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Report From Agency**ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions, Division of Securities by this order amends
3 ss. DFI—Sec 1.02(5)(b) and (c); repeals ss. DFI—Sec 1.02(8), 2.01(9) and (10), 2.02(9)(b) and
4 (m); amends ss. DFI—Sec 3.03(1); amends ss. DFI—Sec 4.01(3) and (4)(e) – (g), 5.01(4)(a) and
5 (b), and 5.05(2)(a); creates s. DFI—5.13(4); amends s. DFI—7.01(2)(title) and (c); and repeals
6 ss. DFI—Sec 9.01(1)(b)10 and 13 relating to minor revisions to securities administrative code
7 sections for conformity with Wisconsin securities statutes, filings and securities agent
8 examination matters.

Analysis Prepared by the Department of Financial Institutions, Division of Securities

Statute(s) interpreted: s. 551.615, Stats.

Statutory authority: ss. 551.406(5), 551.605(1), and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to ch. 551, Stats., the department regulates securities.

9 Summary of proposed rule: The objective of the rule is to amend ss. DFI—Sec 1.02(5)(b) and
10 (c); repeal ss. DFI—Sec 1.02(8), 2.01(9) and (10), 2.02(9)(b) and (m); amend ss. DFI—Sec
11 3.03(1); amend ss. DFI—Sec 4.01(3) and (4)(e) – (g), and 5.01(4)(a) and (b), and 5.05(2)(a);
12 create s. DFI—5.13(4); amend s. DFI—7.01(2)(title) and (c); and repeal ss. DFI—Sec
13 9.01(1)(b)10 and 13. The purpose of the rule is as follows: Section 1. These amendments are
14 necessary to clarify that these apply to federally-covered advisors, their investment adviser
15 representatives and state advisers, and also to correct cross references. Section 2. This section
16 can be repealed as duplicative to the definition in s. 551.102(11)(m), Stats. Section 3. As a
17 result of 2007 Wisconsin Act 196, these exemptions are no longer necessary. Section 4. These
18 sections can be repealed because of the language and scope of the merger/reorganization and
19 employee benefit plan registration exemptions resulting from 2007 Wisconsin Act 196. Section
20 5. These amendments provide for an electronic filing alternative (to the existing hardcopy notice
21 filing provision) for federal Regulation D/Rule 506 securities offerings that are or will be made
22 in Wisconsin. Section 6. This amendment provides specific recognition of electronic prospectus
23 delivery modes that comply with federal requirements on the subject. Section 7. The
24 amendment to s. DFI—Sec 4.01(3) clarifies that if a broker-dealer or agent applicant has received
25 a waiver, he or she need not again take and pass such exams. The amendments to ss. DFI—Sec
26 4.01(4)(e) to (g) clarify that even though the applicant may receive a waiver from passing the
27 general securities business examination requirement, it does not relieve the applicant from passing
28 one of the state law exams. Section 8. Section DFI—Sec 5.01(4)(a) embodies two distinct
29 examination waiver concepts for investment advisors and investment advisor representatives that

30 are best separated, and the amendment eliminates a conflict with (b). Amending s. DFI—Sec
31 5.01(4)(b) preserves the minimum qualification standard envisioned by s. DFI-Sec 5.01(3).
32 Section 9 corrects a citation. Section 10 is necessary to provide the exemption from registration
33 for investment adviser representatives of noticed filed federal covered investment advisers in
34 order to comply with the provisions of federal law. Section 11. Because of the change from
35 “licensing” to “registration” for broker-dealer and investment adviser matters, these amendments
36 help differentiate between “licensee” matters and registration of securities matters. Section 12.
37 Form IAR (WI) is no longer necessary because renewals are handled via IARD, and form
38 IAUSR(WI) will be discontinued as part of the application process.

Summary of and preliminary comparison with existing or proposed federal regulation: There are no newly-developed or proposed federal regulations addressed by this rule. However, Wisconsin Securities Law and rules are generally coordinated with corresponding federal requirements, pursuant to s. 551.615, Stats.

Comparison with rules in adjacent states: These rule chapters reflects the 2002 Uniform Securities Act which Iowa and Minnesota have adopted and written rules; Illinois and Michigan have not.

Summary of factual data and analytical methodologies: The division applied its own experience in its regulation of securities generally for the minor clarifications, corrections, revisions and examination matters addressed by the rule.

Analysis and supporting documentation used to determine effect on small business: The rule makes minor clarifications, corrections and revisions for conformity with existing statutes; imposes no additional substantive requirements; and reduces the same.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

Agency Contact Persons

To obtain a copy of the rule or fiscal estimate at no charge or for questions regarding the agency’s internal processing of the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the rule may also be obtained and reviewed at the Department of Financial Institution’s website, www.wdfi.org.

For substantive questions on the rule, contact Randall Schumann, Attorney, Department of Financial Institutions, Division of Securities, P.O. Box 1768, Madison, WI 53701-1768, tel. (608) 266-3414, e-mail randall.schumann@wisconsin.gov.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Securities adopts the following:

39 SECTION 1. DFI-Sec 1.02(5)(b) and (c) are amended to read:

40 **DFI-Sec 1.02(5)(b)** For purposes of ss. 551.403 (1), ~~and 551.404 (1)~~ and 551.405(1), Stats.,
41 advising any person in this state through the United States mail, by telephone or by other means
42 from outside or from within this state as to the value of securities, the advisability of investing in,
43 purchasing or selling securities, or issuing analyses or reports concerning securities to any person
44 in this state through the United States mail, by telephone or by other means; and

45 **DFI-Sec 1.02(5)(c)** Except as provided under s. DFI-Sec ~~5.12~~ 5.13, for purposes of ss. 551.401
46 (1), 551.402 (1), 551.403 (1), ~~and 551.404 (1)~~ and 551.405(1), Stats., soliciting any person in this
47 state through the United States mail, by telephone or by other means from outside or from within
48 this state to become a customer, client or subscriber of the person on whose behalf the soliciting
49 is performed.

50 SECTION 2. DFI-Sec 1.02(8) is repealed.

51 SECTION 3. DFI-Sec 2.01(9) and (10) are repealed.

52 SECTION 4. DFI-Sec 2.02(9)(b) and (m) are repealed.

53 SECTION 5. DFI-Sec 2.04(2) is amended to read:

54 (2) With respect to a federal covered security referred to in s. 551.302 (3), Stats., unless the
55 security is registered or exempt from registration under ss. 551.201, 551.202, Stats., or rule or
56 order under s. 551.203, Stats., the issuer or a person acting on behalf of the issuer shall ~~file~~ make
57 a filing with the division not later than 15 days after the first sale of the security in this state ~~;~~
58 that meets the requirements of either of the following:

59 (a) A notice consisting of a photocopy of a completed Form D as prescribed by rule 503 of
60 regulation D under the securities act of 1933, signed by the issuer that has been filed
61 electronically with the U.S. securities and exchange commission, together with a \$200 fee.

62 (b) An electronic filing under the Electronic Filing of Form D (EFD) System developed by the
63 North American Securities Administrators Association and operated by PNC Global Investment
64 Servicing or its affiliate, that designates Wisconsin as a state in which the offering is or will be
65 made, and allocates to Wisconsin a \$200 fee.

66 SECTION 6. DFI-Sec 3.03(1) is amended to read:

67 **DFI-Sec 3.03 Prospectus requirements.** (1) As a condition of registration, a prospectus,
68 offering circular, or similar document meeting the requirements of subs. (2), (3), (4) and (5) shall
69 be sent or given to each person to whom an offer is made by or for the account of the issuer or
70 any other person on whose behalf the offering is made, or by any underwriter or broker-dealer
71 who is offering part of an unsold allotment or subscription as a participant in the distribution.
72 The document may be sent or given in hardcopy form, or may be provided in compliance with
73 applicable federal requirements for electronic delivery of prospectuses. The document shall be
74 sent or given either before or concurrently with the earlier of any of the following:

75 SECTION 7. DFI-Sec 4.01(3) (intro.) and 4.01(4)(e) to (g) are amended to read:

76 **DFI-Sec 4.01(3)** Unless waived under sub. (4), each applicant for an initial registration as a
77 broker-dealer or agent is required to take and pass within the two year period immediately
78 preceding the "FILING DATE" of the application reflected on the records of the central
79 registration depository, either the Series 63 Uniform Securities Agent State Law Examination or
80 the Series 66 Uniform Combined State Law Examination, and take and pass within the two year
81 period immediately preceding the "FILING DATE" of the application reflected on the records of

82 the central registration depository, ~~one of~~ or receive a waiver from passing, the general securities
83 business examinations in par. (a), unless the applicant's proposed securities activities will be
84 restricted, in which case the applicant is required to take and pass, or receive a waiver from
85 passing, each examination in pars. (b) to (h) that relates to the applicant's proposed securities
86 activities:

87 **DFI-Sec 4.01(4)(e)** The applicant is currently registered and in good standing with The
88 Securities and Futures Authority of Great Britain and has passed the Series 17 Modified General
89 Securities Representative Qualification Examination for United Kingdom Representatives, and
90 either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform
91 Combined State Law Examination, except that the applicant's activities may not include the offer
92 and sale of municipal Securities unless the applicant passes the examination listed in sub. (3) (d).

93 **DFI-Sec 4.01(4)(f)** The applicant is currently registered and in good standing as an agent with
94 any Canadian stock exchange or with a securities regulator of any Canadian province or territory,
95 or with the Investment Dealers Association of Canada and has passed either the Series 37 or
96 Series 38 Canada modules of the Series 7 general securities representative qualification
97 examination, and either the Series 63 Uniform Securities Agent State Law Examination or the
98 Series 66 Uniform Combined State Law Examination, except that the applicant's activities may
99 not include the offer and sale of municipal securities unless the applicant passes the examination
100 listed in sub. (3) (d).

101 **DFI-Sec 4.01(4)(g)** The applicant is currently registered and in good standing as an agent with
102 any Japanese stock exchange or with any Japanese securities dealers association and has passed
103 ~~either~~ the Series 47 Japan module of the Series 7 general securities representative qualification
104 examination, and either the Series 63 Uniform Securities Agent State Law Examination or the

105 Series 66 Uniform Combined State Law Examination, except that the applicant's activities may
106 not include the offer and sale of municipal securities unless the applicant passes the examination
107 listed in sub. (3) (d).

108 SECTION 8. DFI-Sec 5.01(4)(a) and (b) are amended to read:

109 **DFI-Sec 5.01(4)(a)** The applicant has taken and passed either the Series 65 Uniform Investment
110 Adviser State Law Examination or both the Series 66 Uniform Combined State Law
111 Examination and the Series 7 General Securities Representative Examination within 2 years prior
112 to the date the application is filed with the division ~~or at any time if the applicant has been~~
113 ~~registered as an investment adviser or investment adviser representative in another state within~~
114 ~~the 2 years prior to the date the application is filed with the division if the other state where the~~
115 ~~applicant is registered requires the examinations specified in sub. (3).~~

116 **DFI-Sec 5.01(4)(b)** The applicant has been registered as an investment adviser or registered as
117 an investment adviser representative in any jurisdiction in the United States within 2 years prior
118 to the date the application is filed if that jurisdiction required the examinations specified in sub.
119 (3)(a).

120 SECTION 9. DFI-Sec 5.05(2)(a) is amended to read:

121 **DFI-Sec 5.05(2)(a)** Provides for compensation to the investment adviser on the basis of a share
122 of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client
123 other than a person specified in s. 551.403 (2), Stats., or s. DFI-Sec ~~5.12~~ 5.13.

124 SECTION 10. DFI-Sec 5.13(4) is created to read:

125 **DFI-Sec 5.13(4)** A supervised person of a federal covered investment adviser notice filed in this
126 state is exempt from the registration requirement in s. 551.404(1), Stats., if that supervised
127 person has no place of business in this state.

128 SECTION 11. DFI-Sec 7.01(2)(title) and (c) are amended to read:
129 **DFI-Sec 7.01(2)** SECURITIES REGISTRATION EXEMPTION AND FEDERAL
130 REGULATION D MATTERS.

131 **DFI-Sec 7.01(2)(c)** Application for an opinion confirming a securities registration exemption or
132 an exclusion from a definition.....\$500.

133 SECTION 12. DFI-Sec 9.01(1)(b)10. and 13. are repealed.

134 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: October 30, 2009

Agency: _____
Patricia Struck, Administrator
Department of Financial Institutions
Division of Securities