

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Corporations, Securities, & Commercial Licensing

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Securities

5. Rule numbers or rule set range of numbers:

R 451.1.1 - R 451.6.2

6. Estimated time frame:

12 months

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The Corporations, Securities, and Commercial Licensing Bureau (CSCL) proposes to amend the Securities Rules (Rule 451.1.1 - 451.6.2) to incorporate model rules adopted by the North American Securities Administrators Association (NASAA) in 2022 and 2023. The model rules extend the validity of qualifications examinations for certain individuals registered under the Michigan Uniform Securities Act (MUSA) if they enroll in a program administered by the Financial Industry Regulatory Authority (FINRA) and/or NASAA, and complete continuing education applicable to their registration categories.

The two MUSA registration categories at issue are agents who effect securities transactions and register pursuant to MCL 451.2402, and investment adviser representatives (IAR or IARs) who advise clients about how to invest in securities and register pursuant to MCL 451.2404.

Agents generally must be registered with both a self-regulatory organization (often FINRA) and the states where they conduct business. In Michigan, agents must take and pass an examination or combination of examinations required by rule 451.4.9 to become registered.

IARs are generally only required to register with relevant state securities authorities where they do business, and in Michigan must take and pass an examination or combination of examinations required by rule 451.4.12.

Under the current rules 451.4.9 and 451.4.12 in Michigan, agents and IARs must have taken and passed relevant examinations no more than two years before the application for registration is filed with the administrator, unless the person qualifies for an examination waiver. For both agents and IARs, if the individual was registered in Michigan or another state with the same examination requirements within the two years prior to the application, then the individual is not required to comply with the examination requirements.

Under the current framework, an examination remains valid if the individual is registered with and employed by or associated with a broker-dealer (for an agent) or an investment adviser (for an IAR), and then for two years following termination of that employment. If the person re-applies for registration within two years of terminating prior employment, their examination will be considered valid; otherwise, they would need to re-take their relevant examinations or qualify for a waiver.

In March 2022, FINRA implemented its Maintaining Qualifications Program (MQP) to extend the validity of examinations for FINRA registration purposes from two years to five years under certain circumstances. By enrolling in the MQP and completing relevant continuing education each year, an agent's examinations will remain valid for five years without being employed by or associated with a broker-dealer, rather than two years without MQP participation. Where an agent does not successfully participate in MQP, their examination validity still expires two years after they terminate their employment with a broker-dealer.

In September 2022, NASAA promulgated a model rule available for state adoption to extend broker-dealer agent examination registration validity from two years to five under relevant state laws; a companion model rule made clear that MQP participation by an agent would not extend IAR examination validity. In April 2023, NASAA adopted another model rule to extend the validity of examinations for IARs who enroll in a NASAA-administered program and complete relevant continuing education.

Just like FINRA's MQP, the NASAA model rules do not eliminate the two-year validity of relevant examinations; rather, they provide an option for individuals to extend the validity to five years should the individual successfully participate in the relevant programs. Adoption of the NASAA model rules will align agent requirements with parallel FINRA requirements and ensure that IARs and agents are treated similarly in the examination validity space.

CSCS staff believes that adoption of these NASAA model rules extending examination validity for agents and IARs who successfully participate is beneficial for members of industry and for investors alike. Agents and IARs may leave employment with their firms for any number of reasons, including business reorganizations, career changes, and life events like caring for children or elderly parents, or pursuing additional education. Doing so for more than two years would require the person to retake their qualification examinations before re-associating with a broker-dealer or investment adviser to prove their knowledge of industry requirements. However, if the individual is incentivized to maintain their knowledge of industry standards, products, practices, and ethics during their disassociated period through approved and documented continuing education, then the investor protection concern is reduced, and the burden on the investment professional is minimized as well.

Incorporation of these new NASAA model rules would involve amendments to Rule 451.4.9 and Rule 451.4.12, along with the addition of a new Rule 451.4.30.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

MCL 451.2102(a) under the MUSA defines “administrator” as the Office of Financial and Insurance Regulation. Executive Reorganization Order No 2012-6, MCL 445.2034, transferred the Securities Division of the Office of Financial and Insurance Regulation to the Department of Licensing and Regulatory Affairs on November 6, 2012. The Department Director delegated authority as the Administrator of the MUSA to the Corporations, Securities, and Commercial Licensing Bureau Director.

MCL 451.2412(5) states, “A rule or order under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order under this act may waive an examination as to an individual and a rule under this act may waive an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.”

MCL 451.2605(1)(a) and (c) allow the Administrator to, after notice and comment, adopt and amend rules necessary or appropriate to carry out the MUSA, and may by rule classify securities, persons, and transactions, and adopt different requirements for different classes.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 451.2102, MCL 451.2102a, MCL 451.2102c, MCL 451.2401, MCL 451.2402, MCL 451.2403, MCL 451.2404, MCL 451.2405, MCL 451.2406, MCL 451.2407, MCL 451.2408, MCL 451.2409, MCL 451.2411, MCL 451.2412, MCL 451.2601, MCL 451.2605, MCL 451.2608, Executive Reorganization Order NO. 2012-6, MCL 445.2034.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

These rules will not conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level. They would promote uniformity and consistency with parallel requirements of other regulatory bodies.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The Securities Rules are available on CSCL’s website, www.michigan.gov/securities, under the Spotlight section.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

No.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The rules do not incorporate recommendations received from the public. The rules are based on NASAA model rules for which NASAA sought and received public comment in its drafting and adoption process.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules were last amended with an effective date of February 16, 2022. FINRA adopted its MQP in March 2022, which led NASAA to draft and adopt exam validity extension program model rules for broker-dealer agents in September 2022, and for investment adviser representatives in April 2023. CSCL seeks to incorporate these updated rules into its rule set under the MUSA.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.