

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

(By authority conferred on the corporation and securities bureau by section 412 of Act No. 265 of the Public Acts of 1964, as amended, being S451.812 of the Michigan Compiled Laws)

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

R 451.601.1 Agents.

Rule 601.1. (1) An agent may only be registered in the employ of a registered broker-dealer, or in the employ of an issuer whose securities are registered or are exempt.

(2) A partner, officer or director of a broker-dealer who represents the broker-dealer in effecting or attempting to effect the purchase or sale of securities in Michigan shall be registered as an agent.

History: 1979 AC.

R 451.601.2 Transfers of employment.

Rule 601.2. (1) An agent, while registered, may transfer from 1 broker-dealer or issuer to another broker-dealer or issuer. Within 14 calendar days after an agent begins or terminates a connection with a broker-dealer or issuer or begins or terminates those activities which make him or her an agent, the agent and the broker-dealer or issuer shall so notify the administrator, in writing, using the appropriate employment notice or termination notice form.

(2) The registration of an agent is not effective during any period when he or she is not associated with a particular registered broker-dealer or a particular issuer whose securities are registered or exempt. Also, an agent is not associated with an issuer and an agent's registration is not effective if the issuer's securities registration statement is not effective. However, the agent may again reactivate the effectiveness of his or her registration during the original term of effectiveness of his or her registration by transferring to another issuer or broker-dealer and paying the transfer fee provided in section 202(b) of the act.

History: 1979 AC; 1981 AACS; 1991 AACS.

R 451.601.3 Agent; registration under more than 1 employer.

Rule 601.3. (1) An agent may not be registered under more than 1 broker-dealer or issuer at any time, unless management and control of the employing organizations are substantially identical and the administrator, after reviewing a request to permit double or multiple registration, is convinced that no confusion or avoidance of responsibility will result.

(2) A registered agent who desires to engage in any other activity involving the sale of investments for remuneration shall first notify his employer of the intended activity and secure approval in writing.

History: 1979 AC.

R 451.601.4 Broker-dealers, agents, and investment advisers; effective registration date; annual report.

Rule 601.4. The registration of a broker-dealer, agent, or investment

adviser may become effective at any date during the year. A registrant shall file, or have filed on the registrant's behalf, an annual report with the administrator during the month of December, but in no event later than December 31 of each year.

History: 1979 AC; 1980 AACS; 1982 AACS.

R 451.602.1 Application for broker-dealer registration.

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

History: 1979 AC; 1980 AACS.

R 451.602.2 Application for agent registration; notice of agent registration.

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

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

History: 1979 AC; 1980 AACS; 1983 AACS.

R 451.602.3 Application for investment adviser registration.

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

History: 1979 AC; 1980 AACS.

R 451.602.4 Fees; payment; filing.

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

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

History: 1979 AC; 1980 AACS; 1982 AACS; 1991 AACS.

R 451.602.5 Rescinded.

History: 1979 AC; 1980 AACS; 1982 AACS; 1991 AACS.

R 451.602.5a Rescinded.

History: 1980 AACS; 1982 AACS.

R 451.602.6 Broker-dealer's net capital.

Rule 602.6. (1) A securities broker-dealer registered with the United States securities and exchange commission shall maintain net capital and ratio of aggregate indebtedness to net capital in accordance with rule 15c3-1, 17 C.F.R. S240.15c3-1 (1978) under the securities exchange act of 1934, 15 U.S.C. S78a et seq.

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

(a) The aggregate indebtedness, as that term is defined in rule 15c3-1, 17 C.F.R. S240.15c3-1 (1978) under the securities and exchange act of 1934, 15 U.S.C. S78a et seq. hereinafter termed "indebtedness" of a broker-dealer that has been registered with the administrator for at least 1 year shall not exceed 2,000% of its net capital, as that term is defined in rule 15c3-1 under the securities exchange act of 1934, hereinafter termed "net capital". The aggregate indebtedness of a broker-dealer that has been registered with the administrator for less than 1 year shall not exceed 1,000% of its net capital.

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

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

(i) Introduces and forwards as a broker all transactions and accounts of customers to another broker or dealer who carries such accounts on a fully disclosed basis, and the introducing broker-dealer promptly forwards all of the funds and securities of customers received in connection with its activities as a broker-dealer.

(ii) Participates in underwritings on a "best efforts" or "all or none" basis in accordance with the provisions of rule 15c2-4(b)(2), 17 C.F.R. S240.15c2-4(b)(2) (1978) under the securities exchange act of 1934, and promptly forwards to an independent escrow agent customers' checks, drafts, notes, or other evidences of indebtedness received in connection therewith which shall be made payable to the escrow agent.

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

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

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

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

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

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

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

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

- (i) The broker-dealer's transactions are limited to both of the following:
- (A) The purchase, sale, and redemption of redeemable shares of registered investment companies, except that the broker-dealer may also effect an occasional transaction in other securities for its own investment account with or through another registered broker-dealer.
- (B) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies.
- (ii) The broker-dealer promptly transmits all funds and delivers all securities received in connection with its activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.
- (3) A commodity issuer registered with the administrator and a broker-dealer registered with the administrator transacting business primarily in commodity contracts shall have the net capital and cash reserve necessary to comply with the following conditions:
- (a) The aggregate indebtedness to all other persons of a registrant who has been registered for at least 1 year shall not exceed 1,500% of its net capital. The aggregate indebtedness to all other persons of a registrant who has been registered for less than 1 year shall not exceed 1,000% of its net capital.
- (b) A commodity issuer and a broker-dealer shall have and maintain net capital of not less than \$25,000.00.
- (c) A commodity issuer and a broker-dealer shall have and maintain a reserve of not less than \$10,000.00 in a checking or savings account in a bank or savings institution organized under the laws of the United States or of any state or in a certificate of deposit issued by a bank or savings institution so organized.
- (4) The administrator, by order which may apply individually or to a class, may establish a lower net capital requirement, a lower cash reserve requirement, or a higher maximum ratio of aggregate indebtedness to net capital, either unconditionally or upon special terms or conditions, for a registrant who satisfies the administrator that because of the special nature of its business, its financial condition, and the safeguards that have been established for the protection of customers' funds, investors would not be adversely affected.
- (5) A registrant not in compliance with the aggregate indebtedness, net capital, or cash reserve requirements shall cease soliciting new business and shall immediately notify the administrator in writing.
- (6) For the purposes of this rule, and to insure uniform interpretation, the terms "aggregate indebtedness" and "net capital" shall have the respective meanings as defined in rule 15c3-1, 17 C.F.R. S240.15c3-1 (1978) under the securities exchange act of 1934. A copy of any pertinent subordination agreement shall be filed with the administrator within 10 days after the agreement has been entered into and shall meet the requirements of a "satisfactory subordination agreement" as that term is defined in rule 15c3-1, 17 C.F.R. S240.15c3-1 (1978).

History: 1979 AC; 1980 AACS.

#### R 451.602.7 Broker-dealers' bonds; surety.

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

History: 1979 AC.

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

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

History: 1979 AC.

R 451.602.9 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.602.10 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.602.11. Rescinded.

History: 1979 AC; 1997 AACS.

R 451.602.12 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.602.13 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.602.14 Rescinded.

History: 1979 AC; 1980 AACS; 1997 AACS.

R 451.603.1 Broker-dealers' records.

Rule 603.1. (1) A broker-dealer shall make and keep current the following books and records relating to his business:

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

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

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

- (d) Ledgers, or other records, reflecting the following:
    - (i) Securities in transfer.
    - (ii) Dividends and interest received.
    - (iii) Securities borrowed and securities loaned.
    - (iv) Monies borrowed and monies loaned, together with a record of the collateral therefor and any substitutions in such collateral.
    - (v) Securities failed to receive and failed to deliver.
  - (e) A securities record or ledger reflecting separately for each security as of the clearance date of "long" or "short" positions, including securities in safekeeping, carried by each member, broker, or dealer for his account or for the account of his customers or partners, and showing the location of all securities long and the offsetting position to all securities short and, in all cases, the name or designation of the account in which each position is carried.
  - (f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.
  - (g) A memorandum of each purchase and sale of securities for the account of such member, broker, or dealer, showing the price and, to the extent feasible, the time of execution.
  - (h) Copies of confirmations of all purchases and sale of securities and copies of notices of all other debits and credits for securities, cash, and other items for the account of customers and partners of such member, broker, or dealer.
- (2) A broker-dealer shall preserve, for not less than 6 years, all records required to be made pursuant to subdivisions (a), (b), (c), and (e) of subrule (1), and, for not less than 3 years, all records required to be made pursuant to subdivisions (d), (f), (g), and (h) of subrule (1).
- (3) A registered commodities issuer and a broker-dealer transacting business primarily in commodity contracts shall make and keep true, accurate, and current the following books and records relating to its business:
- (a) Journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in a ledger.
  - (b) General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income, and expense accounts.
  - (c) A memorandum of each order given by the registrant for the purchase or sale of any commodity contract, of any instruction received by the registrant from a client concerning the purchase, sale, receipt, or delivery of a particular commodity contract, and a memorandum of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification, or cancellation, shall identify the person connected with the registrant who recommended the transaction to the client and the person who placed the order, and shall show the account for which entered, the date of the entry, and the registrant by or through whom executed where appropriate. An order entered pursuant to the exercise of a power of attorney shall be so designated.
  - (d) All check books, bank statements, cancelled checks, and cash reconciliations of the registrant.
  - (e) All bills or statements, or copies thereof, paid or unpaid, relating to the business of the registrant.
  - (f) All trial balances, financial statements, and internal audit working papers relating to the business of the registrant.
  - (g) A financial ledger record which shows separately for each customer all charges against and credits of a customer's account, including, but not limited to, funds or securities deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions.
  - (h) A record of transactions which show separately for each account, including house accounts, all commodity contract transactions executed for the account, including the date, price, quantity, market, commodity, and, when applicable, the delivery date, option expiration date, or other relevant date.
  - (i) A record or journal which shows separately for each business day complete details of all commodity contract transactions executed on that day, including the date, price, quantity, market, commodity, future if applicable, and the person for whom the transaction was made.
  - (j) A record of all securities and property received from customers in lieu of money to margin, guarantee, or secure the commodity trades and contracts of the customers. The records shall show separately for each customer a description of the securities or property received, the name and address of the customer, the dates when the securities or property were received, the identity of the depositories or other places where the securities or property are segregated, the dates of deposits

and withdrawals from the depositories, and the dates of return of the securities or property to the customer, or other disposition thereof, together with the facts and circumstances of the other disposition.

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

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

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

(n) Minutes and other appropriate records with respect to meetings of the board of directors.

(o) A copy of each advertisement used, showing the dates and publications in which the advertisement appeared.

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

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

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

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

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

History: 1979 AC.

#### R 451.603.2 Broker-dealers' confirmations.

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

History: 1979 AC.

#### R 451.603.4 Broker-dealer's reports.

Rule 603.4 (1) A broker-dealer shall file a detailed balance sheet with the administrator as of a date 6 months, or about 6 months, after the date of the last previous balance sheet filed. This balance sheet, if not pursuant to audit, shall be certified as to correctness by an officer, partner, or the proprietor of the broker-dealer, except that 1 balance sheet submitted during each registration year shall be pursuant to certified audit by independent or certified public accountants. An unaudited balance sheet shall be as of a date not more than 45 days prior to its submittal date, unless an extension of time is

granted. An audited balance sheet shall be of a date not more than 90 days prior to its submittal date, unless an extension of time is granted.

(2) If the net capital, as defined by R 451.602.6, of the broker-dealer does not exceed \$100,000.00, the following schedules shall accompany the above balance sheets:

(a) Firm investments priced at current market and extended.

(b) Customers' debit balances, with dates incurred and security positions.

(c) Notes receivable and notes payable, listing all collateral thereto.

(d) Subordinated capital, listing in detail the type and amount of the loan, including securities by name, market value, date and maturity of the loan, and the name of the lender.

(3) A broker-dealer may simultaneously file a duplicate copy of the report of financial condition filed with the securities and exchange commission as required by rule 17a-5 under the securities exchange act of 1934 in lieu of one of the reports under subrule (1). Submission of such a report, if not certified by a certified public accountant, does not relieve the broker-dealer from filing 1 certified report during the registration year.

(4) A broker-dealer who is a member of a national securities exchange may simultaneously file duplicate copies of balance sheet statements and schedules pertaining thereto filed with the exchange of which he is a member in lieu of the reports under subrule (1), 1 of which shall be pursuant to certified audit by independent or certified public accountant.

(5) If a broker-dealer is a sole proprietorship, a personal balance sheet of the proprietor shall be submitted with, and as of the same date as, the balance sheet of the firm.

(6) The administrator may require at any time the filing of special financial reports by a registered broker-dealer if it finds that such filing of special financial reports by a registered broker-dealer is in the public interest and for the protection of investors.

(7) A registered commodity issuer and a registered broker-dealer transacting business primarily in commodity contracts shall file with the administrator monthly, within 10 business days after the close of the month for which the report is made, a report showing all purchases and sales of commodities during the month, and its commodity positions and obligations to customers as of the close of the month, segregated by classification of commodity, as well as, a report showing the registrant's net capital position and ratio of aggregate indebtedness to net capital unless the registration is waived or modified by the administrator.

History: 1979 AC; 1983 AACS.

R 451.603.5 Investment adviser; books and records.

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

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

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

History: 1980 AACS.

R 451.604.1 Failure to complete or withdraw application for registration.

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



History: 1979 AC; 1980 AACS; 1983 AACS.

R 451.604.2 Unethical business practices by broker-dealer or agent.

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

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

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

History: 1979 AC; 1980 AACS.

R 451.604.3 Examination of applicants.

Rule 604.3. (1) As a condition to obtaining registration, an applicant for registration as a broker-dealer which is a proprietorship and an applicant for registration as an agent shall take and pass a written examination testing the person's knowledge of the securities business, the act, and the rules thereunder. The test shall be evidence of the person's qualifications as to training and knowledge. This examination and the minimum passing grade may be varied for any class of applicants. The administrator shall waive this examination requirement in the case of applicants who were registered within the past 2 years or who have passed this examination within the past 2 years. The administrator may waive this examination requirement, in whole or in part, in the case of applicants who have passed a comparable examination within the past 2 years, applicants who meet certain standards of experience, or applicants whose activities will be so restricted as to make imposition of the examination requirements inappropriate.

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

History: 1979 AC; 1980 AACS.

R 451.604.4 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.605.1 Rescinded.

History: 1979 AC; 1997 AACS.

R 451.605.2 Class R broker-dealer.

Rule 605.2 (1) Pursuant to authority granted in the act, a special classification of broker-dealer is hereby created and special conditions established for registration of broker-dealers within the class. This classification of broker-dealer shall be designated "class R broker-dealers."

(2) As of the effective date of this rule, a person who meets all of the following requirements, whether currently registered as a broker-dealer or not, shall comply with the registration requirements for class R broker-dealers as set forth in subrule (3) of this rule:

(a) Engage in the business of effecting transactions in mortgage-backed note securities in reliance on the exemption from registration authorized in section 402(b)(5) of the act. Transactions in government or quasi-government guaranteed backed notes or notes which are rated are excluded from the scope of this rule.

(b) Transactions in mortgage-backed note securities made in reliance on the exemption from registration authorized in section 402(b)(5) of the act, represent 10% or more of the gross dollar amount of securities transactions effectuated by the enterprise.

(3) All broker-dealers who meet the requirements specified in subrule (2) shall comply with all of the following conditions, in addition to all registration requirements and conditions of the act and rules adopted thereunder:

(a) Deliver an offering circular to all prospective investors 5 business days before any purchase agreement involving mortgage-backed notes being transacted in reliance on section 402(b)(5) of the act becomes binding. The offering circular shall accurately disclose all material information about the investment in mortgage-backed notes of the type being transacted and shall be kept current to reflect material changes in the information contained therein.

(b) Deliver to a prospective investor a description of the property which will secure the specific note being sold and the mortgagor's credit report before the purchase agreement becomes binding. The description of the property shall contain, at a minimum, the address and legal description of the property.

(c) Deliver to an investor a mortgage and mortgage note which has been properly assigned and recorded within 60 days of the acceptance of funds from the investor. In all circumstances, if a mortgage and mortgage note have not been assigned, recorded, and delivered to an investor within 60 days from the payment of funds by the investor, the funds shall be returned with 6% interest from the date of investment less any income received by the investor from the investment.

(d) Deposit all investor funds with a bank or trust company in a segregated account which clearly shows that the funds belong to investors. An investor's fund shall not be withdrawn from the account for use by the registrant until a properly assigned and recorded mortgage and mortgage note has been delivered to the investor or upon expiration of the 60-day period for the purpose of returning the investor's funds. A record shall be maintained by the registrant showing the places in which investor funds are deposited.

(e) On a calendar year basis, submit quarterly reports to the administrator which contain the name, address, and telephone number of each investor who purchased a mortgage-backed note during the quarter being reported; the date of purchase; the purchase price; the name of the agent that sold the mortgage-backed note; and the date the mortgage and note were delivered to the investor. Reports shall be submitted to the administrator no later than 20 business days after the end of each quarter. The administrator shall retain the reports received under this rule on a confidential basis, unless it is determined by the administrator that release is necessary for the public interest or protection of investors.

(f) Submit for review all advertising prior to use, including the offering circular to be furnished to prospective investors, to the administrator. The administrator shall have 30 days to disallow the use of materials submitted.

History: 1983 AACS.

### PART 3. REGISTRATION OF SECURITIES

#### R 451.702.1 Registration by notification; copies of statement.

Rule 702.1. The administrator may require by order, as a condition to registration by notification in case of a public offering of a substantial amount of securities where an inadequate, or no prospectus or offering circular is proposed to be used, that a copy of the registration statement

under section 302(b) of the act be given or sent to each person to whom an offer is made before or concurrently with such offer.

History: 1979 AC.

#### R 451.703.1 Registration by coordination; exhibits.

Rule 703.1. (1) A registration statement by coordination shall be submitted on a form supplied by the administrator or on the uniform application to register securities form, together with any consent to service required by section 414(g) and 3 copies of the latest form of prospectus filed under the securities act of 1933, and, unless the administrator in a specific instance permits otherwise, shall be accompanied by:

(a) A copy of the articles of incorporation and a copy of the bylaws or their substantial equivalents, currently in effect.

(b) A copy of any agreement with or among underwriters.

(c) A copy of any indenture or other instrument governing the issuance of the security to be registered.

(d) A specimen or copy of the security.

(2) The administrator may request other information or copies of other documents filed under the securities act of 1933. A document filed under the act or a predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

History: 1979 AC.

#### R 451.703.2 Acceleration of effectiveness of registration.

Rule 703.2. If the administrator accelerates effectiveness of a registration by notification, or after all other conditions are met, the administrator accelerates effectiveness of a registration by coordination, it will so advise the registrant by collect telegram stating the date and time of effectiveness. If the administrator does not accelerate effectiveness of a registration by coordination, it will advise the registrant by collect telegram when all other conditions are satisfied and no adverse proceeding is contemplated, whereupon registration becomes effective with effectiveness of the federal registration.

History: 1979 AC.

#### R 451.704.1 Registration by qualification; prospectus.

Rule 704.1. In the case of a registration by qualification, unless the administrator in a specific instance permits otherwise, a prospectus prepared in accordance with prospectus instructions (form PI) and previously filed with the administrator shall be sent or given to each prospective purchaser within a reasonable time before a commitment to purchase is made. If the prospectus or any part thereof becomes misleading as to any material fact, or 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 shall be revised or supplemented, and the revision or supplementation shall be submitted to the administrator prior to use. A prospectus shall not be used if the administrator has informed the registrant of an objection thereto. A prospectus shall not be used without revision or supplementation for more than 13 months from its date.

History: 1979 AC.

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

Rule 704.2. As a condition of registration by qualification, the administrator may require that a report by an accountant, engineer, appraiser or other professional person be filed, and may require that the estimated cost of such report be deposited in advance by the registrant in an

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

History: 1979 AC.

R 451.705.1 Registration statements; who may file.

Rule 705.1. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. A registration statement shall have 1 or more registrants and may ordinarily have no more than 1 issuer but may cover more than 1 class of securities of that issuer.

History: 1979 AC.

R 451.705.2 Rescinded.

History: 1979 AC; 1983 AACS.

R 451.705.3 Impoundment of proceeds of sale of securities.

Rule 705.3. (1) As a condition to registration by qualification or coordination, the administrator may require that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security in this state or elsewhere, sufficient to accomplish the purposes of the offering, or until certain stipulated requirements are met.

(2) In a new promotional enterprise, the administrator will ordinarily require that 100% of the sales price be impounded and that the 100% be returned to investors entitled thereto upon order of the administrator in case of failure to raise the specified amount within 1 year or during the effectiveness of the registration, or if certain stipulated requirements are not met. In such case, the promoters will be required, by equity investment or otherwise in a manner satisfactory to the administrator, to defray the discount, commission and expenses of the public offering including the expense of the impoundment and possible refunds. Consideration will be given to reduction of this percentage to defray some or all of the public offering costs in any instance of an enterprise with reduced promotional remuneration and advantages. No funds may be released except upon order of the administrator and all funds may be subject to audit before release.

(3) A bank or trust company may act as depository or escrow agent for the impoundment of proceeds. Checks, drafts and money orders shall be made payable to the depository. If a broker-dealer is acting as underwriter or selling agent for the issuer, payments may be made directly to such broker-dealer who shall promptly, after payment or settlement, make remittance to the depository.

(4) A request for the release of impounded funds when requirements are met shall be by petition in writing affirming compliance with the registration and shall be accompanied by a statement from the depository setting forth the total amount on deposit.

History: 1979 AC.

R 451.705.4 Reports by registrants.

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

History: 1979 AC.

R 451.705.5 Rescinded.

History: 1979 AC; 1991 AACS.

R 451.705.6 Distribution of preliminary prospectus.

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

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

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

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

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

History: 1980 AACS.

R 451.705.7 Amendment of registration statement.

Rule 705.7. (1) Pursuant to section 305(j), a registration statement relating to securities not yet sold may be amended after its effective date to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the administrator so orders.

(2) For securities which are sold in an amount in excess of the amount or number of securities specified in an effective registration statement as proposed to be offered, the person or persons who filed the registration statement may elect to have the registration of such excess securities considered effective as of the time of their sale, upon payment to the administrator, within 6 months after the first sale of such excess securities, of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee which would have otherwise been applicable to those additional securities had they been included in the registration statement, if any, plus a late registration fee of \$250.00.

History: 1983 AACS.

R 451.706.1 Incomplete registration statements.

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

History: 1979 AC.

R 451.706.2 Debt securities and preferred stock; junior equity.

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

History: 1979 AC.

R 451.706.3 Rescinded.

History: 1979 AC; 1980 AACS.

R 451.706.4 Contractuals; 30-day letter.

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

History: 1979 AC.

R 451.706.5 Rescinded.

History: 1979 AC; 1983 AACS.

R 451.706.6 Rescinded.

History: 1979 AC; 1983 AACS.

R 451.706.7 Rescinded.

History: 1979 AC; 1983 AACS.

R 451.706.8 Warrants and stock purchase options.

Rule 706.8. (1) A registration statement covering an offering of capital stock involving warrants or stock purchase options to others than all the purchasers of securities will generally be regarded as not being in the public interest and as being objectionable under subparagraphs (E) and (F) of

section 306(a)(2) of the act unless the requirements hereinafter set forth are met and justify the issuance of the warrants or stock options.

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

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

History: 1979 AC; 1983 AACS.

R 451.706.9--R 451.706.23 Rescinded.

History: 1979 AC; 1981 AACS.

R 451.706.24 Waiver of the affiliated broker-dealer prohibition contained in section 402(b)(9)(C) of the act.

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

History: 1981 AACS.

R 451.706.25 Review standard pursuant to the act.

Rule 706.25. Pursuant to section 402(b)(9)(D)(3)(ii) of the act, the administrator may find the offering consistent with the provisions of section 306 of the act when it appears to the administrator that the offering circular reasonably discloses all information material to the offering. Such offering circular shall, at a minimum, contain the provisions enumerated in section 402(b)(9)(D)(2)(i) to (ix).

History: 1981 AACS.

R 451.706.26 Definitions; corporation equity securities registration.

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

(a) "Accredited investors" means those investors defined in regulation D, 17 C.F.R. S230.501(a)(1) to (3) (1982).

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

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

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

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

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

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

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

- (i) Number of underwriters involved.
- (ii) Whether the underwriters are purchasing for their own account.
- (iii) Size and experience of underwriter staff.
- (iv) Independence of underwriter.
- (v) Past history of underwriter.
- (vi) Total size of offering.

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

(i) Operates a small business investment company licensed under the small business investment act of 1958, as amended, 15 U.S.C. §631 et seq.

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

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

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

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

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

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

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

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

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

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

(iii) Investors satisfy any of the following requirements:

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

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

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

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

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

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

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

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

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



History: 1983 AACCS.

#### PART 4. GENERAL PROVISIONS

R 451.801.1 "Act" defined.

Rule 801.1. (1) As used in these rules:

"Act" means Act No. 265 of the Public Acts of 1964, as amended, being S451.501 et seq. of the Michigan Compiled Laws.

(2) Except when the context clearly indicates otherwise, terms defined in the act have the same meaning when used in these rules.

History: 1979 AC; 1980 AACCS.

R 451.801.2 Definitions.

Rule 801.2. As used in the act and in these rules:

(a) "A specified number of days" means calendar days, including Saturdays, Sundays, and holidays, unless the act or rule specifically indicates that business days are intended.

(b) "Officer" means the president, vice president, secretary, or treasurer of a corporation, or a person occupying a similar status or performing similar functions.

(c) "Commodities contract," as defined by section 401(o) of the act, includes, but is not limited to, an agreement or document evidencing the sale of a commodity for present delivery where the value of the commodity is difficult to ascertain, except by a person expert in the analysis of the commodity, and the commodity is offered for sale to the general public as an investment for future appreciation.

(d) "Goods commonly classified as commodities within the normal course of business dealings" include, but are not limited to:

(i) Precious or semi-precious gems or imitations thereof.

(ii) Warehouse receipts for, casks of, or other containers of whiskey or other alcoholic beverage.

History: 1979 AC.

R 451.801.3 Persons excluded from definition of "agent."

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

History: 1980 AACCS.

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

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

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

History: 1980 AACCS; 1981 AACCS.

R 451.801.5 Rescinded.

History: 1983 AACS; 1991 AACS.

R 451.802.1 Rescinded.

History: 1979 AC; 1980 AACS; 1991 AACS.

R 451.802.2 Recognized securities manuals.

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

- Moody's industrial manual
- Moody's transportation manual
- Moody's public utility manual
- Moody's bank and finance manual
- Moody's municipal and government manual
- Moody's OTC industrial manual
- Standard and Poor's corporation records
- Best's life insurance reports
- Best's insurance reports (fire and casualty)

History: 1979 AC; 1980 AACS.

R 451.802.3 Rescinded.

History: 1979 AC; 1980 AACS.

R 451.803.1 Rescinded.

History: 1979 AC; 1980 AACS.

R 451.803.2 Number of sales permitted under act.

Rule 803.2. (1) The number of sales to persons in this state permitted under section 402(b)(9)(D)(2) of the act shall be 25 during the initial period of 12 months commencing with the first sale and shall be 15 during any subsequent period of 12 consecutive months in the case of any offering of securities with respect to which no exemption is also claimed under section 402(b)(10) of the act.

(2) The number of sales to persons in this state permitted under section 402(b)(9)(D)(2) of the act shall be 15 during any 12-month period in the case of any offering of securities with respect to which an exemption is also claimed under section 402(b)(10) of the act.

History: 1980 AACS.

R 451.803.3 "Consulting fee" defined; offering circular; delivery; rescission of agreement.

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

accountants, or officers or employees of a financial institution whose securities are exempt pursuant to section 402(a)(3), (4), or (5) of the act.

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

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

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

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

History: 1980 AACS.

#### R 451.803.4 Private offering exemption.

Rule 803.4. In furtherance of any investigation, the administrator may require an offeror utilizing an exemption under section 402(b)(9) of the act to file a written statement identifying the issuer or venture and the offeror, describing the securities offered or to be offered, and listing the name and address of every offeree and every purchaser. The failure to file such information within 15 days of request or the filing of incomplete or false information constitutes grounds for the administrator to withdraw the exemption as provided in section 408(c) of the act and to start proceedings under section 408 of the act.

History: 1980 AACS.

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

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

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

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

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

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

if such entity had at least 1 officer or partner, or person of similar status, who was engaged in any such business, or combination thereof, on a full-time basis during the period in question.

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

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

History: 1980 AACS.

R 451.803.6 Rescinded.

History: 1980 AACS; 1984 AACS.

R 451.803.7 Uniform limited offering exemption.

Rule 803.7. (1) The major objective of this rule is to facilitate regional and national exempt offerings through uniformity among the states and compatibility with federal exemptions. It is therefore substantially identical with the national guidelines for limited offering exemptions adopted by the north American securities administrators association (NASAA), which is integrated with, and largely based upon, the federal exemption, regulation D, 17 C.F.R. SS230.501 to 230.505 and 230.506 to 230.508, adopted in securities and exchange commission release no.33-6389, 47 F.R. 11251 (March 8, 1982), and as amended in releases nos.33-6663, 51 F.R. 36385 (October 2, 1986), 33-6758, 53 F.R. 7866 (March 3, 1988), and 33-6825, 54 F.R. 11369 (March 14, 1989). Copies may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, Northwest, Washington, DC 20549, at a cost at the time of adoption of these rules of 20 cents per page, or the Michigan Corporation and Securities Bureau, Securities Division, 6546 Mercantile Way, Lansing, Michigan 48909, at no cost. Consistent with this objective, and in the interest of continuing uniformity, interpretations or modifications to regulation D, 17 C.F.R. SS230.501 to 230.503, 230.505, and 230.506 to 230.508, which are applicable to this state and which are cooperatively developed with NASAA shall be proposed for implementation at the earliest possible opportunity.

(2) This exemption does not relieve issuers or persons acting on behalf of issuers from providing disclosure to prospective investors which is adequate to satisfy the antifraud provisions of the act.

(3) In view of the objective of this rule and the purpose and policies underlying the act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

(4) This rule does not relieve registered brokers or agents from the due diligence, suitability, or know-your-customer standards or other requirements of law applicable to such registered persons.

(5) This rule does not exempt any person who is otherwise required to be registered as a broker-dealer or agent in this state from such requirement.

(6) Attempted compliance with this exemption does not act as an exclusive election.

(7) The conditions and number of purchasers provided for in the act are waived or modified to provide for exemption of any securities if offered or sold in compliance with federal regulation D, 17 C.F.R. SS230.501 to 230.503, 230.505, and 230.506 to 230.508, as made effective in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 8, 1982), and as amended in release nos. 33-6663, 51 F.R. 36385, (October 2, 1986), 33-6758, 53 F.R. 7866 (March 3, 1988), and 33.6825, 54 F.R. 11369 (March 14, 1989). Federal regulation D, SS230.501 to 230.503, 230.505, and 230.506 to 230.508 are adopted in these rules by reference. Copies may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, Northwest, Washington, DC 20549, at a cost at the time of adoption of these rules of 20 cents per page, or the Michigan Corporation and Securities Bureau, Securities Division, 6546 Mercantile Way, Lansing, Michigan 48909, at no cost. Such offering or sale shall also comply with all of the following conditions and limitations:

(a) A commission shall not be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state, unless such person is appropriately registered in this state as a broker-dealer, agent, finder, or investment adviser. It is a defense to a violation of this subdivision if the issuer sustains the burden of proof to establish that he or she did not know, and in the exercise of reasonable care could not have known, that the person who is receiving a commission, fee, or other remuneration was not appropriately registered in this state. A person who is not otherwise required to be registered in accordance with the act may satisfy this condition through special notice registration as follows:

(i) Notice registration is accomplished by filing a uniform notice registration form with the administrator. A separate form shall be filed, for each person to be registered, not later than 10 business days before the first sale of securities in the state by that person. The registration becomes effective 10 days after receipt unless objected to by the administrator.

(ii) The registration provided for in this subdivision may be denied or revoked for the same reasons, except for examination requirements, that the similar class of registration may be denied or revoked under the act.

(iii) A person who is registered in accordance with the notice registration provided for in this subdivision is registered for only the offering for which exempt transaction status is sought, and the registration only remains effective until such time as the offering is completed or registration is otherwise terminated.

(b) An exemption under this rule shall not be available for the securities of any issuer if any of the following provisions applies to any of the parties described in regulation A, 17 C.F.R. S230.252(c), (d), (e), and (f), adopted in securities and exchange commission release no.33-3663, 21 F.R. 5739 (July 23, 1956), amended in release nos. 33-3935, 23 F.R. 4454 (July 11, 1958), 33-4149, 24 F.R. 8627 (November 19, 1959), 33-6289, 46 F.R. 13505 (March 25, 1981), and 33-6546, 49 F.R. 35342 (September 7, 1984):

(i) A party has filed a registration statement which is subject to a currently effective stop order involving fraud or deceit entered pursuant to any state's securities law within 5 years before the filing of the notice required under this exemption.

(ii) A party has been convicted, within 5 years before the filing of the notice required under this exemption, of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit.

(iii) A party is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within 5 years before the filing of the notice required under this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within 5 years before the filing of the notice required under this exemption.

(iv) A party is currently subject to any state's administrative enforcement order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

(v) A party is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction 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 the state entered within 5 years before the filing of the notice required under this exemption.

(vi) A party is disqualified pursuant to the disqualification provisions of regulation A, 17 C.F.R. S230.252(c), (d), (e), and (f), adopted in securities and exchange commission release no. 33-3663, 21 F.R. 5739 (July 23, 1956), amended in release nos. 33-3935, 23 F.R. 4454 (July 11, 1958), 33-4149, 24 F.R. 8627 (November 19, 1959), 33-6289, 46 F.R. 13505 (March 25, 1981), 33-6546, 49 F.R. 35342 (September 7, 1984), as to offerings under regulation D, 17 C.F.R. S230.506, adopted in securities and exchange commission release no. 33-6389, 47 F.R. 11251 (March 8, 1982), and as amended in release nos. 33-6663, 51 F.R. 36385 (October 2, 1986), 33-6758, 53 F.R. 7866 (March 3, 1988), and 33-6825, 54 F.R. 11369 (March 14, 1989). Copies may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, Northwest, Washington, DC 20549, at a cost as of the time of adoption of these rules of 20 cents per page, or the Michigan Corporation and Securities Bureau, Securities Division, 6546 Mercantile Way, Lansing,

Michigan 48909, at no cost. The prohibitions of paragraphs (i) to (iii) and (v) of this subdivision do not apply if the party subject to the disqualifying order is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such party or if the broker-dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order conviction, judgment, or decree relating to such party. Any disqualification caused by this subdivision is automatically waived if the federal agency, state securities administrator, or agency of the state which 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. Federal regulation A, 17 C.F.R. S230.252(c), (d), (e), and (f) is adopted in these rules by reference. Copies of regulation A may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, Northwest, Washington, DC 20549, at a cost as of the time of adoption of these rules of 20 cents per page, or the Michigan Corporation and Securities Bureau, Securities Division, 6546 Mercantile Way, Lansing, Michigan 48909, at no cost.

(c) The issuer shall file, with the state administrator, 1 signed copy of the notice on form D, 17 C.F.R. S230.500, at the same time and in the same manner as prescribed by the provisions of 17 C.F.R. S230.503(a), adopted in securities and exchange commission release no. 33-6389, 47 F.R.11251 (March 8, 1982), and as amended in release nos. 33-6663, 51 F.R.36385 (October 2, 1986), 33-6758, 53 F.R. 7866 (March 3, 1988), and 33-6825, 54 F.R. 11369 (March 14, 1989). Form D, 17 C.F.R. S230.500 is adopted in these rules by reference. Copies may be obtained from the Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, Northwest, Washington, DC 20549, at a cost as of the time of adoption of these rules of 20 cents per page, or the Michigan Corporation and Securities Bureau, Securities Division, 6546 Mercantile Way, Lansing, Michigan 48909, at no cost. In addition, the issuer shall file both of the following with the required initial notice on form D:

(i) A consent to service of process, unless such consent was previously filed with the administrator.

(ii) An undertaking by the issuer to furnish the state securities administrator, upon written request, the information furnished by the issuer to offerees.

(d) In all sales in this state to a person who is not an accredited investor, the issuer and any person acting on the issuer's behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that either of the following conditions has been satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his or her other security holdings and as to his or her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment is not more than 10% of the investor's net worth, it is suitable.

(ii) The purchaser, either alone or with his or her purchaser representative, has such knowledge and experience in financial and business matters that the purchaser or the purchaser and his or her purchaser representative are capable of evaluating the merits and risks of the prospective investment.

(8) Offers and sales which are exempt under this rule shall not be combined with offers and sales exempt under any other rule or any section of the act; however, nothing in this limitation shall act as an election. If for any reason the offer and sale fail to comply with all of the conditions for this exemption, the issuer may utilize the availability of any other applicable exemption.

(9) The administrator may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(10) The exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

History: 1983 AACS; 1991 AACS.

R 451.803.8 Multijurisdictional disclosure system offerings.

Rule 803.8. (1) This rule shall apply to the registration by coordination pursuant to the provisions of section 303 of the act in

Michigan of securities that are registered with the securities and exchange commission in accordance with the multijurisdictional disclosure system adopted in securities and exchange commission release no. 33-6902, 56 F.R. 30036 (July 1, 1991).

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

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

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

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

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

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

History: 1993 AACS.

R 451.803.9 Private resales under securities and exchange commission rule 144A.

Rule 803.9. (1) Offers to resell and resales of restricted securities made in compliance with rule 144A of the securities and exchange commission, as adopted in securities and exchange commission release no.33-6862, 55 F.R. 17933 (April 30, 1990), shall be exempt from the securities registration requirements of the act.

(2) This rule does not exempt any person who is otherwise required to be registered as a broker-dealer or agent in this state from such requirement.

History: 1993 AACS.

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

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

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

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

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

History: 1993 AACs.

R 451.803.11 Small corporate offering registration.

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

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

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

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

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

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

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

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

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

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

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

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

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

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

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

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



1934, 15 U.S.C. SS78m 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 registration shall not be available for the securities of any issuer if any of the following provisions applies to that issuer or any of its officers, directors, 10% stockholders, promoters, or any selling agents of the securities to be offered or any officer, director, or partner of such selling agent:

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

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

(i) Forgery.

(ii) Embezzlement.

(iii) Obtaining money under false pretenses.

(iv) Larceny.

(v) Conspiracy to defraud.

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

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

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

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

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

(a) The form of selling agency agreement.

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

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

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

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

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

- (g) Consent to service of process accompanied by an appropriate corporate resolution.
- (h) Copies of all advertising or other material that is directed, or to be furnished to investors in the offering.
- (i) The form of escrow agreement for escrow of proceeds.
- (j) Consent to inclusion in disclosure document of accountant's report.
- (k) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences.
- (l) Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel.
- (m) The form of any subscription agreement for the purchase of securities in the offering.
- (n) An opinion of an attorney who is licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and, when issued upon payment of the offering price, will be legally and validly issued, fully paid and nonassessable, and binding on the issuer in accordance with their terms.
- (o) A schedule of residence street addresses of officers, directors, and principal stockholders.
- (p) Additional information as the administrator requires by rule or order.

History: 1993 AACS.

#### R 451.812.1 Financial statements.

Rule 812.1. When a report pursuant to any of these rules is prepared by an independent or certified public accountant who holds, or intends to acquire, any position or interest in the registrant covered by the report, full disclosure thereof shall be made to the administrator.

History: 1979 AC.

#### R 451.812.2 Disclosure of financial condition of general partner or oil and gas issuer.

Rule 812.2. For the purpose of section 402(b)(9)(D)(2)(ii) of the act, the statement of a general partner in a limited partnership or of an oil and gas issuer concerning its net worth shall refer to its net worth as determined in accordance with generally accepted accounting principles, except that in the case of a general partner or oil and gas issuer which does not have books and records kept in accordance with generally accepted accounting principles, the statement may refer to its net worth as determined in accordance with the provisions of the internal revenue code of 1954, as amended. In calculating its net worth, a general partner or oil and gas issuer shall follow generally accepted accounting principles or the provisions of the internal revenue code, as the case may be, except that fixed assets may be valued at market value as determined in accordance with generally accepted valuation methods in the industry, and proven oil and gas reserves may be valued at their actual discounted value as determined by an independent petroleum appraiser.

History: 1980 AACS.

#### R 451.813.1 Rescinded.

History: 1980 AACS; 1991 AACS.

#### R 451.814.1 Irrevocable consent to service of process.

Rule 814.1. An applicant for registration under the act and an issuer which proposes to offer a security in this state through a broker-dealer as his agent shall file, or have on file, with the administrator an irrevocable consent to service of process pursuant to section 414(g) of the act in the prescribed form CA appearing in the appendix to these rules, or a uniform form satisfactory to the administrator containing substantially the same provisions may be filed.

History: 1979 AC.

R 451.817.1 Rescission.

Rule 817.1. Rules 1 to 30, 101 to 120, and 201 to 208 of the corporation and securities commission pertaining to securities, being R 451.1 to R 451.30, R 451.101 to R 451.120, and R 451.201 to R 451.208 of the Michigan Administrative Code, and appearing on pages 5501 to 5514 of the 1954 volume of the Code and the amendments and additions thereto appearing on page 133 of the 1955 Supplement to the Code, pages 739 to 741 of the 1957 Supplement to the Code, and page 2911 of the 1963 Supplement to the Code, are rescinded.

History: 1979 AC.

R 451.818.1 Securities exempt from sections 301 and 403 of act; conditions.

Rule 818.1. Any security which meets all of the following conditions is exempted from sections 301 and 403 of the act:

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process, and has set forth the name and address of such agent in its prospectus.

(b) A class of the issuer's securities is required to be and is registered under section 12 of the securities exchange act of 1934, 15 U.S.C. S78l and has been so registered for the 3 years immediately preceding the offering date. For purposes of this rule, the issuer may include the registration period of its immediate predecessor, if the issuer's succession was primarily as a consequence of changing the state of incorporation or for the formation of a holding company. In either situation the assets and liabilities of the successor must be substantially the same as the predecessor.

(c) Neither the issuer nor a significant subsidiary, or predecessor relied upon for the purpose of subdivision (b), has had a material default during the last 7 years (or the issuer's existence, if less than 7 years) in the payment of either of the following:

(i) Principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money.

(ii) Rentals under leases with terms of 3 years or more. A "material default" is a failure to pay, the effect of which is to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds 5% of the issuer's (and its consolidated subsidiaries) total assets, or if the arrearage in required dividend payments on preferred stock is not cured within 30 days.

(d) The issuer and its predecessor, as indicated in subdivision (b), have an annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes), as follows:

(i) Not less than \$1,000,000.00 in 4 of its last 5 fiscal years including its last fiscal year.

(ii) If the offering is of interest-bearing securities, not less than 1 1/2 times its annual interest expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds, for its last fiscal year. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ending not more than 15 months from the commencement of the offering.

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights and such rights include both of the following:

(i) The right to have at least as many votes per share.

(ii) The right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law.

(f) If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within 6 months prior to the commencement of the offering, by not less than 1,200 persons, and on that date there are not less than 750,000 of the shares outstanding with an aggregate market value, based on the average bid price, of not less than \$3,750,000.00. In

determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owner.

(g) If the issuer of the securities is a finance company with liquid assets of not less than 105% of its liabilities (other than deferred income taxes, deferred investment tax credits, the net income surplus) at the end of each of its last 5 fiscal years, the net income requirement of subdivision (d)(ii), but before deduction for interest expense, shall be  $1\frac{1}{4}$  times its annual interest expense. "Finance company" means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand for not more than 12 years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

History: 1982 AACS.