will be paid to the person in connection with the introduction and the conditions for payments of that compensation.

(B) That the person is not providing advice to the issuer or any person introduced by the person to the issuer as to the value of the securities or the advisability of investing in, purchasing, or selling the securities.

(C) Whether the person, a related person, or a member of the person’s immediate family, has any beneficial interest in the securities being offered or sold by the issuer.

(D) Any actual or potential conflict of interest in connection with the person’s participation in the potential securities transaction.

(iii) Copies of all written agreements required by subrule (1)(b)(ii) of this rule entered into by the person must be maintained by the person for a period of 5 years from the date the agreement is signed by all parties, and must be provided to the administrator upon the administrator’s request.

PART 2. EXEMPTIONS FROM REGISTRATION OF SECURITIES

R 451.2.1 Not-for-profit securities.

Rule 2.1. (1) The offer or sale of a note, bond, debenture, or other evidence of indebtedness by a person described in section 201(g) of the act, MCL 451.2201(g), qualifies for the self-executing exemption set forth in section 201(g), MCL 451.2201(g) only if the aggregate sales price of the issuance of the securities is $500,000.00 or less, and sold to a bona fide member of the issuing organization without payment of a commission or consulting fee.

(2) The offer or sale of a note, bond, debenture, or other evidence of indebtedness that does not qualify for the self-executing exemption described in subrule (1) of this rule shall file with the administrator a request for exemption pursuant to section 201(g) of the act, MCL 451.2201(g), and shall comply with subrules (6) to (10) of this rule.

(3) The administrator shall apply the applicable statement of policy adopted by NASAA as listed in subrule (2) of this rule when reviewing requests for exemption authorization pursuant to section 201(g) of the act, MCL 451.2201(g).

(4) The following statements of policy are adopted by reference:

(a) “Church Bonds” as adopted by NASAA on April 14, 2002. A copy of this policy can be obtained from NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at http://www.nasaa.org, or from the Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2.

(b) “Church Extension Fund Securities” as amended and published by NASAA on April 18, 2004. A copy of this policy can be obtained from NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at http://www.nasaa.org, or from the
Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2.

(5) The administrator may require a cross-reference table be included in a request for exemption authorization to indicate compliance with, or deviation from, the various sections of the applicable NASAA statement of policy.

(6) The request for exemption authorization for an offering of church bonds shall include the documents listed in section II.A.3. of the NASAA statement of policy “Church Bonds”.

(7) All sales and advertising literature must be filed with the administrator prior to use and must comply with the applicable NASAA statement of policy.

(8) Each request for exemption under section 201(g) of the act, MCL 451.2201(g), must include a nonrefundable filing fee of $250.00.

(9) The securities that qualify for an exemption under subrule (2) of this rule are exempt when ordered by the administrator, and the exemption is effective for 1 year from the date that the securities were ordered exempt.

(10) If the securities offering is not completed during the effective period, an issuer may renew the exemption by submitting to the administrator a written request for renewal that includes any amendments to the documents filed with the initial request for exemption and a nonrefundable filing fee of $250.00. The issuer shall file the written request for renewal with the administrator within 30 days before the end of the 1 year effective date. With each renewal, the administrator may require a cross-reference sheet to demonstrate compliance with the applicable NASAA statement of policy.

R 451.2.2 Recognized securities manuals.

Rule 2.2. The administrator recognizes the following securities manuals under section 202(1)(b)(iv) of the act, MCL 451.2202(1)(b)(iv):

(a) Standard & Poor’s standard corporation descriptions.
(b) Mergent’s industrial manual and news reports.
(c) Mergent’s transportation manual and news reports.
(d) Mergent’s public utility manual and news reports.
(e) Mergent’s bank and finance manual and news reports.
(f) Mergent’s municipal and government manual and news reports.
(g) Mergent’s international manual and news reports.
(h) Fitch’s individual stock bulletin.
(i) Best’s insurance reports life-health.
(j) Moody’s OTC industrial manual.
(k) OTC Markets Group, Inc.’s OTCQX market.
(l) OTC Markets Group, Inc.’s OTCQB market.
(m) Any other securities manual determined by the administrator to be a nationally recognized securities manual that requires the continuous disclosure by any issuer relying on the manual for the registration exemption.

R 451.2.3 Bad actor disqualification.

Rule 2.3. (1) Exemptions available at section 201(g), MCL 451.2201(g), section 202(1)(k), MCL 451.2202(1)(k), section 202(1)(n), MCL 451.2202(1)(n), section 202(1)(t), MCL 451.2202(1)(t), and section 202a, MCL 451.2202a, are not available for an offer or sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial
owner of 20% or more of the issuer’s outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any investment manager of an issuer that is a pooled investment fund; any person that has been or will be paid, directly or indirectly, remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such investment manager or solicitor; or any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor is subject to either of the following:

(a) Disqualification as described in SEC rule 506(d) of SEC regulation D, 17 C.F.R. §230.506(d).
(b) Disqualification as described in SEC rule 262 of Regulation A, 17 C.F.R. §230.262.

(2) Subrule (1) of this rule does not apply under any of the following conditions:
(a) With respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before September 23, 2013. Issuers relying on this subrule shall furnish to each offeree and purchaser, a reasonable time prior to sale, a description in writing of any matters that would cause a disqualification under subrule (1) of this rule, but which occurred before September 23, 2013.
(b) Upon a showing of good cause and without prejudice to any other action by the administrator, if the administrator determines that it is not necessary under the circumstances that an exemption be denied. Requests for a determination by the administrator under this subsection must be made in writing.
(c) If, before the relevant sale, the court or regulatory authority that entered the relevant order, judgment, or decree advises in writing, whether contained in the relevant order, judgment, or decree, or separately to the administrator or its staff, that disqualification under subrule (1) of this rule should not arise as a consequence of such order, judgment, or decree.
(d) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known, that a disqualification existed under subrule (1) of this rule. For purposes of this subrule, an issuer shall not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry shall vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

R 451.2.4 Intra-industry exemption for persons engaged in oil, gas, and mineral business.

Rule 2.4. (1) Pursuant to section 203 of the act, MCL 451.2203, sales of certificates of interest; participation in oil, gas, or mining titles or leases; payments out of production under such titles or leases; or of other securities relating to oil, gas, or mining ventures are exempt from registration requirements of section 301 of the act, MCL 451.2301, when the offers or sales are made to any of the following:
(a) Persons who are engaged on a full-time basis in the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying, selling, and trading of oil, gas, or mining titles or leases; payments out of production under such titles or leases; or in any combination of the foregoing businesses and who have at least 3 years of experience in any such business or combination thereof.
(b) Corporations or any subsidiaries of such corporations, any of the stock of which is listed on the New York stock exchange or the American stock exchange, that are engaged in any business specified in subdivision (a) of this subrule, or combination thereof, as a principal line of business.
(2) As used in this rule, "engaged on a full-time basis," when applied in relation to the business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals; buying,
selling, and trading oil, gas, or mining titles or leases; payments out of production under such
titles or leases; or any combination of the foregoing businesses means that the person is engaged in
such business as his or her principal business activity and, in the case of an individual, that the
person is engaged in any such business in a management capacity and either maintains an office
for the conduct of such business or is employed by a person maintaining such office.
(3) For the purpose of this rule, a person is deemed to have had 3 years of experience in the
business of exploring for, or the producing, transporting, or refining of, oil, gas, or other minerals;
buying, selling, and trading oil, gas, or mining titles or leases; or payments out of production
under such titles or leases, if such person was engaged in any such business, or combination
thereof, on a full-time basis during the period in question. However, a corporation, partnership,
association, or other business entity that was engaged in any such business on a full-time basis
during the period in question is nonetheless deemed to have had 3 years of experience in any such
business or combination thereof, if such entity had at least 1 officer or partner, or person of
similar status, who was engaged in any such business, or combination thereof, on a full-time basis
during the period in question.

R 451.2.5  Purchaser.
Rule 2.5.  For purposes of section 202(1)(n) of the act, MCL 451.2202(1)(n), a natural person,
spouse, and minor children residing in the same household, together with any revocable grantor
trusts, individual retirement accounts, health savings accounts, or similar accounts for which any
of them is the grantor, trustee, or sole beneficiary, is considered as 1 purchaser.

PART 3. REGISTRATION OF SECURITIES AND NOTICE FILINGS OF FEDERAL
COVERED SECURITIES

R 451.3.1  Notice filing.
Rule 3.1.  A notice filing for a security issued by an investment company that is a federal covered
security as defined in section 18(b)(2) of the securities act of 1933, 15 U.S.C. §77r, that is not
otherwise exempt under sections 201 to 203 of the act, MCL 451.2201 to 451.2203, includes the
following, as applicable:
(a) Before the initial offer of a federal covered security in this state all of the following:
   (i) All records that are part of a federal registration statement filed with the SEC under
       the securities act of 1933, 15 U.S.C. § 77a et seq.
   (ii) NASAA form U-2 consent to service of process signed by the issuer.
   (iii) NASAA form NF uniform investment company notice filing form.
   (iv) A nonrefundable filing fee of $500.00.
(b) After the initial offer of sale, if the issuer files an amendment to its registration
    statement with the SEC, the issuer shall file a copy of the amendment with the
    administrator.

R 451.3.2  State securities registrations and notice filings.
Rule 3.2.  (1) Pursuant to section 302 of the act, MCL 451.2302, the administrator designates the
EFD to be authorized pursuant to subrule (2) of this rule to receive and store securities
registrations, exemptions, notice filings, and amendments and collect related fees on behalf of the
administrator.
(2) Unless otherwise provided, upon notice under subrule (3) of this rule, filings and related fees shall be filed electronically with and transmitted to the EFD. This requirement may be waived by the administrator.

(3) Notwithstanding subrule (2) of this rule, the electronic filing of documents and the collection of related processing fees is not required until such time as the EFD provides for receipt of such filings and fees and 30 days’ notice is provided by the administrator. Any documents or fees required to be filed with the administrator that are not permitted to be filed with, or cannot be accepted by, the EFD system must be filed directly with the administrator, or the administrator’s designee.

(4) A duly authorized person of the issuer shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to EDGAR. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

R 451.3.3 Small corporate offering registration, SCOR.

Rule 3.3. (1) This rule offers issuers an optional method of registration pursuant to the provisions of section 304 of the act, MCL 451.2304, for corporations or manager-managed limited liability companies issuing securities that are exempt from registration under the federal exemption, regulation D, 17 C.F.R. §230.504, or pursuant to the provisions of section 3(a)(11) of the securities act of 1933, 15 U.S.C. §77c(a)(11). Issuers eligible for this method of registration shall use Form U-7 as the disclosure document for the offering. This method of registration is known as SCOR, as defined in R 451.1.1(z).

(2) Both of the following provisions apply to SCOR applications:

(a) Applications must be in compliance with the provisions of this rule; however, the provisions of this rule may be modified or waived by the administrator.

(b) Where individual characteristics of specific offerings warrant modification from the provisions of this rule, they must be accommodated, insofar as possible, while still being consistent with the intent of this rule.

(3) All of the following provisions apply to the availability of SCOR:

(a) SCOR is intended to allow small corporations or manager-managed limited liability companies to conduct limited offerings of securities. SCOR uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR format and shall, therefore, be unable to utilize SCOR. SCOR shall not be utilized by the following issuers and programs unless written permission is obtained from the administrator based upon a showing that adequate disclosure can be made to investors using the SCOR format:

(i) Holding companies, companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

(ii) Portfolio companies, such as real estate investment trusts.

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

(b) SCOR is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, all of the following requirements must be met:
(i) The issuer is a corporation or manager-managed limited liability company that is organized under the laws of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia.

(ii) The issuer does not engage in petroleum exploration or production or mining or other extractive industries.

(iii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(iv) The offering price for common stock or common ownership interests, collectively referred to as “common stock”; the exercise price if the securities offered are options, warrants, or rights for common stock; and the conversion price if the securities are convertible into common stock is equal to or more than $5.00 per share.

(v) The aggregate offering price of the securities offered, within or outside this state, is not more than $5,000,000.00, less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under federal exemption, regulation D, 17 C.F.R. §230.504, in reliance on any exemption pursuant to the provisions of section 3(a)(11) and (b) of the securities act of 1933, 15 U.S.C. §77c(a)(11) and (b) or in violation of section 5(a) of the securities act of 1933, 15 U.S.C. §77e(a).

(c) SCOR is not available to investment companies that are subject to the investment company act of 1940, 15 U.S.C. §80(a) et seq., or to issuers that are subject to the reporting requirements of section 13 or section 15(d) of the securities exchange act of 1934, 15 U.S.C. §78m and §78o(d).

(d) SCOR is available for registration of debt offerings only if the issuer can demonstrate a reasonable ability to service its debt.

(4) SCOR is not available for the securities of any issuer if any of the following provisions applies to that issuer or any of its officers, directors, 10% stockholders, unitholders, promoters, or any selling agents of the securities to be offered or any officer, director, or partner of such selling agent:

(a) The individual has filed a registration statement that is the subject of a current registration stop order entered pursuant to any federal or state securities law within 5 years before the filing of the SCOR application.

(b) The individual has been convicted, within 5 years before the filing of the SCOR application, of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following:

(i) Forgery.

(ii) Embezzlement.

(iii) Obtaining money under false pretenses.

(iv) Larceny.

(v) Conspiracy to defraud.

(c) The individual is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the SEC within 5 years before the filing of the SCOR application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within 5 years before the filing of the SCOR registration application.

(d) The individual is subject to any federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.
(c) The individual is currently subject to any order, judgment, or decree of any court of
compentent jurisdiction temporarily or preliminarily, or permanently restraining or enjoining such
party from engaging in or continuing any conduct or practice in connection with the purchase or
sale of any security or involving the making of any false filing with any state or with the SEC
entered within 5 years before the filing of the SCOR application. However, the prohibition of this
subdivision and subdivisions (a), (b) and (c) of this subrule do not apply if the person who is
subject to the disqualification is duly licensed or registered to conduct securities-related business
in the state in which the administrative order or judgment was entered against the person or if the
broker-dealer who employs the person is licensed or registered in this state and the form BD that
is filed in this state discloses the order, conviction, judgment, or decree relating to the person. A
person who is disqualified pursuant to the provisions of this subdivision shall not act in any
capacity other than that for which the person is licensed or registered. Any disqualification
pursuant to the provisions of this subdivision is automatically waived if the state securities
administrator or other state or federal agency that created the basis for disqualification
determines, upon a showing of good cause, that it is not necessary under the circumstances that
the exemption be denied.

(5) By filing for SCOR in this state, the registrant agrees with the administrator that the
registrant shall not split its common stock or declare a stock dividend for 2 years after the
effectiveness of the registration without the prior written approval of the administrator.

(6) In addition to filing a properly completed form and filing fee required pursuant to the
provisions of section 305(2) of the act, MCL 451.2305(2), an applicant for SCOR shall file all of the
following exhibits with the administrator:
   (a) The form of selling agency agreement.
   (b) The issuer's articles of incorporation or other charter documents and all amendments to
       those documents.
   (c) The issuer's bylaws or operating agreement, as amended to date.
   (d) Copies of any resolutions by directors setting forth terms and provisions of capital stock or
       units to be issued.
   (e) Any indenture, form of note, or other contractual provision containing terms of notes or other
debt or of options, warrants, or rights to be offered.
   (f) A specimen of the security to be offered, including any legend restricting resale.
   (g) Consent to service of process accompanied by an appropriate corporate resolution.
   (h) Copies of all advertising or other material that is directed, or to be furnished, to investors in
       the offering.
      (i) The form of escrow agreement for escrow of proceeds.
      (j) Consent to inclusion in disclosure document of accountant's report.
      (k) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax
          consequences.
      (l) Consent to inclusion in disclosure document of any evaluation of litigation or administrative
          action by counsel.
      (m) The form of any subscription agreement for the purchase of securities in the offering.
      (n) An opinion of an attorney who is licensed to practice in a state or territory of the United
          States that the securities to be sold in the offering have been duly authorized and, when issued
          upon payment of the offering price, shall be legally and validly issued, fully paid and
          nonassessable, and binding on the issuer pursuant to their terms.
      (o) A schedule of residential street addresses of officers, directors, and principal stockholders.
      (p) Additional information as the administrator requires by rule or order.
R 451.3.4  Registration by qualification; prospectus.

Rule 3.4.  (1) As a condition of registration by qualification, a prospectus containing the information and records specified in section 304(2) of the act, MCL 451.2304(2), must be sent or given by the issuer to each person to whom an offer is made, before or concurrently, with the earliest of any of the following:

(a) The first offer made in a record to the person other than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made, or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.

(b) The confirmation of a sale made by or for the account of the person.

(c) Payment pursuant to the sale.

(d) Delivery of the security pursuant to the sale.

(2) If the prospectus, or any part of it, becomes misleading as to any material fact, or facts, or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, it must be revised or supplemented, and the revision or supplementation must be submitted to the administrator prior to use. A prospectus must not be used if the administrator has informed the registrant of an objection to the prospectus.

(3) An issuer shall not use a prospectus without revision or supplementation for more than 13 months from its first use.

(4) Every submitted prospectus must carry the following legend displayed in a prominent manner: “THESE SECURITIES ARE OFFERED PURSUANT TO A REGISTRATION ORDER ISSUED BY THE STATE OF MICHIGAN. THE STATE OF MICHIGAN DOES NOT RECOMMEND OR ENDORSE THE PURCHASE OF ANY SECURITIES, NOR DOES IT PASS UPON THE TRUTH, MERITS, OR COMPLETENESS OF ANY PROSPECTUS OR ANY OTHER INFORMATION FILED WITH THIS STATE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”

R 451.3.5  Registration by qualification; reports and investigations.

Rule 3.5.  (1) As a condition of registration by qualification, the administrator may require that a report by an accountant, engineer, appraiser or other professional person be filed, and may require that the estimated cost of such report be deposited in advance by the registrant in an escrow account.

(2) The administrator may designate 1 or more employees to investigate the books, records, and affairs of any applicant for registration by qualification and may require the estimated cost of the investigation to be deposited in advance by the applicant in an escrow account.

(3) Unless waived by the administrator in writing, a registrant by qualification shall submit a complete audit report of the issuer covering the last fiscal year that is certified by an independent or certified public accountants.

R 451.3.6  Adoption by reference; statements of policy.

Rule 3.6.  (1) Unless waived by the administrator, the administrator shall apply the applicable statement of policy adopted by NASAA when conducting a merit review to determine whether an offering is fair, just, and equitable.
(a) The following statements of policy are incorporated by reference in these rules and made a part of this rule as published by NASAA, 750 First Street, NE, Suite 1140, Washington, DC 20002, and is available for free online at http://www.nasaa.org, or from the Michigan department of licensing and regulatory affairs, corporations, securities, and commercial licensing bureau, P.O. Box 30018, Lansing, MI 48909 for a cost as prescribed in R 451.6.2:
   (v) “Promoter’s Equity Investment”, as amended by NASAA on March 31, 2008.
   (xii) “Registration of Asset-Backed Securities”, as amended by NASAA on May 6, 2012.
   (xiv) “Real Estate Programs”, as amended by NASAA on May 7, 2007.
   (xvi) “Registration of Oil and Gas Programs”, as amended by NASAA on May 6, 2012.
   (xviii) “Commodity Pool Programs”, as amended by NASAA on May 6, 2012.
   (xix) “Cattle-Feeding Programs”, as adopted by NASAA on September 17, 1980.
(b) The “Omnibus Guidelines” shall be applied to limited partnerships programs or other entities in which more specific statements of policy have not been adopted by NASAA.

(2) If requested by the administrator, a registration statement to register securities must include a cross-reference table to indicate compliance with, or deviation from, the applicable statement of policy.

(3) In establishing standards of fairness and equity, the administrator establishes the following investor suitability standards for direct participation programs registered under the act:
   (a) A gross income of $70,000.00 and a net worth of $70,000.00, exclusive of home, home furnishings, and automobiles, or a net worth of $250,000.00, exclusive of home, home furnishings, and automobiles.
   (b) No more than 10% of any 1 Michigan investor’s liquid net worth shall be invested in the securities being registered with the administrator.

(4) The administrator may establish higher or lower suitability standards as a condition of registration.

(5) The suitability standards must be disclosed in the prospectus.

R 451.3.7 Abandonment of registration statement.
Rule 3.7. The administrator may begin proceedings to deny effectiveness of a registration statement under section 306(1) of the act, MCL 451.2306(1), if the applicant fails to complete or withdraw the application within 7 months after the date the application for registration is filed.

PART 4. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

R 451.4.1 Broker-dealer; Canadian exemption.

Rule 4.1. (1) A broker-dealer that is registered as a broker-dealer in 1 or more Canadian provinces and that does not have a place of business in this state may effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:
(a) A resident of Canada who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.
(b) A resident of Canada who is present in this state and whose transactions are in a self-directed, tax-advantaged retirement plan of which the individual is the holder or contributor in Canada.
(c) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently a resident of Canada.
(2) An agent who represents a broker-dealer that is exempt under subrule (1)(a) of this rule, may effect transactions in securities or attempt to effect the purchase or sale of any securities in this state as permitted for a broker-dealer described in subrule (1)(a) of this rule.

R 451.4.2 Merger and acquisition broker exemption.

Rule 4.2. (1) The following definitions apply for purposes of this rule:
(a) “Control” means the power to directly or indirectly direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for a person who meets any of the following:
(i) Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility, or has similar status or functions.
(ii) Has the right to vote 20% or more of a class of voting securities or the power to sell or direct the sale of 20% or more of a class of voting securities.
(iii) In the case of a partnership or limited liability company, has the right upon dissolution to receive, or has contributed, 20% or more of the capital.
(b) “Eligible privately held company” means a company meeting both of the following conditions:
(i) The company does not have any class of securities registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78l; or, with respect to which the company files, or is required to file, periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).
(ii) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions:
(A) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.00.
(B) The gross revenues of the company are less than $250,000,000.00.
(c) “Merger and acquisition broker” means a broker and a person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase or redemption of, or, a business combination involving securities or assets of the eligible privately held company if both of the following are true:

(i) If the merger and acquisition broker reasonably believes that upon consummation of the transaction, all persons acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company.

(ii) If a person is offered securities in exchange for securities or assets of the eligible privately held company, then before becoming legally bound to consummate the transaction, the person will receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and, information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

(d) “Public shell company” is a company that at the time of a transaction with an eligible privately held company meets all of the following:

(i) Has any class of securities registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78l; or, with respect to which the company files or is required to file periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).

(ii) Has no or nominal operations.

(iii) Has no or nominal assets; assets consisting solely of cash and cash equivalents; or, assets consisting of any amount of cash and cash equivalents and nominal other assets.

(2) A merger and acquisition broker is exempt from registration as a broker-dealer pursuant to section 401 of the act, MCL 451.2401, except as provided in subrules (3) and (4) of this rule.

(3) A merger and acquisition broker is not exempt from registration pursuant to this rule if the merger and acquisition broker does any of the following:

(a) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(b) Engages on behalf of an issuer in a public offering of any class of securities that is registered or required to be registered with the SEC pursuant to section 12 of the securities exchange act of 1934, 15 U.S.C. 78l; or, with respect to which the issuer files or is required to file periodic information, documents, and reports pursuant to section 15(d) of the securities exchange act of 1934, 15 U.S.C. 78o(d).

(c) Engages on behalf of any party in a transaction involving a public shell company.

(4) A merger and acquisition broker is not exempt from registration pursuant to this paragraph if the merger and acquisition broker is subject to any of the following:

(a) Suspension or revocation of registration pursuant to section 15(b)(4) of the securities exchange act of 1934, 15 U.S.C. 78o(b)(4).

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

(d) A final order described in paragraph (4)(H) of section 15(b) of the securities exchange act of 1934, 15 U.S.C. 78o(b)(4)(H).

(5) Nothing in this rule shall be construed to limit the authority of the administrator to exempt a person or class of persons from the provisions of the act or rules or orders promulgated pursuant to the act.

(6) On the date that is 5 years after the date of the enactment of this rule, and every 5 years after that date, each dollar amount in subrule (1)(b)(ii) may be adjusted pursuant to all of the following:

(a) Dividing the annual value of the Detroit consumer price index for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index for the calendar year ending December 31, 2012. As used in this subrule, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the Bureau of Labor Statistics of the United States Department of Labor.

(b) Multiplying such dollar amount by the quotient obtained pursuant to subdivision (a) of this subrule.

(c) Each dollar amount determined pursuant to this subrule shall be rounded to the nearest multiple of $100,000.00.

R 451.4.3 Electronic filing; designated entities.

Rule 4.3. (1) The administrator designates both of the following:

(a) The CRD to receive and store filings and collect fees from broker-dealers and agents representing broker-dealers on behalf of the administrator.

(b) The IARD to receive and store filings and collect fees from investment advisers, investment adviser representatives, and federal covered investment advisers on behalf of the administrator.

(2) Unless otherwise provided, all applications, amendments, reports, notices, related filings, and fees required to be filed with the administrator pursuant to the act or rules adopted under the act, shall be filed electronically with and transmitted to 1 of the following:

(a) The CRD, when the filing is required for the registration of a broker-dealer or agent representing a broker-dealer.

(b) The IARD, when the filing is required for the registration or notice filing of a federal covered investment adviser, an investment adviser, or investment adviser representative.

(3) When a signature, or signatures, are required by the particular instructions of any filing to be made electronically through the CRD or the IARD, the applicant or a duly authorized officer of the applicant, as required, shall affix his or her electronic signature to the applicable form by typing his or her name in the appropriate fields and submitting the filing electronically to the CRD or the IARD. Submission of a filing in this manner constitutes irrefutable evidence of legal signature by any individual whose name is typed on the filing.

(4) Solely for purposes of document submissions made electronically through the CRD or the IARD, a document is considered filed with the administrator when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(5) Any documents or fees required to be filed with the administrator that are not permitted to be filed with, or cannot be accepted electronically by the CRD or the IARD, must be filed directly with the administrator.
Electronic signatures.

Rule 4.4. (1) As used in this rule “electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual at the time of the action or response.

(2) Electronic signatures may be used or accepted, or both, for investment securities if the legal effect, validity, or enforceability of contracts or other records are consistent with ESIGN.

(3) This rule does not require a record or signature be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(4) This rule applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct transactions by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(5) If a party agrees to conduct a transaction by electronic means, this rule does not prohibit the party from refusing to conduct other transactions by electronic means. This subrule may not be modified by agreement.

(6) Whether an electronic record or electronic signature has legal effect is determined by this rule and other applicable law.

(7) A signature may not be denied legal effect solely because the record or signature is in electronic form.

(8) A contract may not be denied legal effect solely because an electronic record was used in the contract's formation.

(9) If a law requires a record to be in writing, an electronic record satisfies the law.

(10) If a law requires a signature, an electronic signature satisfies the law.

(11) If parties have agreed to conduct transactions by electronic means, and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender, or the sender's information processing system, inhibits the ability of the recipient to print or store the electronic record.

(12) If a sender’s information processing system inhibits the ability of a recipient to print or store an electronic record, the electronic record is not enforceable against the recipient.

(13) An electronic record, or electronic signature, is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record, or electronic signature, was attributable.

(14) The effect of an electronic record, or electronic signature, attributed to a person is determined from the context and surrounding circumstances at the time of the record's or signature's creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(15) If a change or error in an electronic record occurs in a transmission between parties to a transaction, both of the following apply:

(a) If the parties have agreed to use a security procedure to detect changes or errors, and 1 party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.
(b) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual does all of the following:

(i) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.

(ii) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.

(iii) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(16) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that does both of the following:

(a) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.

(b) Remains accessible for later reference.

(17) If a law requires a record to be presented or retained in the record's original form, or provides consequences if the record is not presented or retained in the record's original form, that law is satisfied by an electronic record retained in accordance with subrule (16) of this rule.

(18) In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(19) In an automated transaction, all of the following apply:

(a) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows, or has reason to know, shall cause the electronic agent to complete the transaction or performance.

(b) The terms of the contract are determined by the substantive law applicable to the contract.

(20) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record meets all of the following:

(a) Is addressed properly, or otherwise directed properly, to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent, and from which the recipient is able to retrieve the electronic record.

(b) Is in a form capable of being processed by that system.

(c) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(21) Unless otherwise agreed between a sender and the recipient, an electronic record is received when both of the following apply:

(a) The record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records, or information of the type sent, and from which the recipient is able to retrieve the electronic record.

(b) The record is in a form capable of being processed by that system.

(22) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business.
(23) If the sender or recipient has more than 1 place of business, the place of business of that person is the place having the closest relationship to the underlying transaction. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence.

(24) Receipt of an electronic acknowledgment from an information processing system establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

R 451.4.5 Registration exemption for investment advisers to private funds.

Rule 4.5. (1) As used in this rule, “venture capital fund” means a private fund that meets the definition of a venture capital fund in SEC rule 203(l)-1, 17 C.F.R. §275.203(l)-1.

(2) Subject to the additional requirements of subrule (3) of this rule, a private fund adviser formed or domiciled in this state, and a private fund adviser not domiciled in this state but offering its fund securities to Michigan residents, is exempt from the registration requirements of section 403 of the act, MCL 451.2403, if the private fund adviser satisfies both of the following conditions:
   (a) Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in SEC rule 506(d)(1) of SEC regulation D, 17 C.F.R. §230.506(d)(1).
   (b) The private fund adviser files with the state each report, and amendments to each report if applicable, that an exempt reporting adviser is required to file with the SEC pursuant to SEC rule 204-4, 17 C.F.R. §275.204-4.

(3) In order to qualify for the exemption described in subrule (2) of this rule, a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund, shall, in addition to satisfying each of the conditions specified in subrule (2) of this rule, comply with all of the following requirements:
   (a) The private fund adviser shall advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities, other than short-term paper, are beneficially owned entirely by persons who each meet the definition of a qualified client in SEC rule 205-3, 17 C.F.R. §275.205-3, or an accredited investor in SEC rule 501, 17 C.F.R. § 230.501, at the time the securities are purchased from the issuer.
   (b) At the time of the purchase, the private fund adviser shall disclose all of the following in writing, to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:
      (i) All services, if any, to be provided to individual beneficial owners.
      (ii) All duties, if any, the investment adviser owes to the beneficial owners.
      (iii) Any other material information affecting the rights or responsibilities of the beneficial owners.
   (c) The private fund adviser shall obtain, on an annual basis, audited financial statements for each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.
   (d) Subrule (3)(c) of this rule does not apply to a 3(c)(1) fund with respect to any annual period if both of the following are true:
      (i) Each beneficial owner is a qualified client.
      (ii) The private fund adviser has provided to each beneficial owner a written disclosure explaining that the private fund will not provide audited financial statements to investors annually, but that other similarly-situated funds may provide audited financial statements to their investors.
(4) If a private fund adviser is registered with the SEC, the investment adviser shall not be eligible for the exemption in subrule (2) of this rule, and shall comply with the state notice filing requirements applicable to federal covered investment advisers in section 405 of the act, MCL 451.2405.

(5) A person is exempt from the registration requirements of section 404 of the act, MCL 451.2404, if he or she is employed by, or associated with, an investment adviser that is exempt from registration in this state pursuant to this rule and does not otherwise act as an investment adviser representative outside of the scope of his or her employment.

(6) The report filings described in subrule (2)(b) of this rule must be made electronically through the IARD. A report is deemed filed when the report is filed and accepted by the IARD on the state’s behalf.

(7) An investment adviser who becomes ineligible for the exemption provided by this rule shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser’s eligibility for this exemption ceases.

(8) An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has 1 or more beneficial owners who are not qualified clients or accredited investors as described in subrule (3)(a) of this rule is eligible for the exemption contained in subrule (2) of this rule, if all of the following conditions are satisfied:
   (a) The subject fund existed prior to the effective date of this regulation.
   (b) As of the effective date of this rule, the subject fund ceases to accept beneficial owners who are not qualified clients or accredited investors, as described in subrule (3)(a) of this rule.
   (c) The investment adviser discloses, in writing, the information described in subrule (3)(b) of this rule to all beneficial owners of the fund.
   (d) As of the effective date of this rule, the investment adviser delivers financial statements as required by subrule (3)(c) of this rule, unless subrule (3)(d) applies to the private fund adviser.

(9) Subrule (2)(a) of this rule does not apply upon a showing of good cause and without prejudice to any other action of the administrator, if the administrator determines that it is not necessary under the circumstances that an exemption be denied.

R 451.4.6 Notice filing requirements for federal covered investment advisers.

Rule 4.6. (1) Pursuant to section 405 of the act, MCL 451.2405, the notice filing for a federal covered investment adviser must be filed electronically with IARD on an executed Form ADV. A notice filing of a federal covered investment adviser is deemed filed when the fee required by section 410(5) of the act, MCL 451.2410(5), and the Form ADV are filed electronically with and accepted by IARD on behalf of this state.

(2) Pursuant to section 405 of the act, MCL 451.2405, the annual renewal of the notice filing for a federal covered investment adviser must be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser is deemed filed when the fee required by section 410(5) of the act, MCL 451.2410(5), is filed with and accepted by IARD on behalf of the state.

(3) A federal covered investment adviser shall file electronically with IARD, pursuant to the instructions in the Form ADV, any amendments to the federal covered investment adviser’s Form ADV.

R 451.4.7 Application for registration by broker-dealers and agents representing broker-dealers.
Rule 4.7. (1) The application for initial registration of a broker-dealer pursuant to section 406 of the act, MCL 451.2406, must be made by completing Form BD pursuant to the form’s instructions and by filing the form electronically with CRD. The application for initial registration must also include both of the following:

(a) Proof of compliance by the broker-dealer with the examination requirements of R 451.4.9.
(b) The fee required by section 410 of the act, MCL 451.2410.

(2) Pursuant to section 406 of the act, MCL 451.2406, the application for initial registration of agents representing a broker-dealer must be made by completing Form U4 pursuant to the form’s instructions and by filing the form electronically with CRD, except that a paper filing may be accepted by the administrator for a broker-dealer that does not register with FINRA, for an agent who is associated with a broker-dealer that does not register with FINRA, and for an agent who is associated solely with an issuer. The application for initial registration must also include both of the following:

(a) Proof of compliance by the agent representing a broker-dealer with the examination requirements of R 451.4.9.
(b) The fee required by section 410 of the act, MCL 451.2410.

(3) To renew a registration as a broker-dealer, or an agent representing a broker-dealer, the registrant shall submit to CRD the fee required by section 410 of the act, MCL 451.2410.

(4) A broker-dealer shall, within 30 days of any event requiring an amendment, file electronically with CRD any amendments to the broker-dealer’s Form BD pursuant to the form’s instructions.

(5) An agent representing a broker-dealer shall, within 30 days of any event requiring an amendment, file electronically with CRD any amendments to the agent’s Form U-4 pursuant to the form’s instructions.

(6) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been filed with the administrator.

R 451.4.8 Application for registration of Michigan investment market.

Rule 4.8. In addition to the requirements of section 455 of the act, MCL 451.2455, an application for registration of a Michigan investment market must include all of the following:

(a) The applicant’s primary street address.
(b) The name, title, and telephone number of a contact employee.
(c) The name and address of counsel for the applicant.
(d) The date the applicant’s fiscal year ends.
(e) The applicant’s form of incorporation or organization, for example, corporation, limited liability company, or partnership; and, a certificate of good standing from the jurisdiction in which the applicant is incorporated or organized.
(f) A copy of the constitution, articles of incorporation or organization with all subsequent amendments and existing bylaws.
(g) A copy of the corresponding rules of the Michigan investment market. Rules drafted pursuant to this subrule must address, at a minimum, price transparency across all trading platforms upon which a security is traded, assurance of best price execution, clearance and settlement of transactions, custody of funds and securities, cybersecurity, business continuity, and safekeeping of issuer and customer information.
(h) A copy of all written rulings, settled practices having the effect of rules, and interpretations of the governing board or other committee of the applicant in respect of any provisions of the
constitution, bylaws, rules, or trading practices of the applicant which are not included in subdivision (g) of this rule.

(i) Proof of compliance with sections 5, 6, and 15 of the securities exchange act of 1934, 15 U.S.C. §78a, et seq., such as an SEC no-action letter.

(j) For each subsidiary or affiliate of the applicant, and for any entity with whom the applicant has contractual or other agreement relating to the operation of an electronic trading system to be used to effect transactions on the Michigan investment market, all of the following must be submitted:

(i) Name and address of organization.
(ii) Form of organization, for example, corporation, limited liability company, or limited partnership.
(iii) Name of the state in which the organization was formed, and the date of formation.
(iv) Brief description of the nature and extent of the affiliation.
(v) Brief description of the business or functions. The description should include responsibilities with respect to operation of the Michigan investment market, the execution, reporting, clearance, or settlement of transactions in connection with operation of the Michigan investment market, or both.
(vi) A copy of the constitution.
(vii) A copy of the articles of incorporation or organization, including all amendments.
(viii) A copy of existing bylaws or corresponding rules or instruments.
(ix) The name and title of the present officers, governors, members of all standing committees, or persons performing similar functions.
(x) An indication of whether such business or organization ceased to be associated with the applicant during the previous year, and a brief statement of the reasons for termination of the association.

(k) For each subsidiary or affiliate of the Michigan investment market, provide unconsolidated financial statements for the latest fiscal year. Such financial statements must consist, at a minimum, of a balance sheet and an income statement of such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. If an affiliate or subsidiary is required by another rule to submit annual financial statements, a statement to that effect, with a citation to the other rule, may be provided instead of the financial statements required in this subdivision.

(l) A description of the manner of operation of the Michigan investment market. The description must include all of the following:

(i) The means of access to the Michigan investment market.
(ii) Procedures governing entry and display of quotations and orders in the Michigan investment market.
(iii) Procedures governing the execution, reporting, clearance, and settlement of transactions in connection with the Michigan investment market.
(iv) Proposed fees.
(v) Procedures for ensuring compliance with the Michigan investment market usage guidelines.
(vi) The hours of operation of the Michigan investment market, and the date on which the applicant intends to commence the operation.
(vii) A copy of the users’ manual.
(viii) If the applicant proposes to hold funds or securities on a regular basis, the applicant shall provide a description of the controls that will be implemented to ensure safety of those funds or securities.
(m) A complete set of forms pertaining to all of the following:
   (i) Application for membership, participation, or subscription to the entity.
   (ii) Application for approval as a person associated with a user, participant, or subscriber of the entity.
   (iii) Any other similar materials.

(n) A complete set of forms of financial statements, reports, or questionnaires required of members, participants, subscribers, or any other users relating to financial responsibility or minimum capital requirements for such members, participants, or any other users.

(o) A complete set of documents comprising the applicant’s listing applications, including any agreements required to be executed in connection with listing and a schedule of listing fees. If the applicant does not list securities, the applicant shall provide a brief description of the criteria used to determine what securities may be traded on the exchange.

(p) For the latest fiscal year of the applicant, audited financial statements that are prepared pursuant to, or in the case of a foreign applicant, reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant. If an applicant has no consolidated subsidiaries, the applicant shall file audited financial statements alone and need not file a separate unaudited financial statement for the applicant.

(q) A list of the officers, governors, members of all standing committees, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year indicating the following for each:
   (i) Name.
   (ii) Title.
   (iii) Dates of commencement and termination of terms of office or position.
   (iv) Type of business in which each is primarily engaged, for example, floor broker, specialist, and odd lot dealer.

(r) A description of the Michigan investment market’s criteria for membership, including a description of conditions under which users may be subject to suspension or termination with regard to access to the Michigan investment market, and a description of any procedures that will be involved in the suspension or termination of a user.

(s) An alphabetical list of all members, participants, subscribers, or other users, including all of the following information:
   (i) Name.
   (ii) Date of election to membership or acceptance as a participant, subscriber, or other user.
   (iii) Principal business address and telephone number.
   (iv) If a member, participant, subscriber, or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity, for example, partner, officer, director, and employee.

(t) A description of the type of activities primarily engaged in by the member, participant, subscriber, or other user. A person is “primarily engaged” in an activity or function for purposes of this subdivision when that activity or function is the one in which that person is engaged for the majority of that person’s time.

(u) The class of membership, participation, or subscription or other access.

(v) A schedule for the securities listed in the Michigan investment market, indicating for each, the name of the issuer and a description of the security.
Rule 4.9. (1) Unless waived by the administrator, a natural person applicant for initial registration as a broker-dealer or agent shall take and pass, within 2 years immediately preceding the filing date of the application, and as reflected on the records of CRD, both of the following: 
(a) Either the uniform securities agent state law examination (S63) or the uniform combined state law examination (S66).
(b) The general securities business examination set forth in paragraph (i) of this subdivision, unless the applicant’s proposed securities activities will be restricted, in which case the applicant shall be required to take and pass each examination in paragraphs (ii) to (viii) of this subdivision that relates to the applicant’s proposed securities activities:
(i) The general securities representative examination (S7).
(ii) The investment company products/variable contracts representative examination (S6).
(iii) The direct participation programs representative examination (S22).
(iv) The municipal securities representative examination (S52).
(v) The corporate securities limited representative examination (S62).
(vi) The registered options representative examination (S42).
(vii) The government securities representative examination (S72).
(viii) The private placement representative examination (S82).
(ix) Other examinations as may be applicable to an associated person and his or her activities according to FINRA rules.
(2) An applicant for registration as a broker-dealer or agent is not required to take the examinations required by subrule (1) of this rule if the applicant was registered or licensed as a broker-dealer or agent in Michigan or another state with the same examination requirements as those identified in subrule (1) of this rule within the 2 years preceding the date the application was filed.

R 451.4.10 Application for investment adviser registration.

Rule 4.10. (1) The application for initial registration as an investment adviser pursuant to section 406 of the act, MCL 451.2406, must be made by completing Form ADV pursuant to the form instructions and by filing the form electronically with IARD. The application for initial registration must also include all of the following:
(a) Proof of compliance by the investment adviser with the examination requirements of R 451.4.12.
(b) A copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, a balance sheet prepared as set forth in R 451.4.18.
(c) A copy of the surety bond required by R 451.4.14, if applicable and requested by the administrator.
(d) The fee required by section 410 of the act, MCL 451.2410.
(2) The administrator may accept a copy of part 2 of Form ADV as filed electronically with IARD.
(3) The application for annual renewal registration as an investment adviser must be filed electronically with IARD. The application for annual renewal registration must include both of the following:
(a) The fee required by section 410 of the act, MCL 451.2410.
(b) A copy of the surety bond required by R 451.4.14, if applicable, or if requested by the administrator.
(4) An investment adviser shall, within 30 days of any event requiring an amendment, file electronically with IARD, pursuant to the instructions in the Form ADV, any amendments to the investment adviser’s Form ADV.

(5) Within 90 days of the end of the investment adviser’s fiscal year, an investment adviser shall file electronically with IARD an annual updating amendment to the Form ADV.

(6) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been received by the administrator.

R 451.4.11 Application for investment adviser representative registration.

Rule 4.11. (1) Pursuant to section 406 of the act, MCL 451.2406, the application for initial registration as an investment adviser representative must be made by completing Form U4 pursuant to the form instructions and by filing the Form U4 electronically with IARD. The application for initial registration must also include both of the following:

(a) Proof of compliance by the investment adviser representative with the examination requirements of R 451.4.12.

(b) The fee required by section 410 of the act, MCL 451.2410.

(2) The application for annual renewal registration as an investment adviser representative must be filed electronically with IARD. The application for annual renewal registration must include the fee required by section 406 of the act, MCL 451.2406.

(3) The investment adviser representative is under a continued obligation to update information required by Form U4 as changes occur.

(4) An investment adviser representative and the investment adviser shall, within 30 days of any event requiring an amendment, file electronically with IARD any amendments to the representative’s Form U4.

(5) An application for initial or renewal registration is not considered filed for purposes of section 406 of the act, MCL 451.2406, until the required fee and all required documents have been received by the administrator.

R 451.4.12 Investment adviser and investment adviser representative examination requirements.

Rule 4.12. (1) Unless otherwise waived by the administrator, a natural person investment adviser or investment adviser representative shall take and pass within 2 years immediately preceding the date of the application, as reflected on the records of IARD, either of the following:

(a) The uniform investment adviser state law examination (S65).

(b) The uniform combined state law examination (S66) and the general securities representative examination (S7).

(2) Any person who has been registered as an investment adviser or an investment adviser representative in any state that requires the licensing, registration, or qualification of investment advisers or investment adviser representatives within the 2 years immediately preceding the date of filing an application shall not be required to comply with the examination requirement in subrule (1) of this rule.

(3) Compliance with subrules (1) and (2) of this rule is waived if the applicant has been awarded any of the following designations and at the time of filing an application the designation is current and in good standing:

(a) Certified financial planner awarded by the certified financial planners board of standards.

(b) Chartered financial consultant or masters of science and financial services awarded by the American College, in Bryn Mawr, Pennsylvania.
(c) Chartered financial analyst awarded by the Institute of Chartered Financial Analysts.
(d) Personal financial specialists awarded by the American Institute of Certified Public Accountants.
(e) Chartered investment counselor awarded by the Investment Adviser Association.
(4) An applicant who has taken and passed the uniform investment adviser law examination (S65) within 2 years immediately preceding the date the application is filed with the administrator, or at any time if the applicant has been registered or licensed as an investment adviser or investment adviser representative within the 2 years immediately preceding the date the application is filed with the administrator, shall not be required to take and pass the uniform investment adviser law examination again.
(5) An applicant who is an agent for a broker-dealer and an investment adviser and who is not required by the agent’s home jurisdiction to make a separate filing on CRD as an investment adviser representative, but who has previously met the examination requirement in subrule (1) of this rule necessary to provide advisory services on behalf of the broker-dealer or the investment adviser, shall not be required to again take and pass the exams in subrule (1) of this rule.

R 451.4.13 Custody prohibitions, limits, and conditions.
Rule 4.13. (1) For purposes of this rule, the following definitions apply:
(a) “Custody” means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. “Custody” includes, but is not limited to, the following circumstances:
(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within 3 business days of receiving the funds or securities.
(ii) Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser’s instruction to the custodian.
(iii) Any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.
(b) “Custody” does not include the receipt of checks drawn by clients and made payable to unrelated third parties and shall not meet the definition of custody if forwarded to the third party by close of business on the first business day after the date of receipt by the investment adviser.
(2) It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser who is registered or required to be registered to have custody of client funds or securities unless both of the following are true:
(a) The investment adviser maintains custody or possession pursuant to the requirements set forth in SEC rule 206(4)-2, 17 C.F.R. §275.206(4)-2.
(b) All items required to be filed with the SEC under SEC rule 206(4)-2, 17 C.F.R. §275.206(4)-2, are filed, through the IARD System, with the administrator.
(3) Investment advisers who are registered, or required to be registered, may have custody or possession of securities or funds of a client if the investment adviser is otherwise permitted by rule or order of the administrator to maintain custody or possession of client funds or securities and complies with such rule or order.

R 451.4.14 Bonding requirement for certain investment advisers.
Rule 4.14.  (1) For purposes of this rule, “custody” is defined in R 451.4.13(1)(a) and (b).
(2) Any bond required by this rule must be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client’s state of residence. Both of the following apply:
  (a) Every investment adviser registered or required to be registered under the act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.
  (b) Every investment adviser registered or required to be registered under the act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in R 451.4.17 shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000.00.
(3) An investment adviser that has its principal place of business in a state other than this state is exempt from the requirements of subrule (2)(a) of this rule, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state’s requirements relating to bonding.

R 451.4.15 Minimum financial requirements for broker-dealers.
Rule 4.15.  (1) A broker-dealer registered or required to be registered under the act, shall maintain net capital in such minimum amounts as are designated in SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o, for the activities the broker-dealer shall engage in this state.
(2) The aggregate indebtedness of a broker-dealer to all other persons must not exceed the levels prescribed under SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o.
(3) If a broker-dealer is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement. The amount so segregated must be utilized solely for the business for which the broker-dealer or Michigan investment market is registered.

R 451.4.16 Minimum financial requirements for Michigan investment markets.
Rule 4.16.  (1) A Michigan investment market, registered or required to be registered under the act, shall maintain net capital in such minimum amounts as are designated in SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o, for the activities the Michigan investment market shall engage in this state.
(2) The aggregate indebtedness of a Michigan investment market to all other persons must not exceed the levels prescribed under SEC rule 15c3-1, 17 C.F.R. §240.15c3-1, promulgated under the securities exchange act of 1934, 15 U.S.C. §78o.
(3) If a Michigan investment market is an individual, the person shall segregate from personal capital, an amount sufficient to satisfy the net capital requirement. The amount so segregated must be utilized solely for the business for which the Michigan investment market is registered.

R 451.4.17 Minimum financial requirements for investment advisers.
Rule 4.17.  (1) For purposes of this rule “net worth” means an excess of assets over liabilities, as determined by generally accepted accounting principles, but does not include as assets any of the following: prepaid expenses, except as to items properly classified assets under generally accepted
accounting principles; deferred charges; goodwill; franchise rights; organizational expenses; patents; copyrights; marketing rights; unamortized debt discount and expense; all other assets of intangible nature; home; home furnishings; an automobile or automobiles; any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and, advances or loans to partners in the case of a partnership.

(2) An investment adviser registered, or required to be registered, under the act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000.00 except for the following circumstances:

(a) An investment adviser having custody solely due to direct fee deduction and complying with the terms described under R 451.4.13 and related books and records, as described in R 451.4.24, is not required to comply with the net worth or bonding requirements of this rule.

(b) An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under R 451.4.13 and related books and records, as described in R 451.4.24 is not required to comply with the net worth or bonding requirements of this rule.

(3) An investment adviser, registered or required to be registered, under the act who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000.00.

(4) An investment adviser registered, or required to be registered, under the act who accepts prepayment of more than $500.00 per client and 6 or more months in advance shall maintain at all times a positive net worth.

(5) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered, or required to be registered, under the act shall by the close of business on the next business day notify the administrator if such investment adviser’s net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of its financial condition, including all of the following:

(a) A trial balance of all ledger accounts.

(b) A statement of all client funds or securities that are not segregated.

(c) A computation of the aggregate amount of client ledger debit balances.

(d) A statement as to the number of client accounts.

(6) An investment adviser is not exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if all of the following have occurred:

(a) The investment adviser has executed with its client a separate investment adviser contract that acknowledges that a third party trading agreement must be executed to allow the investment adviser to effect securities transactions for the client in the client’s broker-dealer account.

(b) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account.

(c) A third party trading agreement is executed between the client and a broker-dealer that specifically limits the investment adviser’s authority in the client’s broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

(8) An investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment
adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state’s minimum capital requirements.

R 451.4.18  Financial statements.
  Rule 4.18.  (1) Subject to subrule (4) of this rule, financial statements, when they are required to be filed with the administrator pursuant to the act, an administrative rule, or order of the administrator, must consist of a balance sheet, a statement of cash flows, an income statement, and a statement of all shareholders or members equity.
  (2) Subject to subrule (4) of this rule, any financial statements required to be filed with the administrator pursuant to any provision of the act, administrative rule, or order of the administrator, must be prepared in accordance with generally accepted accounting principles.
  (3) Financial statements must be prepared on a consolidated basis unless otherwise required by the administrator or its designee.
  (4) A filer of financial statements may request in writing to be exempt from the requirements of subrules (1), (2), and (3) of this rule. The administrator, upon good cause shown in a request made pursuant to this subrule, may issue an order exempting a filer from the requirements of subrules (1), (2), and (3) of this rule.
  (5) The administrator may in its discretion require a filer of financial statements to submit financial statements that have been audited by an independent certified public accountant who shall also issue an opinion on the financial statements.

R 451.4.19  Investment adviser brochure.
  Rule 4.19.  (1) Unless otherwise provided in this rule, an investment adviser that is registered, or required to be registered, pursuant to section 403 of the act, MCL 451.2403, shall, pursuant to the provisions of this subrule, furnish each advisory client and prospective advisory client with the following:
  (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.
  (b) The brochure must comply with the language, organizational format, and filing requirements specified in the instructions to part 2 of Form ADV.
  (2) An investment adviser, except as provided in subrule (4) of this rule, shall deliver the part 2A brochure and any brochure supplements required by this rule to a prospective advisory client before or at the time an investment advisory contract with that client is formed.
  (3) An investment adviser, except as provided in subrule (4) of this rule, 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.

(4) Delivery of the brochure and related brochure supplements required by subrules (2) and (3) of this rule do not need to be made to any of the following:
   (a) Clients who receive only impersonal advice and who pay less than $500.00 in fees per year.
   (b) An investment company registered under the investment company act of 1940, 15 U.S.C. §80(a) et seq.
   (c) A business development company as defined in the investment company act of 1940, 15 U.S.C. §80(a) et seq., and whose advisory contract meets the requirements of section 15c of that act, 15 U.S.C. §80(a)-15c.

(5) 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.
   (b) In the case of other than initial deliveries, obtains each client’s prior consent to provide the brochure and supplements electronically.
   (c) Prepares the electronically delivered brochure and supplements in the format prescribed in subrule (1) of this rule and instructions to part 2 of Form ADV.
   (d) Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form.
   (e) Establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this rule.

(6) Nothing in this rule relieves any investment adviser from any obligation required under the act or a rule promulgated under the act or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

R 451.4.20 Proxy voting.

Rule 4.20. It is a fraudulent, deceptive, or manipulative act, for an investment adviser registered, or required to be registered, under section 406 of the act, MCL 451.2406, to exercise voting authority with respect to client securities, unless the adviser does all of the following:
   (a) Adopts and implements written policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients, which procedures must include how the investment adviser will address material conflicts that may arise between the investment adviser and its clients.
   (b) Discloses to clients how they may obtain information from the investment adviser about how the investment adviser voted with respect to the client’s securities.
   (c) Describes to clients the investment adviser’s proxy voting policies and procedures and, upon request, furnishes a copy of the policies and procedures to the requesting client.

R 451.4.21 Business continuity and succession planning.

Rule 4.21. An investment adviser shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The plan must be based upon the facts and circumstances of the investment adviser’s business model including the size of the firm, type or types of services provided, and the number of locations of the investment adviser. The plan shall provide for at least all of the following:
   (a) The protection, backup, and recovery of books and records.
(b) Alternate means of communications with customers, key personnel, employees, vendors, service providers, third-party custodians, and regulators, including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

(c) Office relocation in the event of temporary or permanent loss of a principal place of business.

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

(e) Steps and methods reasonably designed to minimize service disruptions and client harm that could reasonably be anticipated to result from a sudden, significant business interruption.

R 451.4.22 Records required to be maintained by broker-dealers.

Rule 4.22. A broker-dealer registered, or required to be registered, under the act, shall make, maintain, and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. §240.17a-3, and SEC rule 17a-4, 17 C.F.R. §240.17a-4.

R 451.4.23 Records required to be maintained by Michigan investment markets.

Rule 4.23. A Michigan investment market registered or required to be registered under the act, shall make, maintain, and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. §240.17a-3, and SEC rule 17a-4, 17 C.F.R. §240.17a-4.

R 451.4.24 Records to be maintained by investment advisers.

Rule 4.24. (1) For the purposes of this rule, "access person" means when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, a person who has access to nonpublic information regarding any client’s purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund, and any person who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic, and any partner, officer, or director of the investment adviser.

(2) Every investment adviser registered, or required to be registered, under the act shall make and keep true, accurate, and current all of the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.

(c) A record of each order given by the investment adviser for the purchase or sale of a security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security, and of a modification or cancellation of any such order or instruction. The record must do all of the following: show the terms and conditions of the order, instruction, modification, or cancellation; identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power must be so designated.

(d) All checkbooks, bank statements, canceled checks, and cash reconciliations of the investment adviser.

(e) All bills or statements, or copies of, paid or unpaid, relating to the investment adviser's business.
(f) All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business.

(g) Copies of all written communications received and sent by the investment adviser relating to all of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) Any receipt, disbursement, or delivery of funds or securities.

(iii) The placing or execution of any order to purchase or sell any security.

(iv) The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser.

(v) If the investment adviser sends a notice, circular, or other advertisement offering a report, analysis, publication, or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom the notice, circular, or advertisement was sent. If the notice, circular, or advertisement is distributed to persons named on a list, the investment adviser shall retain with the copy of the notice, circular, or advertisement a memorandum describing the list and its source.

(h) A list or other record of all accounts that identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of a client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by a client to the investment adviser.

(j) A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(k) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser directly or indirectly circulates or distributes to 10 or more persons, other than persons connected with the investment adviser. If the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation shall be kept.

(l) A record of every transaction in a security in which the investment adviser or any access person of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record must state the title and amount of the security involved; the date and nature of the transaction, for example the purchase, sale, or other acquisition or disposition; the price at which it was effected; and, the name of the broker-dealer or bank with or through whom the transaction was effected. A record under this subrule does not need to be kept for a transaction in a security involving any of the following:

(i) Direct obligations of the government of the United States.

(ii) Bankers’ acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements.

(iii) Shares issued by money market funds.

(iv) Shares issued by open-end funds other than reportable funds.

(v) Shares issued by unit investment trusts that are invested exclusively in 1 or more open-end funds, none of which are reportable funds.
(m) The record may also contain a statement declaring that the reporting or recording of any transaction is not as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(n) A transaction must be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(o) A record is not required for either transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; or for transactions in securities that are direct obligations of the United States.

(p) An investment adviser shall not be deemed to have violated the provisions of this subdivision because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(q) Notwithstanding the provisions of subdivision (l) of this subrule, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any access person of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership. The record must state all of the following:

(i) The title and amount of the security involved.

(ii) The date and nature of the transaction, for example purchase, sale, or other acquisition or disposition.

(iii) The price at which it was effected.

(iv) The name of the broker-dealer or bank with or through whom the transaction was effected.

(v) The record may also contain a statement declaring that the reporting or recording of any transaction is not an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security.

(vi) A transaction must be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(vii) A record is not required for either of the following:

A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control.

B) Transactions in securities that are direct obligations of the United States.

(viii) An investment adviser is deemed to be “primarily engaged in a business or businesses other than advising investment advisory clients” if, for each of its most recent 3 fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50% of total sales and revenues, and more than 50% of income or loss before income taxes and extraordinary items, from other business or businesses that did not primarily involve the giving of investment advice.

(ix) An investment adviser is not deemed to have violated the provisions of this subdivision because of the failure to record securities transactions of an advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(r) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser pursuant to the provisions of R 451.4.19; summary of material changes that is required by part 2 of Form ADV but is not contained in the written statement; and a record of the dates that each written statement, including an amendment or
revision to the written statement, and a summary of material changes was given, or offered to be
given, to any client or prospective client who subsequently becomes a client.

(s) All accounts, books, internal working papers, and any other records or documents that are
necessary to form the basis for or demonstrate the calculation of the performance or rate of
return of all managed accounts or securities recommendations in any notice, circular,
advertisement, newspaper article, investment letter, bulletin, or other communication that the
investment adviser circulates or distributes to 2 or more persons, other than persons connected
with the investment adviser. With respect to the performance of managed accounts only, the
retention of all account statements, reflecting all debits, credits, and other transactions in a client's
account for the period of the statement, and all worksheets necessary to demonstrate the
calculation of the performance or rate of return of all managed accounts is deemed to satisfy the
requirements of this paragraph.

(t) A file containing a copy of all written communications received or sent regarding any
litigation involving the investment adviser or an investment adviser’s representative or employee
and regarding any customer or client complaint.

(u) Written information about each investment advisory client that is the basis for making any
recommendation or providing any investment advice to such client.

(v) Written procedures regarding the supervision of employees and investment adviser
representatives that are reasonably designed to achieve compliance with the act and rules
promulgated under the act, and federal laws and rules.

(w) A copy of each document, other than any notices of general dissemination, that was filed with
or received from any state or federal agency or self-regulatory organization and that pertains to
the registrant or its investment adviser representatives which file should contain, but is not limited
to, all applications, amendments, renewal filings, and correspondence.

(x) A record with original signatures of the investment adviser’s appropriate signatory and the
investment adviser representative, of each initial Form U4 and each amendment to the disclosure
reporting pages.

(y) If an investment adviser inadvertently holds or obtains a client’s securities or funds and
returns them within 3 business days, the investment adviser shall keep a copy of each such
financial instrument and a ledger or other listing of all securities or funds received, including all
of the following information:

(i) Issuer, payor, or maker, as may be applicable.
(ii) Type of security and series.
(iii) Date of issue.
(iv) For debt instruments, the denomination, interest rate, and maturity date.
(v) Certificate number, including alphabetical prefix or suffix.
(vi) Name in which registered.
(vii) Date given to the investment adviser.
(viii) Date sent to client or sender.
(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender.
(x) Mail confirmation or courier tracking number, if applicable, or confirmation by client or
sender of the fund’s or security’s return.

(z) If an investment adviser obtains possession of securities that are acquired from the issuer in a
transaction or chain of transactions not involving any public offering that meet the exception from
custody under R 451.4.13, the investment adviser shall keep both of the following records:
(i) A record showing the issuer or current transfer agent’s name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities.

(ii) A copy of any legend, shareholder agreement or other agreement providing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(aa) An investment adviser that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain all of the following:

(i) Copies of all policies and procedures required by R 451.4.20.

(ii) A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser’s behalf, a copy of a proxy statement, provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request, or may rely on obtaining a copy of a proxy statement from the EDGAR system.

(iii) A record of each vote cast by the investment adviser on behalf of the client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser’s behalf, a record of the vote cast, provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request.

(iv) A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.

(v) A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any written or oral client request for information on how the adviser voted proxies on behalf of the requesting client.

(3) If an investment adviser has custody, the records required to be made and kept under subrule (2) of this rule must include all of the following:

(a) A copy of all documents executed by a client, including a limited power of attorney, under which the investment adviser is authorized or permitted to withdraw a client’s funds or securities maintained with a custodian upon the investment adviser’s instruction to the custodian.

(b) A journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts.

(c) A separate ledger account for a client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(d) Copies of confirmations of all transactions effected by or for the account of a client.

(e) A record for each security in which a client has a position. This record must show at a minimum the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(f) A copy of the client’s monthly or quarterly account statements, as may be applicable, as generated and delivered by the qualified custodian. If the investment adviser also generates a statement that is delivered to the client, the investment adviser shall also maintain copies of such statements along with the date such statements were sent to the client.

(g) If applicable to the investment adviser’s situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(h) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
(i) If applicable, evidence of the client’s designation of an independent representative.

(4) If an investment adviser has custody because it advises a pooled investment vehicle, the investment adviser shall also keep in addition to any other applicable record retention requirements, the following records:

(a) True, accurate, and current account statements.

(b) Where the investment adviser complies with the exception found in 17 C.F.R. §275.206(4)-2(b)(4), the records required to be made and kept must include all of the following:

(i) The date or dates of the audit.

(ii) A copy of the audited financial statements.

(iii) Evidence of the mailing of the audited financial statements to all limited partners, members, or other beneficial owners within 120 days of the end of its fiscal year.

(5) An investment adviser subject to subrule (2) of this rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate, and current both of the following:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount, and price of each purchase and sale.

(b) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

(6) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(7) Every investment adviser subject to subrule (2) of this rule shall preserve all of the following records in the following manner:

(a) All books and records required to be made under the provisions of subrules (2) to (3)(a) of this rule, except for books and records required to be made under the provisions of subrules (2)(k) and (s) of this rule, must be maintained and preserved in an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 years in the principal office of the investment adviser.

(b) Partnership agreements, limited liability company articles of organization, operating agreements, articles of incorporation, charters, and similar business formation documents, any amendments to such documents, minute books, and stock ledgers of the investment adviser and of any predecessor, must be maintained in the principal office of the investment adviser and preserved until at least 3 years after termination of the enterprise.

(c) Books and records required to be made under the provisions of subrule (1)(s) and (2)(k) of this rule, must be maintained and preserved in an easily accessible place for a period of not less than 5 years, the first 2 years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(d) Books and records required to be made under the provisions of subrule (2)(t) to (y) of this rule, must be maintained and preserved in an easily accessible place for a period of not less than 5 years from the end of the fiscal year during which the last entry was made on such record, the first 2 years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.
(e) Notwithstanding other record preservation requirements of this rule, all of the following records or copies must be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subrules (2)(c), (g) to (j), (r), (t) to (v), (3) and (4) of this rule.

(ii) Records or copies required under the provision of subrule (2)(k) and (s) of this rule which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

(8) An investment adviser subject to subrule (2) of this rule, that ceases to conduct or discontinues business as an investment adviser shall arrange for and be responsible for the retention of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing prior to ceasing to conduct or discontinuing business of the exact address where the books and records are maintained.

(9) Pursuant to subrule (6) of this rule, the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on any of the following:

(a) Paper or hard copy form, as those records are kept in their original form.

(b) Micrographic media, including microfilm, microfiche, or any similar medium.

(c) Electronic storage media, including any digital storage medium or system that meets the terms of this rule.

(10) Pursuant to subrule (6) of this rule, the investment adviser shall do both of the following:

(a) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.

(b) Provide promptly any of the following that the administrator, by its examiners or other representatives, may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored.

(ii) A legible, true, and complete printout of the record.

(iii) Means to access, view, and print the records.

(11) Pursuant to subrule (6) of this rule, in the case of records created or maintained on electronic storage media, the investment adviser shall establish and maintain procedures to do all of the following:

(a) Maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction.

(b) Limit access to the records to properly authorized personnel and the administrator, including its examiners and other representatives.

(c) Reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(d) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this rule.

(12) A book or other record made, kept, maintained, and preserved in compliance with rules 17a-3 and 17a-4 under the securities exchange act of 1934, 17 C.F.R. §240.170a-3 and 17 C.F.R. §240.170a-4 which is substantially the same as the book or other record required to be made, kept,
maintained, and preserved under this rule, must be made, kept, maintained, and preserved in compliance with this rule.

(13) An investment adviser registered, or required to be registered, in this state and that has its principal place of business in a state other than this state is exempt from the requirements of this rule, provided the investment adviser is registered or licensed in such state and is in compliance with such state's recordkeeping requirements.

R 451.4.25  Prohibited practices of investment advisers and investment adviser representatives.

Rule 4.25.  (1) For purposes of subrule (2)(l) of this rule, the following definitions apply:
(a) “Publicly distributed written materials” means written materials that are distributed to 35 or more persons who pay for those materials.
(b) “Publicly made oral statements” means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(2) A person who is an investment adviser or an investment adviser representative is a fiduciary and has a duty to act primarily for the benefit of its clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or an investment adviser representative and its clients and the circumstances of each case, an investment adviser or an investment adviser representative shall not engage in fraudulent, deceptive, or manipulative conduct, including but not limited to, the following:
(a) Recommending to a client to whom investment adviser services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.
(b) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority relates solely to the price at which, or the time when, an order involving a definite amount of a specified security must be executed, or both.
(c) Inducing trading in a client’s account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.
(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.
(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.
(g) Loaning money or securities to a client unless the investment adviser is a broker-dealer, bank, or other financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.
(h) Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, or any employee, or person affiliated with the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.
(i) Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or investment adviser representative, or any of its employees, or affiliated persons that could reasonably be expected to impair the rendering of unbiased and objective advice, including but not limited to, the following:

(i) Compensation arrangements connected with investment adviser services to clients that are in addition to compensation from such clients for such services.

(ii) Charging a client an investment adviser fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice is received by the investment adviser or investment adviser representative or its employees, or affiliated persons.

(l) While acting as principal for an advisory account of the investment adviser or investment adviser representative, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction. The prohibitions of this subdivision do not apply to either of the following:

(i) A transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(ii) A transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely by any of the following methods:

(A) By means of publicly distributed written materials or publicly made oral statements.

(B) By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts.

(C) Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security.

(D) Any combination of the services in this subparagraph.

(m) Guaranteeing a client that a specific result shall be achieved with advice rendered.

(n) Publishing, circulating, or distributing any advertisement that directly or indirectly does not comply with rule 206(4)-1 under the investment advisers act of 1940.

(o) Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(p) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of sections 204A of the investment advisers act of 1940, 17 C.F.R. §275.204A-1.

(q) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of R 451.4.13.
(r) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the act or any rule or regulation thereunder.

(3) Publicly distributed written materials or publicly made oral statements must disclose that, if the purchaser of the advisory communication uses the investment adviser’s services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as a principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement does not relieve it of any other disclosure obligations under the act.

(4) The prohibition on agency cross transactions does not apply if all of the following conditions are met:

(a) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client.

(b) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as a broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions.

(c) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation must include all of the following:

(i) A statement of the nature of the transaction.

(ii) The date the transaction took place.

(iii) An offer to furnish, upon request, the time when the transaction took place.

(iv) The source and amount of any other remuneration the investment adviser received or shall receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or shall receive any other remuneration and that the investment adviser shall furnish the source and amount of such remuneration to the client upon the client’s written request.

(5) At least annually, with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule to conduct agency cross transactions shall send each client a written disclosure statement identifying both of the following:

(a) The total number of agency cross-transactions during the period for the client since the date of the last such statement or summary.

(b) The total amount of all commissions or other remuneration the investment adviser received or shall receive in connection with agency cross transactions for the client during the period.

(6) Each written disclosure and confirmation must include a conspicuous statement that the client may revoke the written consent required by this rule at any time by providing written notice to the investment adviser.

(7) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(8) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling a duty with respect to the best price and execution for the particular transaction for the client, nor does it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or rules.
(9) For the purposes of this rule, the term investment adviser representative must exclude a supervised person of a federal covered investment adviser as that term is defined in section 202(a)(25) of the investment advisers act of 1940, 17 C.F.R. §275.203A-3.

R 451.4.26 Investment adviser contracts.

Rule 4.26. (1) For purposes of this rule, the following definitions apply:

(a) “Assignment,” as used in subrule (3)(b) of this rule, includes, but is not limited to, a transaction or event that results in a change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50% of any class of voting securities of, the investment adviser as compared to the individuals or entities that had such power as of the date when the contract was first entered into, extended, or renewed.

(b) “Private investment company” means a company that is defined as an investment company under section 3(a) of the investment company act of 1940, 15 U.S.C. §80a-3(a), but for the exception provided from that definition by section 3(c)(1) of the investment company act of 1940, 15 U.S.C. §80A-3.

(2) This rule applies to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the national securities markets improvement act of 1996, 15 U.S.C. §78a et seq.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

(a) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser or any of its investment adviser representatives.

(b) That no direct or indirect assignment or transfer of the contract may be made by the investment adviser without the consent of the client or other party to the contract. Unless prohibited by contract, a client’s consent may be implied with at least 30 days’ prior written notice of an anticipated change of control, followed by written notice of the consummation of the change of control, provided that the client is both notified and permitted to discontinue services and terminate the contract within 30 days without cost or penalty.

(c) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

(d) That the investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

(4) It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to do any of the following:

(a) Include in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or the investment advisers act of 1940, 15 U.S.C. §80b-1 et seq., or any other practice contrary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. §80b-15.

(b) Enter into, extend, or renew any advisory contract contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. §80b-5. This provision applies to all advisers and investment adviser representatives registered or required to be registered under the act.
notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. §80b-3.

(5) Notwithstanding subrule (3)(c) of this rule, an investment adviser may enter into, extend, or renew an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if either of the following occur:

(a) The investment adviser is not registered and is not required to be registered pursuant to section 403 of the act, MCL 451.2403; or

(b) All of the following conditions are met:

(i) 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.

(ii) To the extent not otherwise disclosed on part 2 of Form ADV, the investment adviser shall disclose in writing to the client all material information concerning the proposed advisory arrangement, including all of the following:

(A) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee.

(B) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client’s account.

(C) The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee.

(D) The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate.

(E) Where the investment adviser’s compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of rule 2a-4(a)(1) under the investment company act of 1940, 17 C.F.R. §270.2a-4(a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(6) In the case of a private investment company, an investment company registered under the investment company act of 1940, 15 U.S.C. §§ 80a-1, et seq. or a business development company, as defined in section 202(a)(22) of the investment advisers act of 1940, 15 U.S.C. §80b-2(a)(22), each equity owner of any such company, except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation, shall be considered a client for purposes of subrules (3)(c) and (5) of this rule.

R 451.4.27 Dishonest or unethical business practices of broker-dealers and agents.

Rule 4.27. (1) “Dishonest or unethical practices” for purposes of section 412(4)(m) of the act, MCL 451.2412(4)(m), includes the conduct prohibited in this rule. The conduct specified in subrules (2) and (3) of this rule is not all inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension, or revocation of registration.

(2) Prohibited conduct of broker-dealers registered, or required to be registered, under the act includes, but is not limited to, the following:

(a) Engaging in unreasonable and unjustifiable delaying or failing to execute orders, liquidate customer’s account or in the delivery of securities purchased by any of its customers or in the
payment upon request, free credit balances reflecting completed transactions of any of its customers.

(b) Inducing trading in a customer’s account that is excessive in size or frequency in view of the financial resources and character of the account.

(c) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer’s investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(d) Executing a transaction on behalf of a customer without authorization to do so.

(e) Exercising any discretionary power in effecting a transaction for a customer’s account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time, price, or both for executing of orders.

(f) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(g) Failing to segregate customer’s free securities or securities held in safekeeping.

(h) Hypothecating a customer’s securities without having a lien on it, unless the broker-dealer secures from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. §240.8c-1, or SEC rule 15c2-1, 17 C.F.R. §240.15c2-1.

(i) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(j) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus or making oral or written statements contrary to or inconsistent with the disclosures contained in the prospectus.

(k) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(l) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(m) Representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe a market for such security exists other than that made, created, or controlled by such broker-dealer, or by any such person from whom he or she is acting or with whom he or she is associated in such distribution, or any person controlled by, controlling, or under common control with such broker-dealer.

(n) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to the following:

(i) Effecting any transaction in a security which involves no change in the beneficial ownership of the security.

(ii) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered for the purpose of creating a false or misleading appearance of active trading the security or a false or misleading
appearance with respect to the market for the security; provided; however, nothing in this subdivision prohibits a broker-dealer from entering a bona fide agency cross transaction for its customers.

(iii) Effecting, alone or with 1 or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(iv) Guaranteeing a customer against loss in any securities account of such customer or in any securities transaction effected by the broker-dealer with or for such customer.

(v) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale or such security; or that purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security.

(vi) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading including, but not limited to, distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, picture, graphs or other medium designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure.

(vii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security that is offered or sold to the customer. The existence of any control or affiliation must be disclosed to the customer in writing prior to completion of the transaction.

(viii) Failing to make a public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including both of the following:

(A) Parking or withholding securities.

(B) Transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities must be returned to the broker-dealer, or the broker-dealer’s nominee.

(ix) Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(x) Marking any order tickets or confirmation as unsolicited when the transaction is solicited.

(xi) Failing to comply with any applicable provision of the FINRA conduct rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

(xii) In connection with the solicitation of a sale or purchase of an “Over the Counter” non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934, 15 U.S.C. §78m, when requested to do so by a customer.

(3) Prohibited conduct of agents registered or required to be registered under the act include any of the following:

(a) 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.
(b) Effecting securities transactions not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(c) Establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited.

(d) Sharing, directly or indirectly, in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer that the agent represents.

(e) Dividing or otherwise splitting the agent’s commissions, profits, or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(f) Engaging in conduct specified in subrule (2)(a), (b), (c), (d), (e), (f), (i), (j) and (n)(iv), (v), (vi), (x), (xi), and (xii).

R 451.4.28 Use of senior-specific certifications and professional designations.

Rule 4.28. (1) The use of a senior-specific certification or designation by a person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead a person is a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of the act. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation.

(b) Use of a nonexistent or self-conferred certification or professional designation.

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have.

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following:

(i) Is primarily engaged in the business of instruction in sales or marketing, or both.

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.

(iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(2) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subrule (1)(d) of this rule when the organization has been accredited by any of the following:

(a) The American national standards institute.

(b) The national commission for certifying agencies.

(c) An organization that is on the United States Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes” and the designation or credential issued does not primarily apply to sales or marketing, or both.
(3) In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered must include both of the following:

   (a) Use of 1 or more words, such as senior, retirement, elder, or similar words, combined with 1 or more words, such as certified, registered, chartered, adviser, specialist, consultant, planner, or similar words in the name of the certification or professional designation.

   (b) The manner in which those words are combined.

(4) For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title does any of the following:

   (a) Indicates seniority or standing within the organization.

   (b) Specifies an individual’s area of specialization within the organization.

   (c) For purposes of this subrule, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the investment company act of 1940, 15 U.S.C. §80a-3.

R 451.4.29 Solicitor exemption from investment adviser representative registration.

Rule 4.29. (1) For purposes of this rule, the following definitions apply:

   (a) “Solicitor” means any individual, person, or entity who directly or indirectly receives a cash fee or any other economic benefit for soliciting, referring, offering, or otherwise negotiating for the sale or selling of investment advisory services to clients on behalf of an investment adviser.

   (b) “Client” means any existing or prospective client of an investment adviser.

(2) It is unlawful for any investment adviser, registered or required to be registered, to pay a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities by a solicitor unless all of the following are true:

   (a) The solicitor is registered as an investment adviser representative or is exempt from registration as provided for in subrule (5) of this rule.

   (b) The solicitor to whom remuneration is paid for such referral is not a person who is subject to either of the following:

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

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

   (c) The remuneration is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by means of any of the following:

      (i) Written materials or oral statements that do not purport to meet the objectives or needs of the specific client.

      (ii) Statistical information containing no expressions of opinions as to the merits of particular securities or investment advisers.

      (iii) Any combination of the services identified in subrule (2)(c)(i) and (ii) of this rule.

   (d) The remuneration is paid pursuant to a written agreement to which the investment adviser is a party and all of the following are true:

      (i) The written agreement meets all of the following:

         (A) Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the remuneration to be received by the solicitor for such activities.

         (B) Contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act.
(C) Requires that the solicitor, at the time of any solicitation or referral activities for which remuneration is paid by the investment adviser, provides the client with a current copy of the investment adviser’s disclosure document required by R 451.4.19 and the separate disclosure required by subrule (3) of this rule.

(ii) The investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgement by the client that the solicitor has complied with subrule (2)(d)(i) of this rule.

(iii) The investment adviser makes a bona fide effort to confirm and has a reasonable basis for believing that the solicitor has complied with the agreement required by this subrule.

(iv) Subdivision (d)(i) to (iii) of this subrule do not apply if the solicitor is a partner, officer, director, or employee of the investment adviser or an entity under the common control of the investment adviser, provided the solicitor’s association with the investment adviser is disclosed to the client at the time of the solicitation or referral.

(3) The separate written disclosure document required to be furnished by the solicitor pursuant to subrule (2)(d)(i) of this rule must contain all of the following:

(a) The name of the solicitor.
(b) The name of the investment adviser.
(c) A description of the relationship, including any affiliation, between the solicitor and the investment adviser.
(d) A statement that the solicitor will be compensated by the investment adviser for the solicitation or referral services.
(e) The terms of the compensation arrangement, including a description of the remuneration paid or to be paid to the solicitor.
(f) The amount of compensation the client will pay, if any, in addition to the advisory fees, and whether the remuneration paid to the solicitor will be added to the advisory fee paid or to be paid by the client.
(e) A description of the fee paid by the client compared to the amount charged to other clients of the investment adviser who are not subject to the solicitor compensation arrangement.

(4) This rule does not relieve any person of any fiduciary or other obligation to which such person may be subject under the act or other applicable law.

(5) A solicitor is not required to register as an investment adviser or an investment adviser representative if the solicitor is in compliance with subrules (2) and (3) of this rule, and the solicitor either:

(a) Provides solicitation activities that are impersonal in nature as set forth in subrule (2)(c) of this rule to no more than 10 clients during a 12-month period.
(b) Obtains an order from the administrator waiving registration as an investment adviser or as an investment adviser representative.

PART 6. ADMINISTRATION AND JUDICIAL REVIEW

R 451.6.1 Interpretative opinions.

Rule 6.1. (1) An interpretative opinion may be issued pursuant to section 605(4) of the act, MCL 451.2605(4); however, the administrator may refuse to issue an interpretative opinion.

(2) An interpretative opinion issued by the administrator is an informal position and is not a declaratory ruling or a formal order. An interpretative opinion does not have quasi-judicial force or effect and is not subject to judicial review.
(3) A person who is interested in receiving an interpretative opinion shall submit an interpretative opinion request that must comply with all of the following:
   (a) An original and 1 copy of each request must be submitted to the administrator. Two copies of all relevant documents, including offering materials, contracts, and agreements, must be submitted as attachments to the request.
   (b) Immediately below the inside address of the letter of request the specific section or sections of the act must be stated. If the request involves more than 1 section or subsection of a statute each section must be specifically indicated and explained to permit the administrator to reasonably ascertain the nature of the request.
   (c) The fact situation underlying the request must be stated completely and accurately. A concise statement of the issues presented must be included in the request.
   (d) The request must contain an analysis by the requestor's legal counsel of the issues presented and legal counsel's conclusion.
   (e) As an alternative to subdivision (d) of this subrule, if private legal counsel has not stated an opinion, the request must contain the requestor's analysis of the issues presented and the requestor's conclusion. The requestor shall state why a problem exists, the requestor's opinion on the matter, and the basis for the requestor's opinion.
   (4) A request must state the names of all persons involved in the request and must not relate to hypothetical fact situations. A request must be confined to the particular fact situation at hand and shall not attempt to include every possible type of situation which may arise in the future.
   (5) Failure to follow the procedure and requirements of this rule may result in the return of the request for compliance or in a denial of the request.

R 451.6.2 Copy and certification fees.

Rule 6.2.

(1) The administrator shall charge the following fees for furnishing records:
   (a) Minimum fee for uncertified copies, up to 6 pages $10.35
   (b) Copy fee per page $ 1.75
   (c) Certification fee $17.25
   (d) Certificate of fact or other detailed certificate $34.50

(2) The administrator may adjust copy and certification fees specified in subrule (1) of this rule every 2 years by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index in the preceding 2-year period and rounded to the nearest dollar. As used in this rule, "Detroit consumer price index" means the most comprehensive index of consumer prices available for the Detroit area by the Bureau of Labor Statistics of the United States Department of Labor.
NOTICE OF PUBLIC HEARING

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.


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.
These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, 45a (6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.


R 460.20201, R 460.20304, R 460.20306, R 460.20308, R 460.20310, R 460.20312, R 460.20313, R 460.20314, R 460.20316, R 460.20319, R 460.20326, R 460.20331, R 460.20332, R 460.20407, R 460.20409, R 460.20501, R 460.20502, R 460.20503, R 460.20504, R 460.20601, R 460.20602, R 460.20603, R 460.20604, R 460.20605, and R 460.20606 of the Michigan Administrative Code are amended, R 460.20317 is rescinded, and R 460.20335 and R 460.20338 are added as follows:

PART 2. SAFETY STANDARDS AND TESTING REQUIREMENTS

R 460.20201 Pipeline safety standards; adoption by reference.

Rule 201(1) Except for 49 C.F.R. §192.1, an operator shall ensure that a gas pipeline is in compliance with all of the minimum safety standards contained in 49 C.F.R. part 192 entitled “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” which are adopted by reference in R 460.20606.

(2) An operator shall ensure that a pipeline which is subject to the standards specified in subrule (1) of this rule is also in compliance with all of the additional safety standards contained in R 460.20301 to R 460.20334.

(3) In addition to the requirements imposed by subrules (1) and (2) of this rule, an operator shall ensure that a pipeline which transports sour gas is also in compliance with the additional safety standards contained in R 460.20401 to R 460.20431.

PART 3. ADDITIONAL MINIMUM SAFETY STANDARDS

R 460.20304 Welding procedures.

Rule 304. In addition to the requirements contained in 49 C.F.R. §192.225, which is adopted by reference in R 460.20606, an operator shall ensure that a welding procedure meets all of the following requirements:
(a) Is qualified under either section IX of the ASME boiler and pressure vessel code, which is adopted by reference in R 460.20604, or section 5 of API standard 1104, which is adopted by reference in R 460.20603, whichever is appropriate to the function of the weld.

(b) Is qualified under appendix B of API standard 1104, which is adopted by reference in R 460.20603, for pipelines operating at greater than 60 psig.

(c) A copy of the welding procedure being followed is on the jobsite when welding is performed.

R 460.20306 Nondestructive testing.

Rule 306. (1) In addition to the requirements in 49 C.F.R. §192.243, which is adopted by reference in R 460.20606, if nondestructive testing is required under 49 C.F.R. §192.243(d), which is adopted by reference in R 460.20606, then an operator shall also ensure that 100% of each day’s field butt welds are nondestructively tested over their entire circumferences in the following locations:

(a) Regulating stations.
(b) Measuring stations.
(c) Compressor stations.

(2) If it is not practical to test 100% of each day's field butt welds as required by subrule (1) of this rule, then an operator shall nondestructively test a random sample of not less than at least 90% of each day's field butt welds selected at random made at the locations specified in subrule (1) of this rule.

R 460.20308 Customer meters and regulators; location.

Rule 308. The requirements contained in 49 C.F.R. §192.353, which is adopted by reference in R 460.20606, are superseded by all of the following provisions:

(a) An operator shall ensure that a customer's meter and regulator installation is located outside the building, or shall include an outside above grade riser, except for unless any of the following apply:

(i) A distribution system that operates at 10 psig or less if an outside meter set assembly is not practical.

(ii) A commercial building, industrial building, or apartment building if an outside meter set assembly is not practical.

(iii) Row-type houses or houses where the proximity of adjoining buildings makes outside meter set assemblies impractical.

(b) A service line excluded under subrule subdivision (1a) of this rule shall include an outside above grade riser, if practical.

(c) If an outside meter set assembly or an outside above grade riser is installed, then the above grade piping shall be designed to prevent an external force that is applied to the service line from being transferred to and damaging the inside piping.

(d) An operator shall install a meter and service regulator, whether inside or outside of a building, in a readily accessible location and shall protect the meter and regulator from corrosion and other damage. An operator shall not install a meter in a bedroom, closet, bathroom, under a combustible stairway, or in an unventilated or inaccessible place.

(e) An operator shall ensure that a service regulator installed in inside a building is located as near as practical to the point of service line entrance.

(f) An operator shall ensure that a meter installed in inside a building is located in a ventilated place not less than 3 feet from a source of ignition or heat that might damage the meter.

(g) An operator shall ensure that the upstream regulator in a series is located outside of the a building unless it is located in a separate metering or regulating building.

R 460.20310 Galvanized or aluminum pipe prohibited for direct burial or submerged use.
Rule 310. (1) In addition to the requirements contained in 49 C.F.R.§192.453, an operator shall not utilize galvanized pipe or aluminum pipe for direct burial or submerged use.

(2) The requirements contained in 49 C.F.R. §192.455, which is adopted by reference in R 460.20606, are superseded by the requirement that an operator shall not utilize aluminum pipe for direct burial or submerged use.

R 460.20312 Leak test test requirements; service lines.

Rule 312. In addition to the requirements contained in 49 C.F.R.§192.511(b) and (c), which is adopted by reference in R 460.20606, an operator shall test all service lines, other than plastic service lines, at the leak test pressures prescribed in 49 C.F.R.§192.511, which is adopted by reference in R 460.20606, to a minimum pressure of 90 psig, but not less than 150% of the maximum allowable operating pressure, for not less than 10 minutes. Each segment of a steel service line stressed to 20% or more of specified minimum yield strength must still be tested in accordance with 49 C.F.R. § 192.507, which is adopted by reference in R 460.20606.

R 460.20313 Strength test test requirements; plastic pipelines.

Rule 313. In addition to the requirements contained in 49 C.F.R.§192.513, which is adopted by reference in R 460.20606, an operator shall maintain the test pressure at or above the test pressure requirement for the pipeline being tested for not less than 1 hour. However, an operator shall test a relatively short segment for not less than 30 minutes, except as provided in R 460.20311. test plastic pipelines according to all the following:

(a) Except for plastic service lines, the test must be maintained at or above the pressure requirement for not less than one hour. However, an operator may test a relatively short segment for not less than 30 minutes.

(b) All plastic service lines must be pressure tested for not less than 10 minutes.

R 460.20314 Test records.

Rule 314. In addition to the requirements contained in 49 C.F.R.§192.517(a), which is adopted by reference in R 460.20606, an operator shall retain the following test record information:

(a) The proposed maximum allowable operating pressure of the pipeline.

(b) Except for distribution facilities, the existing class location existing at the time of the test of the area in which the pipeline is installed.

(c) The date the test was performed.

R 460.20316 Leakage survey and repair requirement before uprating required in addition to requirements in 49 C.F.R. § 192.555(b)(2).

Rule 316. (1) In addition to the requirements contained in 49 C.F.R.§192.555(b) which is adopted by reference in R 460.20606, an operator shall make conduct a leakage survey and repair all leaks found before the operator begins uprating any segment of a steel pipeline to an operating pressure that will produce a hoop stress of 30% or more of the specified minimum yield strength for the pipeline.

(2) The provisions contained in 49 C.F.R. §192.557(b)(2), which is adopted by reference in R 460.20606, are superseded by the requirement that before an operator begins uprating any segment of a steel pipeline to an operating pressure that will produce a hoop stress of less than
30% of the specified minimum yield strength, a leakage survey must be conducted and all leaks found shall be repaired.


Rule 317. The provisions contained in 49 C.F.R. §192.557(b)(2), which is adopted by reference in R 460.20606, are superseded by the requirement in R 460.20316 that a leakage survey be conducted and that all leaks found be repaired.

R 460.20319 Filing of operation and maintenance manual with commission staff required.

Rule 319. In addition to the requirements contained in 49 C.F.R.§192.605, which is adopted by reference in R 460.20606, an operator shall file the operation and maintenance manual required by 49 C.F.R. §192.605 with the commission staff in paper or electronic form. The operation and maintenance manual shall include procedures that address both the federal rules and the rules contained in the Michigan gas safety standards. An operator shall file a change in the operation and maintenance manual with the commission staff within 90 calendar days after the change is made. An operator shall identify the specific changes.

R 460.20326 Transmission lines; permanent field repair of leaks.

Rule 326. (1) In accordance with the requirements contained in 49 C.F.R. §192.717(b)(3), which is adopted by reference in R 460.20606, are superseded by the requirement that an operator shall not repair a leak that is due to a corrosion pit or that occurs in a transmission line that is joined by mechanical couplings and that operates at less than 40% of the specified minimum yield strength of the pipeline by use of a welded patch. through any of the following procedures:

(a) The methodology set forth in 49 C.F.R. § 192.717(a).
(b) The methodology set forth in 49 C.F.R. § 192.717(b)(1).
(c) The methodology set forth in 49 C.F.R. § 192.717(b)(2).

(2) The requirements of 49 C.F.R. § 192.711(c) are superseded by the requirement that an operator shall not repair a leak described in subrule (1) of this rule through the use of a fillet welded patch.

R 460.20331 Caulked bell and spigot joints.

Rule 331. In addition to the requirements contained in 49 C.F.R.§192.753(a), which is adopted by reference in R 460.20606, are superseded by the following:

(a) An operator shall seal a cast-iron, caulked bell and spigot joint subject to pressures of more than 10 psig with either of the following:

(ai) A mechanical leak clamp.
(bii) A material or device that has all of the following characteristics:

(iA) Does not reduce the flexibility of the joint.
(iiB) Permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces.
(iiiC) Seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of 49 C.F.R.§192.53 and 49 C.F.R. §192.143, which are adopted by reference in R 460.20606.

R 460.20332 Discontinuation of inactive service lines.
Rule 332. (1) In addition to complying with the requirements contained in 49 C.F.R. § 192.727, which is adopted by reference in R 460.20606, an operator shall, within 9 months after a service line becomes inactive, of October 15, 2014, shall discontinue gas service for any inactive service line with components located inside a structure pursuant to the methods specified in either of the following regulations:
   (i) In accordance with 49 C.F.R. § 192.727(d)(1) and (d)(2).
   (ii) In accordance with 49 C.F.R. § 192.727(d)(3) by physically disconnecting the service line outside the building.
(2) As used in subrule (1) of this rule, “inactive service line” means a service line where there has been no customer of record for a continuous 24-month period and gas service to the premises has not been discontinued.

R 460.20335 Master meter systems.
Rule 335. (1) The definition of “master meter system” contained in 49 C.F.R. §191.3, which is adopted by reference in R 460.20606, is superseded by the following:
   (a) As used in these rules, “master meter system” means a distribution pipeline system that receives metered gas from an outside source and that is used for distributing gas within a definable area, including but not limited to, a mobile home park, vacation rental housing complex, apartment complex, college campus, or prison. The master meter system supplies the ultimate consumer of the gas whether the gas is purchased or supplied at no cost.
   (b) As used in this rule, “distribution pipeline system” means a system of main and service lines including all parts of those physical facilities through which gas moves in transportation, including but not limited to, pipe, valves, and other appurtenance attached to pipe, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. The distribution pipeline system ends at the outlet of the sub-meter, the outlet of the service regulator, or the building wall, whichever is furthest downstream.
   (c) As used in this rule, “ultimate consumer” means a third-party end-user occupying an area containing distribution piping from the distribution pipeline system who routinely consumes gas from the system.
   (d) As used in this rule, “sub-meter” means 1 of 2 or more meters for measuring different sections of gas supply that is located downstream from a master meter.
(2) An operator shall not supply gas to any new master meter system established on or after January 1, 2019 unless the commission has provided a waiver.
(3) The design, construction, inspection, and testing of additions to existing master meter systems are the responsibility of the operator with the direct costs paid by the owner, unless the commission has provided a waiver.
(4) Unless the commission has provided a waiver, for master meter systems that were established before January 1, 2019, an operator shall make efforts to negotiate an operations and maintenance agreement with the master meter system owner that ensures compliance with all applicable requirements of the gas safety standards for that system. The direct cost to the operator for services performed under this agreement, including an appropriate administrative overhead, may be charged to the owner of the master meter system. The monthly charge per service line must not exceed the residential meter charge or customer charge included in the operator’s tariffs on January 1, 2018. An operator shall apply for any necessary waivers under this subrule by January 1, 2020.
(5) Beginning March 15, 2019, all operators shall provide an annual report to the commission describing the location, type of facility served, number of services at each known master meter
system in service at the end of the previous calendar year, and the names and contact information for all known master meter system owners with whom the operator is unable to execute an operations and maintenance contract.

R 460.20338 Farm taps.
   Rule 338. (1) As used in this rule, “farm tap” means a distribution line directly connected to a production, gathering, or transmission pipeline not operated as part of a distribution system, or to a natural gas producing well, compressor station, or gas processing facility that delivers gas to a landowner or occupant.
   (2) Effective January 1, 2019, an operator shall not construct any new farm taps unless all of the following apply:
       (a) The operator is a public utility as defined in section 1 of 1972 PA 299, MCL 460.111.
       (b) The farm tap complies with all of the requirements of the gas safety standards, and
       (c) The gas supplied meets the requirements for gas quality set forth in part 8 of the technical standards for gas service, R 460.2381 and R 460.2382.
   (3) This rule does not apply to domestic wells. As used in this rule, “domestic well” means a well that produces gas and that is owned by the owner of the surface estate on which the well is located and that is used only to provide gas for the owner’s domestic use.
   (4) Beginning March 15, 2019, all operators supplying gas to 1 or more farm taps shall provide an annual report on the status of farm taps connected to the operator’s facilities. The report must include the location of each farm tap connection, safety equipment installed on each connection, and the source of gas supply.

PART 4. SOUR GAS PIPELINES

R 460.20407 Sectionalizing block valves.
   Rule 407. In addition to the requirements in 49 C.F.R. §192.179, which is adopted by reference in R 460.20606, an operator of pipeline facilities used in the transportation of sour gas shall comply with all of the following requirements for any portion of the pipeline that contains more than 10 pounds of H2S per mile, with the weight calculated according to the formula: 

   \[ W = \frac{0.0933 \times P \times V \times M \times H}{T} \]

   \[ W = 9.318 \times 10^{-8} \]  

   where:
   - \( W \) = Weight of H2S in pounds per mile of pipe,
   - \( P \) = Absolute pressure in pounds per square inch,
   - \( V \) = Volume of one mile of pipe in cubic feet,
   - \( M \) = Molecular weight of natural gas in grams per mole,
   - \( H \) = Percentage Quantity of H2S in the gas in parts per million, and
   - \( T \) = Temperature in degrees Rankine;

   (a) Sectionalizing block valves shall must be installed and located so that each point on the pipeline is within 3 miles of a sectionalizing block valve with a block valve located at each end of the pipeline.
   (b) A pipeline shall must incorporate block valve automation so that block valves will automatically close upon the registering of low pressure readings. The system shall must be designed to operate even in the event of a power failure or malfunction of electronic devices and shall must be designed to fail in a closed position.
(c) A pipeline must incorporate a supervisory control and data acquisitions (SCADA) system that complies with all of the following provisions:
   (i) Is monitored by the operator to ensure appropriate response to emergencies.
   (ii) Is programmed to automatically close block valves based on operating data gathered at each metering site and at each automated block valve.
   (iii) Automatically closes the upstream and downstream sectionalizing block valves surrounding any sectionalizing block valve that is in an alarm condition.
   (iv) Allows the operator monitoring the SCADA system to close, but not open, any or all of the block valves and metering points.
   (d) H2S sensors must be located at all sectionalizing block valve sites. The sensors must provide a warning to the SCADA system at H2S levels of 10 ppm and shall close the block valve at H2S levels of 30 ppm.
   (e) Control valves must be installed at appropriate locations at well sites or laterals to automatically shut off the flow of gas into the pipeline in the event of a line break or over pressure conditions.

R 460.20409 Inspection and testing of welds.
Rule 409. In addition to the requirements set forth in 49 C.F.R. §192.241(b), which is adopted by reference in R 460.20606, an operator of pipeline facilities used in the transportation of sour gas shall engage in nondestructive testing of 100% of all girth butt welds. Nondestructive testing of welds shall be performed by any process that clearly indicates all defects in the welds.

PART 5. RECORDS AND REPORTS

R 460.20501 Records.
(1) An operator shall maintain the information generated by any recordkeeping requirement in these rules within the state at the operating headquarters office of each service area and shall make the information available to the commission and its staff for inspection and copying upon request.
(2) An operator shall maintain all of the following additional records:
   (a) Maps and records showing the locations of pipelines and service lines, including lines that have been abandoned but not removed.
   (b) An up-to-date schematic drawing of station piping, which shall be available at each aboveground pressure-regulating station containing buried station components.
   (3) In addition to the requirements contained in 49 C.F.R. §192.603(b), which is adopted by reference in R 460.20606, an operator shall establish and maintain records, make reports, and record such information as may be reasonably required to demonstrate that the operator has acted or is acting in compliance with these rules and 49 C.F.R. Part 192. The operator shall maintain these records and reports for the time periods prescribed in 49 C.F.R. Part 192; for a minimum of 2 inspection cycles, if applicable; or for a minimum of 5 years, whichever is longer.

R 460.20502 Reports Construction filings and reports.
Rule 502. (1) In addition to the requirements contained in 49 C.F.R. § 191.22, which is adopted by reference in R 460.20606, an operator or other person proposing to construct a gas transmission
line pipeline or gas pipeline facility wherein the maximum operating pressure will result in a hoop
stress of 30% or more of specified minimum yield strength, or to construct any gas metering or
regulating facility, gas treatment plant, gas production plant, or gas compressor station connected to, and
forming part of, such transmission line shall, notify the commission staff not less than 60 days before
any starting construction, file all of the following data with the commission begins:

(a) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or
update of a facility, other than a section of line pipe, that costs $1 million or more.
(b) Construction of any of the following gas facilities connected to a transmission pipeline
system:
   (i) Metering station.
   (ii) Regulating station.
   (iii) Treatment plant.
   (iv) Production plant.
   (v) Compressor unit.
   (c) Construction of a gas transmission pipeline wherein the maximum allowable operating
pressure will result in a hoop stress of 30% or more of the specified minimum yield strength, or
construction of 1 or more miles of contiguous new or replacement pipeline, excluding the length
associated with service lines.

(2) As part of the notification required under subrule (1)(a) to (c) of this rule, an operator or
other person proposing to construct a gas pipeline or gas pipeline facility shall file all of the
following before construction begins:
   (a) A facility schematic or map showing the proposed route of the line on a scale not less than 3/8 of
an inch to 1 mile.
   (b) Engineering specifications covering design, construction, materials, and testing and operating
pressures.
   (c) Certification that the facilities will be in compliance with these rules.

(3) As part of the notification required under subrule (1)(d) of this rule, an operator or other
person proposing to construct a gas pipeline shall comply with the requirements in subrule (2)
upon request.

(4) An application for a certificate of public convenience and necessity filed under 1929 PA 9, MCL
483.101 et seq., 1929 PA 69, MCL 460.501 to 460.506, 1923 PA 238, MCL 486.251 to
MCL 486.255, or pursuant to a commission order meets the requirements of subrule (1) and (2)
of this rule.

(5) Except for distribution facilities, Within within 60 days following the completion of
construction and testing of facilities covered by subrules (1), and (2), and (3) of this rule, an operator
shall file a report with the commission containing the information required under 49 C.F.R. §
192.517, adopted by reference in R 460.20606 of these rules, and R 460.20314, giving details of the
test pressures applied and the dates of the tests, the results of the tests, including leaks and failures, and
a route map of the "as-built" facility pipeline.

(6) If notification under subrule (1) of this rule is not possible due to an emergency, an operator
shall notify the commission staff as soon as feasible.

R 460.20503 Reports of incidents; telephonic notice to the commission.

Rule 503. (1) At the earliest practicable moment following discovery, an operator shall give notice to
the commission staff of any of the following situations:
   (a) An incident that is reportable pursuant to 49 C.F.R. §191.5, which is adopted by reference in R
460.20606.
(b) An event resulting in estimated property damage of $10,000.00 or more including loss to the operator and others, or both, but excluding the cost of gas lost. As used in this subdivision, an “event” means on or relating to an operator’s facilities that may or may not involve a release of gas.

(c) An event resulting in the loss of service to more than 100 customers.

(d) An event involving a customer's gas facility that results in a fatality or an explosion causing structural damage.

(e) An event that receives or is likely to receive extensive news coverage or is significant in the judgment of the operator, even though it did not meet the criteria of subdivisions (a), (b), (c), or (d) of this subrule. This subdivision is not subject to the penalty provisions of section 11 of 1969 PA 165, MCL 483.161.

(f) An event resulting in an unintentional release of gas estimated by the operator to be a gas loss of 1 million cubic feet or more or an unintentional activation of an emergency shutdown system of any portion of a compressor station.

(g) An event that causes the pressure of any portion of a distribution system to rise above its maximum allowable operating pressure plus the build-up allowed for operation of pressure limiting or control devices.

(h) An event that receives or is likely to receive extensive news coverage or is significant in the judgment of the operator, even though it did not meet the criteria of subdivision (a), (b), (c), (d), (e) or (f) of this subrule. This subdivision is not subject to the penalty provisions of section 11 of 1969 PA 165, MCL 483.161.

(2) If additional information is received by the operator after the initial report that indicates a different cause, more serious injury, or more serious property damage than was initially reported, then the operator shall make a supplemental telephone report to the commission staff as soon as practicable.

(3) When requested by the commission staff, an operator shall supplement a report made in accordance with subrule (1) of this rule within a reasonable time, with a written report giving full details, such as the cause of the incident or occurrence, the extent of injuries or damage, and the steps taken, if any, to prevent a recurrence of the incident or occurrence.

R 460.20504 Address for written Reports.

Rule 504. (1) An operator shall concurrently submit a written report that is required to be filed with any federal agency by 49 C.F.R. §§191.9, 191.11, 191.13, 191.15, 191.17, 191.23, or 191.25, which are adopted by reference in R 460.20606, to the commission at P.O. Box 30221, Lansing, Michigan 48909-0221 or at MPSC-Operations@michigan.gov.

(2) An operator required to submit an annual report in accordance with 49 C.F.R. §191.11 and 49 C.F.R. §191.17, which are adopted by reference in R 460.20606 of these rules, shall also submit a supplemental report to the commission staff. In the supplemental report, the operator shall subdivide the information in the reports required under 49 C.F.R. §191.11 and 49 C.F.R. §191.17 into specific regions identified by the commission staff. The staff shall identify and communicate these regions to the operator by the end of the calendar year for which the reports are being submitted. For the purpose of this rule, “regions” are defined as geographical, operational, or functional areas of the operator’s system. These supplemental reports are to be submitted no later than the dates required in 49 C.F.R. §191.11 and 49 C.F.R. §191.17 and in a similar format.

PART 6. ADOPTION OF STANDARDS

R 460.20601 Adoption by reference.
Rule 601. (1) The publications listed in R 460.20603 to R 460.20606 are adopted by reference and are a part of these rules, except where they are inconsistent with these rules. Publications identified as published by a specific organization are available from the organization at the addresses specified in R 460.20602. The public service commission also has copies of the publications available for inspection and distribution at cost at its offices located at 6545 Mercantile Way 7109 W. Saginaw Hwy., Lansing, Michigan 48917-1120. The mailing address is Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909-0221.

(2) The numbers in parentheses following the publications adopted by reference indicate the applicable editions.

R 460.20602 Names, addresses, and phone numbers of organizations.

Rule 602. The names, addresses, and phone numbers of organizations that sponsor or publish documents that have been adopted by reference in these rules are as follows:

(a) American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005, (202)-682-8000.

(b) American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, New York, 10016-5990, (212)-591-7000 or (800)-843-2763, or contact its publishing division, 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey, 07007, (973)-882-1167.

(c) National Association of Corrosion Engineers International (NACE), 1400 South Creek Drive, Houston, Texas 77084-4906, (281)-228-6200 or (800)-797-6223).


R 460.20603 American petroleum institute standard; adoption by reference.

Rule 603. The following American petroleum institute standard is adopted by reference in these rules and is available at the price listed:

API standard 1104 titled “Welding of Pipelines and Related Facilities,” (20th edition, October 2007 2005, including errata 1 (2007) and errata 2 (2008)), at a cost as of the time of adoption of these rules of $295.00 345.00.

R 460.20604 American society of mechanical engineers standard; adoption by reference.

Rule 604. The following American society of mechanical engineers standard is adopted by reference in these rules and is available at the price listed:

ASME boiler and pressure vessel code, section IX, titled “Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators” (2007 edition, July 1, 2007), at a cost as of the time of adoption of these rules of $440.00 495.00.

R 460.20605 National association of corrosion engineers international standard; adoption by reference.

Rule 605. The following national association of corrosion engineers international standard is adopted by reference in these rules and is available at the price listed:

NACE MR0175/ISO 15156, 2009 2015, titled “Petroleum and natural gas industries – materials for use in H2S-containing environments in oil and gas production” at a cost as of the time of adoption of these rules of $242.00 255.00.
R 460.20606 Pipeline and hazardous materials safety administration standards; adoption by reference.

Rule 606. (1) The following pipeline and hazardous materials safety administration standard is adopted by reference in these rules and may be ordered from the U.S. government printing office via the internet at http://bookstore.gpo.gov at a cost at the time of adoption of these rules at the price listed. The standard is also available for public inspection and distribution at the price listed from the Michigan Public Service Commission, 7109 W. Saginaw Highway, Lansing, MI 48917: 49 C.F.R. part 40 entitled “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” (2009-2017 edition or 2016 edition and all final rule changes through October 1, 2017), at a cost as of the time of adoption of these rules of $60.00.

(2) The following office of pipeline and hazardous materials safety administration standards are adopted by reference in these rules and may be ordered from the U.S. government printing office via the internet at http://bookstore.gpo.gov at a cost at the time of adoption of these rules of $23.00 for a single volume that contains all of the standards. The standards are also available for public inspection and distribution at the price listed from the Michigan Public Service Commission, 7109 W. Saginaw Highway, Lansing, MI 48917:


NOTICE OF PUBLIC HEARING

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

NOTICE OF HEARING
REGARDING THE REVISION OF ADMINISTRATIVE RULES
GOVERNING GAS SAFETY STANDARDS
CASE NO. U-17826; ORR #2016-057 LR

- The Michigan Public Service Commission is considering the revision of rules governing gas safety standards, located at R 460.20101 through R 460.20606. The Commission will hold a public hearing to solicit comments from anyone who wishes to comment on the proposed rules.

- The information below describes how a person may participate in this case.

- You may contact the Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909, (517) 284-8330 for a free copy of the proposed rules. Any person may review the rules on the Commission’s E-Docket Website at michigan.gov/mpscedockets. The rules will be published in the March 15, 2018 issue of the Michigan Register under ORR #2016-057 LR, and may be accessed at the ORR website, www.michigan.gov/orr, under “Latest Rules Activity.”

- The public hearing will be held:

  DATE: March 21, 2018
  BEFORE: Lauren G. VanSteel
  TIME: 9:00 a.m.
  LOCATION: Public Service Commission Offices
             7109 W. Saginaw Hwy.
             Lansing, Michigan 48917
  PARTICIPATION: Any interested person may attend and participate.
                 The hearing site is accessible, including handicapped parking.
                 People needing any accommodation to participate should contact
                 the Commission’s Executive Secretary at (517) 284-8090 at least a
                 week in advance to request mobility, visual, hearing or other
                 assistance.

These proposed amended rules adopt by reference the current federal gas safety standards as set forth in 49 CFR parts 191, 192, and 199. In addition, these rules adopt rules pertaining to master meter systems and farm taps. The hearing will be for the purpose of providing an opportunity for all interested persons to present statements, views, data, questions, or arguments concerning the proposed rules. The public hearing will continue until all parties present have had a reasonable opportunity to present statements regarding the proposed rules. Persons presenting statements may be asked questions by the
Commission and its Staff, as well as by the presiding officer. Statements may be limited in duration by the presiding officer in order to ensure that all interested parties have an opportunity to participate in the proceedings.

Written and electronic comments may be filed with the Commission and must be received no later than 5:00 p.m. on April 13, 2018. Written comments should be sent to the: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments may be e-mailed to mpsedockets@michigan.gov. If you require assistance, contact Commission staff at (517) 284-8330 or by e-mail at mpsedockets@michigan.gov. All information submitted to the Commission in this matter will become public information available on the Commission’s website and subject to disclosure. All comments should reference Case No. U-17826.

Jurisdiction is pursuant to 49 USC 60105(b)(2), which provides that the state retains jurisdiction over gas pipeline facilities and transportation as long as the state certifies that it has adopted each applicable federal standard, or is taking steps to adopt that standard and MCL 483.152, which provides that the MPSC shall promulgate rules and prescribe safety standards for gas pipeline facilities and transportation.
MCL 24.208 states in part:

“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

“(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.”

The following table cites administrative rules promulgated during the year 2017, and indicates the effect of these rules on the Michigan Administrative Code (1979 ed.).
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(* Amendment to Rule, A Added Rule, N New Rule, R Rescinded Rule)
ATTORNEY GENERAL, DEPARTMENT OF
Opinions
Application of Minimum Wage Laws to Agricultural Employees
OAG Opinion No. 7301 (2018-1)

EDUCATION, DEPARTMENT OF
Fees for Transporting Pupils to or from Nonmandatory and Noncredited Events (2018-2)
Special Education Programs and Services (2018-2)

ENVIRONMENTAL QUALITY, DEPARTMENT OF
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Supplying Water to the Public (2018-2*)

HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Correction:
Birth Defect Reporting (2018-1)

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Michigan Gas Safety Standards (2018-4*)
Part 2. Walking Working Surfaces GI (2018-2)
Part 3. Fixed Ladders GI (2018-2)
Part 4. Portable Ladders GI (2018-2)
Part 5. Powered Platforms for Building Maintenance GI (2018-3)
Part 18. Overhead and Gantry Cranes GI (2018-3)
Part 21. Powered Industrial Trucks GI (2018-3)
Part 25. Manlifts GI (2018-3)
Part 27. Woodworking Machinery GI (2018-3)
Part 33. Personal Protective Equipment GI (2018-3)
Part 50. Telecommunications GI (2018-3)
Part 52. Sawmills GI (2018-3)
Part 86. Electric Power Generation, Transmission, and Distribution GI (2018-3)
Licensing Substance Use Disorder Programs (2018-3)
Occupational Code Renewals (2018-1*)
Real Estate Appraisers - General Rules (2018-1*)
Securities (2018-4*)
State Boundary Commission (2018-2*)

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NATURAL RESOURCES, DEPARTMENT OF
Metallic Minerals Leased on State Lands (2018-4)
Underground Gas Storage Leases on State Lands (2018-4)

S

STATE POLICE, DEPARTMENT OF
Test for Breath Alcohol (2018-2)

T

TRANSPORTATION, DEPARTMENT OF
Motor Bus Transportation (2018-2)
Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”

Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”

MCL 24.208 states in part:

“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

*   *   *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”