

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

**SECURITIES**

(By authority conferred on the director of the department of licensing and regulatory affairs by section 412 of 1964 PA 265, MCL 451.812 and by sections 201, 202, 202a, 203, 304, 306, 401, 403, 405, 406, 410, 411, 412, 502, 504, and 605 of 2008 PA 551, MCL 451.2201, 451.2202, 451.2202a, 451.2203, 451.2304, 451.2306, 451.2401, 451.2403, 451.2405, 451.2406, 451.2410, 451.2411, 451.2412, 451.2502, 451.2504, and 451.2605, and Executive Reorganization Order No. 2012-6, MCL 445.2034)

**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).

(b) "Act" means the uniform securities act of 2002, 2008 PA 551, MCL 451.2101 to 451.2703.

(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 subdivision (d)(i) and (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.

(k) “ESIGN” means the electronic signatures in global and national commerce act, and more specifically, chapter 96, subchapters I and II, 15 U.S.C. §§7001 to 7031.

(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.

(aa) “SEC” means the United States Securities and Exchange Commission.

History: 2019 AACCS.

### **R 451.1.2 Broker-dealer definition exclusion.**

Rule 1.2. 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 (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 and the issuer shall enter into a written agreement before 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) The person shall provide a copy of the written agreement required by subdivision (b)(ii) of this rule to any potential purchaser of securities before making any introductions in reliance on this rule, and receive written acknowledgement from the potential purchaser of delivery of the written agreement.

(iv) Copies of all written agreements and acknowledgements required by subdivision (b)(ii) and (iii) 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 or acknowledgement is signed by all parties, and must be provided to the administrator upon the administrator's request.

History: 2019 AACCS.

## **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.

History: 2019 AACCS.

**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.

History: 2019 AACCS.

**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.

History: 2019 AACCS.

#### **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 fulltime 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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

### **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.

History: 2019 AACS.

### **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.

History: 2019 AACS.

### **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 manger-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.

(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 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.

History: 2019 AACCS.

#### **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."

History: 2019 AACS.

**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.

History: 2019 AACS.

**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:

- (i) "Corporate Securities Definitions", as amended by NASAA on March 31, 2008.
- (ii) "Loans and Other Material Affiliated Transactions", as amended by NASAA on March 31, 2008.
- (iii) "Options and Warrants", as amended by NASAA on March 31, 2008.
- (iv) "Preferred Stock", as amended by NASAA on March 31, 2008.
- (v) "Promoter's Equity Investment", as amended by NASAA on March 31, 2008.
- (vi) "Promotional Shares", as amended by NASAA on March 31, 2008.
- (vii) "Risk Disclosure Guidelines", as adopted by NASAA on September 9, 2001.
- (viii) "Specificity in Use of Proceeds", as amended by NASAA on March 31, 2008.
- (ix) "Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders", as amended by NASAA on March 31, 2008.
- (x) "Unsound Financial Condition", as amended by NASAA on March 31, 2008.
- (xi) "Unequal Voting Rights", as amended by NASAA on March 31, 2008.
- (xii) "Registration of Asset-Backed Securities", as amended by NASAA on May 6, 2012.
- (xiii) "Mortgage Program Guidelines", as amended by NASAA on May 7, 2007.
- (xiv) "Real Estate Programs", as amended by NASAA on May 7, 2007.
- (xv) "Real Estate Investment Trusts", as amended by NASAA on May 7, 2007.

- (xvi) “Registration of Oil and Gas Programs”, as amended by NASAA on May 6, 2012.
- (xvii) “Equipment 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.
- (xx) “Omnibus Guidelines”, as amended by NASAA on May 7, 2007.
- (xxi) “Viatical Investment Guidelines”, as adopted by NASAA on October 1, 2002.

(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.

History: 2019 AACS.

### **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.

History: 2019 AACS.

## **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.

History: 2019 AACCS.

#### **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).

(b) A statutory disqualification described in section 3(a)(39) of the securities exchange act of 1934, 15 U.S.C. 78c(a)(39).

(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.

History: 2019 AACCS.

### **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.

History: 2019 AACCS.

#### **R 451.4.4 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.

History: 2019 AACCS.

#### **R 451.4.5 Registration exemption for investment advisers to private funds.**

Rule 4.5. (1) This rule takes effect 365 days after the rule set has been filed with the secretary of state.

(2) 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.

(3) Subject to the additional requirements of subrule (4) 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.

(4) In order to qualify for the exemption described in subrule (3) 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 (3) 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 (4)(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.

(5) If a private fund adviser is registered with the SEC, the investment adviser shall not be eligible for the exemption in subrule (3) 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.

(6) 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.

(7) The report filings described in subrule (3)(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.

(8) 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.

(9) 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 (4)(a) of this rule is eligible for the exemption contained in subrule (3) 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 (4)(a) of this rule.

(c) The investment adviser discloses, in writing, the information described in subrule (4)(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 (4)(c) of this rule, unless subrule (4)(d) applies to the private fund adviser.

(10) Subrule (3)(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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

#### **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.

History: 2019 AACCS

#### **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.

History: 2019 AACCS.

#### **R 451.4.9 Broker-dealer and agents representing broker-dealers examination requirements.**

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.

History: 2019 AACCS.

#### **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.

History: 2019 AACCS.

#### **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.

History: 2019 AACCS.

**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.

History: 2019 AACCS.

**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.

History: 2019 AACCS.

**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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

**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.

History: 2019 AACCS.

#### **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.

History: 2019 AACCS.

#### **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. If investment advice for a client is provided by more than 5 supervised persons, a part 2B brochure supplement for only the 5 supervised persons with the most significant responsibility day-to-day advice to the client must be provided.

(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 (5) 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 (5) 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, within 120 days of the end of its fiscal year, a free 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) An investment adviser shall, within 30 days of disclosing an event in response to item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV, deliver to clients the amended brochure or brochure supplement, as applicable, with a written statement describing the material facts relating to the amendment to Part 2A of Form ADV or Item 3 of Part 2B of Form ADV.

(5) Delivery of the brochure and related brochure supplements required by subrules (2)-(4) 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.

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

(a) In the case of an initial delivery to a potential client, obtains verification that a readable copy of the brochure and supplements were received by the client. The verification required by this subrule may be in the client contract required by rule 451.4.26 or other documents signed 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. The consent required by this subrule may be in the client contract required by rule 451.4.26 or other documents signed by the client.

(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.

(7) 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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

#### **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.

History: 2019 AACS.

**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.

History: 2019 AACS.

**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.

History: 2019 AACS.

**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 subrule (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 subrules (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.

History: 2019 AACCS.

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

Rule 4.25. (1) For purposes of subrule (2)(1) 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 1 of the following is true:

(i) The client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(ii) The client is the investment adviser's or investment adviser representative's parent, parent-in-law, spouse, child, child-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or cousin, including any step-family or adoptive relationship and all of the following are true:

(A) The borrowing arrangement is permitted by the investment adviser's written policies and procedures.

(B) The investment adviser or investment adviser representative has written permission from the investment adviser to enter the borrowing arrangement.

(C) The borrowing arrangement is evidenced by a written document maintained by the investment adviser until the borrowing arrangement is fully repaid to the lender.

(g) Loaning money or securities to a client unless 1 of the following is true:

(i) 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.

(ii) The client is the investment adviser's or investment adviser representative's parent, parent-in-law, spouse, child, child-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or cousin, including any step-family or adoptive relationship and all of the following are true:

(A) The lending arrangement is permitted by the investment adviser's written policies and procedures.

(B) The investment adviser or investment adviser representative has written permission from the investment adviser to enter the lending arrangement.

(C) The lending arrangement is evidenced by a written document maintained by the investment adviser until the lending arrangement is fully repaid by the borrower.

(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 the identity of the person who prepared the report or recommendation. 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.

History: 2019 AACCS.

#### **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 if the contract has a specific term, otherwise it should describe how the contract may be terminated by either party; 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 or limited liability company, 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 subrules (3)(c) and (4)(b) 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.

History: 2019 AACCS.

#### **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 of 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, unless all of the following are true:

(i) The broker-dealer that employs the agent has written procedures allowing the lending or borrowing of money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer.

(ii) The arrangement is with the agent’s parent, parent-in-law, spouse, child, child-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or cousin, including any step-family or adoptive relationship.

(iii) The arrangement is approved in writing by the broker-dealer that employs the agent.

(iv) The broker-dealer that employs the agent maintains a written copy of the lending arrangement, borrowing arrangement, or custodial agreement until the agent’s obligations under the arrangement are satisfied.

(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).

History: 2019 AACS.

#### **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.

History: 2019 AACCS.

## **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.

History: 2019 AACCS.

### **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.

History: 2019 AACCS.