Chapter DFI–Sec 1

TITLE AND DEFINITIONS

DFI–Sec 1.01 Short title. DFI–Sec 1.02 Definitions.

Note: Chapter SEC 1 was renumbered Chapter DFI–Sec 1 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI–Sec 1.01 Short title. These rules shall be known and may be cited as the "rules of the division of securities."

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

DFI–Sec 1.02 Definitions. In ch. 551, Stats., and chs. DFI–Sec 1 to 36 and unless the context otherwise requires:

(1) With respect to advertising as defined in s. 551.02 (1), Stats.:

(a) "Publication" means:

1. Advertising printed in any newspaper, magazine, periodical or other publication and mailed or delivered to its subscribers or addressees, or communicated by radio, television or similar means; or

2. Seminars or meetings whose attendees have been invited by any general solicitation or general advertising;

(b) "Circulation" means advertising mailed, delivered or communicated in substantially similar form to more than 10 persons in this state (exclusive of persons designated under s. 551.23 (8), Stats.), except that for purposes of s. 551.53 (1) (b), Stats., the distribution of written offering materials in the form of a confidential memorandum or other offering or disclosure document in connection with an offering exempt from registration under s. 551.23 (10) or (19), Stats., shall not be deemed circulation; and

(c) "Use" means any other use of advertising.

(2) "Broker–dealer" as defined in s. 551.02 (3), Stats., does not include:

(a) A pension or profit sharing trust, when effecting transactions for its own account; or

(b) A licensed investment adviser or federal covered adviser when placing orders for the accounts of its clients in accordance with rules prescribed by the division, provided that no commission or other remuneration is received by the investment adviser solely for placing the orders.

(c) Any financial institution which by contract, agreement or other means associates with a broker–dealer licensed in Wisconsin whereby the broker–dealer provides securities services on the premises of the financial institution in accordance with s. DFI–Sec 4.05 (9).

(3) "Purchase" of a security includes every purchase, acquisition or exchange, and every contract of purchase of, or contract to purchase, a security or interest in a security for value.

(4) An "offer" within the meaning of s. 551.02 (11) (b), Stats., is involved, so far as the security holders of an issuer are concerned, if there is submitted to the vote of the security holders a proposal, plan or agreement for:

(a) A reclassification of securities of such issuer which involves the substitution or exchange of a security for another security;

(b) A statutory merger or consolidation in which securities of the issuer will become or be exchanged for securities of any other issuer;

(c) A transfer of assets of the issuer to another person in consideration of the issuance of securities of the other person or any of its affiliates; or

(d) A sale of securities of the issuer to another person in consideration of the issuance or transfer to such issuer of securities of the other person or any of its affiliates.

(5) "Transact business" as used in ch. 551, Stats., includes:

(a) For purposes of s. 551.31 (1), Stats., effecting or attempting to effect transactions in securities for the account of any person in this state through the United States mail, by telephone or by other means from outside or from within this state;

(b) For purposes of s. 551.31 (3), Stats., advising any person in this state through the United States mail, by telephone or by other means from outside or from within this state as to the value of securities, the advisability of investing in, purchasing or selling securities, or issuing analyses or reports concerning securities to any person in this state through the United States mail, by telephone or by other means; and

(c) 1. Except as provided under subd. 2., for purposes of s. 551.31 (1) and (3), Stats., soliciting any person in this state through the United States mail, by telephone or by other means from outside or from within this state to become a customer, client or subscriber of the person on whose behalf the soliciting is performed.

2. Any person who complies with Rule 206 (4)–3. of the investment advisers act of 1940 and meets any of the following conditions is not considered to be "soliciting" for purposes of subd. 1.

a. The person is licensed in this state as an investment adviser or as an investment adviser representative; or

b. The person is licensed in this state as a securities agent for a licensed broker–dealer which is approved to provide investment advisory services for a fee in this state; or

c. The person solicits or refers fewer than 10 persons in Wisconsin to any one investment adviser within a calendar year; or

d. The person is a federal covered adviser.

(6) "Investment contract" as used in s. 551.02 (13) (a), Stats., includes:

(a) Any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. In this subsection, a "common enterprise" means an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts of those seeking the investment or of a 3rd party; and

(b) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(7) (a) "Branch office" for purposes of the broker–dealer provisions of ch. 551, Stats., and chs. DFI–Sec 1 to 9 means any branch office, sales office or office of supervisory jurisdiction registered under the rules of any national securities exchange or national securities association of which the broker–dealer is a member, or any place of business in this state of 3 or more licensed

agents of a broker–dealer that is not a member of a national securities exchange or national securities association.

(b) "Branch office" for purposes of the investment adviser provisions of ch. 551, Stats., and chs. DFI–Sec 1 to 9 means any office in this state that is held out to the public by any means as a business location of an investment adviser or federal covered adviser required to make a filing under s. 551.32 (1m) (a), Stats.

(8) "Financial institution", except for purposes of s. DFI–Sec 2.02 (4), means any of the following entities if authorized to do business in this state:

(a) Any bank organized under the laws of the United States or any state.

(b) Any federal savings and loan association and any savings and loan association or similar association organized under the laws of any state.

(c) Any federal credit union and any credit union or similar association organized under the laws of any state.

(d) Any other savings institution and any trust company organized under the laws of any state.

(9) "Securities services" includes but is not limited to the acceptance of orders to effect securities transactions as agent for the purchaser or seller. "Securities services" does not include exclusively promotional or account–establishing functions subject to s. DFI–Sec 4.05 (8).

(10) For purposes of s. 551.02 (7) (b), Stats., a person's activities that come within the definition of "investment adviser" are not "performed solely incidental" either to the practice of his or her profession or the conduct of his or her business if the person holds himself or herself out generally to the public as being a financial or investment planner, consultant, adviser or similar designation by means of advertisements, cards, signs, circulars, letterheads or similar means.

(11) For purposes of determining availability of the registration exemption of s. 551.22 (1) (a), Stats., in connection with the offer or sale of a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or other instrumentality of any of the foregoing, a "nongovernmental industrial or commercial enterprise" is not present if:

(a) The source, under a lease, sale or loan arrangement, for payment of principal and interest on the revenue obligation, is a duly organized and existing not–for–profit corporation under applicable state law and is an organization described in section 501 (c) (3) of the internal revenue code which qualifies for exemption from federal taxation under section 501 (a) of the internal revenue code; and

(b) The receipt of a limited amount of revenue by the corporation from commercial or retail sources does not result in a loss of the corporation's status as a qualifying organization under sections 501 (a) and (c) (3) of the internal revenue code.

(12) "Cash," "funds," or "money" as used in ch. 551, Stats., and rules thereunder includes, but is not limited to, all types of currency, checks, drafts, bank deposits or their equivalents.

(13) An "offer" for purposes of use of the registration exemption in s. 551.23 (11), Stats., does not include presentations made at an organized venture capital fair or other investment forum designated in writing by the division pursuant to s. DFI–Sec 2.02 (9) (k).

(14) The following defined terms apply for purposes of the definition of "investment adviser representative" in s. 551.02 (7m) (a), Stats.

(a) "Client" has the definition as that set forth in rule 275.203(b)(3)–1 under section 203 of the investment advisers act of 1940, except that "client" does not include persons that are not residents of the United States.

(b) "Excepted person" means a natural person who is a qualified client as described in Rule 205–3(d)(1) under the investment advisers act of 1940.

(c) "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(d) "Percentage specified" for purposes of s. 551.02 (7m) (a) 1. a., Stats., with reference to the percentage of clients of the supervised person who are natural persons that are not excepted persons, means 10%.

(e) "Supervised person" means any of the following:

1. Any partner, officer or director of, or other person occupying a similar status or performing similar functions for, an investment adviser or federal covered adviser.

2. Any employe of an investment adviser or federal covered adviser, except for clerical or ministerial employes.

3. Any other person who provides investment advice on behalf of an investment adviser and is subject to the supervision and control of the investment adviser or federal covered adviser.

(f) "Third party solicitor" means a person soliciting clients on behalf of a licensed investment adviser or a federal covered adviser who is neither a partner, officer, director, or employe of the adviser, nor a supervised person of that adviser.

(15) "Place of business" for purposes of the investment adviser provisions of ch. 551, Stats., and chs. DFI–Sec 1 to 9, means any location held out to the public by any means at which an investment adviser or an investment adviser representative regularly provides investment advisory services, or solicits, meets with, or otherwise communicates with clients or prospective clients.

(16) "Principal office" means the office from which the officers, partners, or managers of a broker–dealer or an investment adviser direct, control, and coordinate the activities of the broker–dealer or investment adviser.

(17) "Custody" includes having possession of customer funds or securities or the power to access or control the disposition of customer funds or securities to third parties.

(18) "Investment adviser representative" as defined in s. 551.02 (7m) (a), Stats., does not include a supervised person of an investment adviser or federal covered adviser that does not have more than 5 natural persons as clients in the United States who are not excepted persons.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70; r. and recr., Register, August, 1972, No. 200, eff. 9–1–72; am. (1), r. and recr. (4) and (5), cr. (6) and (7), Register, December, 1977, No. 264, eff. 1–1–78; am. (1) (intro.), (2) (b) (4) and (6) (a), Register, December, 1980, No. 300, eff. 1–1–81; am. (7), Register, December, 1983, No. 336, eff. 1–1–84; emerg. am. (1) (b), eff. 1–1–84; am. (1) (b), Register, May, 1984, No. 341, eff. 6–1–84; am. (1) (a), cr. (2) (c), (8) and (9), r. and recr. (5), Register, December, 1984, No. 348, eff. 1–1–85; correction in (2) (a) made under s. 13.93 (2m) (b) 12., Stats., Register, December, 1985, No. 360; am. (6) (a), Register, December, 1986, No. 372, eff. 1–1–87; cr. (10), Register, December, 1987, No. 384, eff. 1–1–88; cr. (11), Register, December, 1990, No. 420, eff. 1–1–91; renum. (7) to be (7) (a) and am., cr. (7) (b), Register, December, 1991, No. 432, eff. 1–1–92; am. (5) (c), (7) (a), cr. (12), (13), Register, December, 1994, No. 468, eff. 1–1–95; correction in (13) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; emerg. am. (2) (b), (5) (c) 2. (intro.), a. and (7) (b), cr. (5) (c) 2. d., (14) to (18), eff. 7–9–98; am. (2) (b), (5) (c) 2. (intro.), a. and (7) (b), cr. (5) (c) 2. d., (14) to (18), Register, December, 1998, No. 516, eff. 1–1–99; **correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524.**