

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

Filed with the secretary of state on February 16, 2022

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 201, 202, 202a, 203, 304, 306, 401, 403, 405, 406, 410, 411, 412, 502, 504, and 605 of the uniform securities act (2002), 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)

R 451.4.21 of the Michigan Administrative Code is amended and R 451.4.29 is added, as follows:

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

R 451.4.21 Investment adviser policies and procedures.

Rule 4.21. (1) As used in this rule:

(a) “Access person” means a supervised person of an investment adviser who meets any of the following:

(i) Has access to either nonpublic information regarding a client’s purchase or sale of securities or nonpublic information regarding the portfolio holdings of a reportable fund.

(ii) Is involved in making securities recommendations to clients, or who has access to nonpublic recommendations.

(iii) Provides investment advice that is an investment adviser’s primary business and is a director, officer, or partner of that business.

(b) “Beneficial ownership” means that term as defined in rule 16a-1, 17 CFR 240.16a-1, in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934, 15 USC 78p, and the rules and regulations pursuant to the act.

(c) “Chief compliance officer” means a supervised person who is an investment adviser representative with the authority, background, skills, and resources to develop and enforce an investment adviser’s policies and procedures.

(d) “Federal securities laws” means all of the following:

(i) The Securities Act of 1933, 15 USC 77a to 77aa.

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- (ii) The Securities Exchange Act of 1934, 15 USC 78a to 78qq
- (iii) The Investment Company Act of 1940, 15 USC 80a-1 to 80a-64.
- (iv) The Investment Advisers Act of 1940, 15 USC 80b-1 to 80b-21.
- (v) Title V of the Gramm-Leach-Bliley Act, 15 USC 6801 to 6809.
- (vi) The Sarbanes-Oxley Act of 2002, Pub. L. 107-204.
- (vii) Any rules adopted by the SEC under any of the statutes in paragraphs (i) to (vi) of this subdivision.
- (viii) The Bank Secrecy Act, 31 USC 5311 to 5314 and 5316 to 5332, as it applies to funds and investment advisers.
- (ix) Any rules adopted under the Bank Secrecy Act, 31 USC 5311 to 5314 and 5316 to 5332, by the SEC or the United States Department of the Treasury.
- (e) “Fund” means an investment company registered under the Investment Company Act of 1940, 15 USC 80a-1 to 80a-64.
- (f) “Initial public offering” means an offering of securities registered under the Securities Act of 1933, 15 USC 77a to 77aa, the issuer of which, immediately before the registration, was not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 USC 78m or 78o(d).
- (g) “Limited offering” means an offering that is exempt from registration under 4(a)(2) or (5) of the Securities Act of 1933, 15 USC 77d(a)(2) or (5), or 17 CFR 230.504 to 230.506.
- (h) “Reportable security” means a security as defined in section 202(a)(18) of the Investment Advisers Act of 1940, 15 USC 80b-2(a)(18), except that it does not include any of the following:
 - (i) Direct obligations 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.
- (i) “Supervised person” means any of the following:
 - (i) A partner, officer, director, or other person occupying a similar status or performing similar functions.
 - (ii) An employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. This includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on the behalf of the investment adviser.
- (2) An investment adviser registered or required to be registered under section 403 of the act, MCL 451.2403, shall not provide investment advice to clients unless the investment adviser establishes, maintains, and enforces written policies and procedures tailored to the investment adviser’s business model, accounting for the size of the firm, the services provided, and the number of locations of the investment adviser. The written policies and procedures must include both of the following:
 - (a) Compliance policies and procedures reasonably designed to prevent violations by the investment adviser of the act and the rules adopted under the act.

(b) Supervisory policies and procedures reasonably designed to prevent violations of the act and the rules adopted under the act by the investment adviser's supervised persons.

(3) An investment adviser, which is registered or is required to be registered, who has authority to vote client securities shall do all of the following:

(a) Establish, maintain, and enforce written proxy voting policies and procedures that are reasonably designed to ensure that the investment adviser votes client securities in the best interest of clients. These procedures must include how the investment adviser addresses material conflicts that may arise between its interests and those of the investment adviser's clients.

(b) Disclose to clients how they may obtain information from the investment adviser about how it voted with respect to their securities.

(c) Describe to clients the investment adviser's proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

(d) An investment adviser who does not have the authority to vote client securities shall disclose that fact to clients.

(4) An investment adviser shall establish, maintain, and enforce written physical security and cybersecurity policies and procedures reasonably designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model, taking into account the investment adviser's size, services provided, and the number of locations. The physical security and cybersecurity policies and procedures must do all of the following:

(a) Protect against reasonably anticipated threats or hazards to the security or integrity of client records and information.

(b) Ensure that the investment adviser safeguards confidential client records and information.

(c) Protect any records and information the release of which could result in harm or inconvenience to any client.

(d) Contain provisions that assist the investment adviser to do all of the following:

(i) Identify potential threats to the investment adviser's information and records and develop the organizational understanding to manage information security risk to systems, assets, data, and capabilities.

(ii) Protect the investment adviser's information and records from threats, including the development and implementation of appropriate safeguards, to ensure delivery of critical infrastructure services.

(iii) Detect breaches of the investment adviser's records and information, and identify the occurrence of an information security event.

(iv) Respond to breaches of the investment adviser's information and records, and implement the appropriate activities to take action regarding a detected information security event.

(v) Recover any of the investment adviser's information or records that are breached. An investment adviser shall develop, implement, and maintain plans for information and data resilience and to restore any capabilities or services that are impaired due to an information security event.

(5) An investment adviser, registered or required to be registered, shall deliver upon the investment adviser's engagement by a client, and annually thereafter, a privacy policy to each client that is reasonably designed to aid in the client's understanding of how the investment adviser collects and shares, to the extent permitted by state and federal law, nonpublic personal information. An investment adviser shall promptly update and deliver to each client an amended privacy policy, if any of the information in the policy becomes inaccurate.

(6) An investment adviser shall establish, maintain, and enforce a written code of ethics that, at a minimum, includes all of the following:

(a) Standards of business conduct that the investment adviser requires of its supervised persons that must reflect the investment adviser's fiduciary obligations and those of its supervised persons.

(b) Provisions requiring the investment adviser's supervised persons to comply with applicable state and federal securities laws.

(c) Provisions requiring all of the investment adviser's access persons to report, and the investment adviser to review, their personal securities transactions and holdings periodically as provided in subdivisions (f) and (g) of this subrule.

(d) Provisions requiring supervised persons to report any violations of the investment adviser's code of ethics promptly to its chief compliance officer or, if the investment adviser's chief compliance officer also receives reports of all violations, to other persons designated in the investment adviser's code of ethics.

(e) Provisions requiring the investment adviser to provide each of its supervised persons with a copy of the investment adviser's code of ethics and any amendments, and requiring the investment adviser's supervised persons to provide it with a written acknowledgment of their receipt of the code and any amendments.

(f) An investment adviser registered or required to be registered under the act shall create holdings reports that comply with all of the following:

(i) The code of ethics required by this subrule must require the investment adviser's access persons to submit to its chief compliance officer or other persons designated in the investment adviser's code of ethics a report of the access person's current securities holdings that meets the following requirements. Each holdings report must contain, at a minimum all of the following:

(A) The title and type of security, and as applicable the exchange ticker symbol or Committee on Uniform Securities Identification Procedures (CUSIP) number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership.

(B) The name of any broker, dealer, or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit.

(C) The date the access person submits the report.

(ii) The investment adviser's access persons shall each submit a holdings report that complies with both of the following:

(A) Is submitted no later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days before the date the person becomes an access person.

(B) Is submitted at least once each 12-month period thereafter on a date selected by the investment adviser, and the information must be current as of a date no more than 45 days before the date the report was submitted.

(g) The code of ethics required by this subrule must require access persons to submit to the investment adviser's chief compliance officer or other persons designated in the investment adviser's code of ethics quarterly securities transactions reports that comply with all of the following:

(i) Each transaction report must contain, at a minimum, all of the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

(A) The date of the transaction, the title, and, as applicable, the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved.

(B) The nature of the transaction such as the purchase, sale, or any other type of acquisition or disposition.

(C) The price of the security at which the transaction was effected.

(D) The name of the broker, dealer, or bank with or through which the transaction was effected.

(E) The date the access person submits the report.

(ii) An access person shall submit a transaction report no later than 30 days after the end of each calendar quarter. The report must cover, at a minimum, all transactions during the quarter.

(h) The code of ethics required by this subrule does not have to require an access person to submit any of the following:

(i) A report about securities held in accounts over which the access person had no direct or indirect influence or control.

(ii) A transaction report about transactions effected pursuant to an automatic investment plan in which regular periodic purchases or withdrawals are made automatically in or from investment accounts pursuant to a predetermined schedule and allocation, including a dividend reinvestment plan.

(iii) A transaction report, if the report would duplicate information contained in broker trade confirmations or account statements that the investment adviser holds in its records as long as the investment adviser receives the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

(iv) Pre-approval of certain investments: the investment adviser's code of ethics must require its access persons to obtain the investment adviser's approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

(i) An investment adviser with only 1 access person is not required to submit reports to itself or to obtain its own approval for investments in any security in an initial public offering or in a limited offering, if the investment adviser maintains records of all of its holdings and transactions that subdivisions (f) and (g) of this subrule would otherwise require the investment adviser to report.

(j) A report required by SEC rule 204A-1(b), 17 CFR 275.204A-1(b), may contain a statement that the report will not be construed as an admission that the person making the

report has any direct or indirect beneficial ownership in the security to which the report relates.

(7) An investment adviser shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the investment adviser or any person associated with the investment adviser.

(8) 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 must provide for at least all of the following:

(a) The protection, backup, and recovery of books and records.

(b) Alternate means of communication 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, if there is a temporary or permanent loss of a principal place of business.

(d) Assignment of duties to qualified responsible persons upon the death of 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.

(9) An investment adviser shall review, at least annually, the adequacy of the policies and procedures established pursuant to this rule and the effectiveness of their implementation.

(10) An investment adviser shall designate a supervised person who is an investment adviser representative as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

R 451.4.29. Investment adviser representative; continuing education.

Rule 4.29. (1) As used in this rule:

(a) "Approved IAR continuing education content" means the materials, which are in a written, oral, or other format, that have been approved by NASAA or its designee and that make up the educational program provided to an investment adviser representative under this rule.

(b) "Authorized provider" means a person that NASAA or its designee has authorized to provide continuing education content required by this rule.

(c) "Credit" means a unit that has been designated by NASAA or its designee as at least 50 minutes of educational instruction.

(d) "Home state" means the state in which the investment adviser representative has its principal office and place of business.

(e) "IAR ethics and professional responsibility content" means approved IAR continuing education content that addresses an investment adviser representative's ethical and regulatory obligations.

(f) "IAR products and practice content" means approved IAR continuing education content that addresses an investment adviser representative's continuing skills and

knowledge regarding financial products, investment features, and practices in the investment advisory industry.

(g) “Investment adviser representative” or “IAR” means an individual who meets the definition of “investment adviser representative” under section 102a(f) the act, MCL 451.2102a, and an individual who meets the definition of “investment adviser representative” under SEC rule 203A-3, 17 CFR 275.203A-3.

(h) “NASAA” means the term as defined in R 451.1.1 or a committee designated by the association’s board of directors.

(i) “Reporting period” means a 12-month period as determined by NASAA. An investment adviser representative’s initial reporting period begins the first day of the first full reporting period after the individual is registered or required to be registered with this state.

(2) An investment adviser representative registered under section 404 of the act, MCL 451.2404, shall complete both of the following IAR continuing education requirements each reporting period:

(a) Six credits of IAR regulatory and ethics content offered by an authorized provider, with at least 3 hours covering the topic of ethics.

(b) Six credits of IAR products and practice content offered by an authorized provider.

(3) An investment adviser representative who is also registered as an agent of a FINRA member broker-dealer and who complies with FINRA’s continuing education requirements complies with the subrule (2)(b) of this rule for each applicable reporting period, if the FINRA continuing education content meets all of the following baseline criteria as determined by NASAA:

(a) The continuing education content focuses on compliance, regulatory, ethical, and sales practices standards.

(b) The continuing education content is derived from state and federal investment advisory statutes, rules, and regulations; securities industry rules and regulations; and accepted standards and practices in the financial services industry.

(c) The continuing education content requires that its participants demonstrate proficiency in the subject matter of the educational materials.

(4) Credits of continuing education completed by an investment adviser representative who was awarded and currently holds a credential that qualifies for an examination waiver under R 451.4.12(3) complies with subrule (2)(a) and (b) of this rule if all of the following continue to occur:

(a) The investment adviser representative completes the credits of continuing education as a condition of maintaining the credential for the relevant reporting period.

(b) The credits of continuing education completed during the relevant reporting period by the investment adviser representative are mandatory to maintain the credential.

(c) The continuing education content provided by the credentialing organization during the relevant reporting period is approved IAR continuing education content.

(5) An investment adviser representative shall ensure that the authorized provider reports the investment adviser representative’s completion of the applicable IAR continuing education requirements.

(6) An investment adviser representative who completes more than the amount of continuing education credits required for the reporting period shall not carry forward the additional credits to a subsequent reporting period.

(7) An investment adviser representative who fails to comply with this rule by the end of a reporting period shall renew as “CE inactive” at the close of the calendar year until the investment adviser representative completes and reports all required IAR continuing education credits for all reporting periods as required by this rule. An investment adviser representative who is CE inactive at the close of the next year is not eligible for investment adviser representative registration or renewal of an investment adviser representative registration.

(8) The administrator may, at its discretion, waive any requirements of this rule.

(9) An investment adviser representative registered or required to be registered in this state and who is registered as an investment adviser representative in the individual’s home state complies with this rule when both of the following continue to occur:

(a) If the investment adviser representative’s home state has continuing education requirements that are at least as stringent as the NASAA model rule on investment adviser representative education adopted by NASAA on November 24, 2020. A copy of this model rule can be obtained from NASAA, 750 First Street, NE, Suite 1140, Washington, D.C. 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, Michigan 48909 for a cost as prescribed in R 451.6.2.

(b) If the investment adviser representative complies with the home state’s investment adviser representative continuing education requirements.

(10) An investment adviser representative who was previously registered under the act but is no longer registered shall complete IAR continuing education for all reporting periods that occurred between the time that the investment adviser representative was no longer registered and when the person became registered again under the act unless the investment adviser representative takes and passes the examination or receives an examination waiver as required by R 451.4.12 in connection with the subsequent application for registration.