

**FINAL ORDER  
WITH ANALYSIS AND RULE TEXT  
OF THE  
DIVISION OF SECURITIES  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
STATE OF WISCONSIN  
AMENDING, ADOPTING AND REPEALING RULES**

**CLEARINGHOUSE RULE 08-077**

To repeal DFI-Sec 1.02(1)(c), (5)(c)2, (6), (8), (14)(b) to (d), (15) to (17), 2.01(1) (c) and (d), (2), (3)(b), and (5) to (8), 2.02(3)(intro.) and (a), (4)(g), (5)(c), (6), (9)(d) to (f), (g)1., (i), and (9)(n)3 and 4, 3.02(1)(a) to (q), 4.01(9), 4.04(3)(b), 4.085, 4.11, 5.02(2)(d)1 and (8), 6.04, 7.01(1)(c), (7), and 7.03(2); to renumber DFI-Sec 4.01(1)(a) and (b), 4.04(3)(a), 5.01(2)(d)2 and 3, (3)(intro.) and (b), 5.04(3) and 8.08; to renumber and amend DFI-Sec 1.02(5)(c)1, (14)(e) to (g), 2.01(3)(a), 2.02(3)(b), (4)(intro.) and (a) to (f), 4.01(1), 4.09, 5.01(3)(a), and 5.09; to amend DFI-Sec 1.02(1), (1)(b), (2)(intro.), (2)(a) and (c), (4)(intro.), (5)(a) and (b), (10), (11)(intro.), (13), (14)(intro.) and (14)(a), 2.01(1)(a) and (b), 2.01(4)(a), (9) and (10)(a), 2.02(1)(intro.), (2), (5)(intro.), (d)(intro.) and (d)2, (7)(a) and (b), (9)(intro.) and (c), 2.07(1), (1)(a)2, (1)(d) and (e) and (2)(b), 2.028(intro.), (1)(a) and (3), 2.03(1) to (3), 2.04(a) to (c) and (2), 3.01(intro.), (1)(a), and (2), 3.02(intro), (2), (2)(h)(intro.) and (3), 3.05(1) to (3), 3.07(2), 3.08, 4.01(2)(a) to (c), (3)(intro.), (3)(a), (4)(a), (8)(intro.), 4.05(1)(a), (8)(b), (d) and (k)2, 4.06(1), (1)(c)2a and b, (1)(f), (o), (s), (t), (2)(intro.), (a), (i), 4.08(1) and (2), 5.03(1)(m) and (o), (3), (5), (6), 5.035(1)(f), 5.04(1), (5)(a) and (b), 5.05(1), (2)(a), (3), (8)(a), (8)(b)1 and 3, (8)(c), (8)(e) 1 to 3, (g), 5.08(1) and (2), 5.10, 5.11(1) to (3), 6.01, 6.02 (intro.), 6.03, 6.05(1)(intro), 7.01(title), (2) (title), (a) and (b), (3)(title), (a), (c)(intro), (d)(intro.), (4)(a) and (b), (5)(title) (a) and (b), 7.03(1), 7.03(3) and (4), 7.06(4)(a)(intro.), 9.01(1)(b)7 and 9, 31.01(8), 32.06, 32.07 and 35.01(5); to repeal and recreate DFI-Sec 1.02(7)(a) and (b), 2.01(4)(b), 2.02(8), 4.01(6), 4.04(7)(c) and (8), 4.07, 4.10, 5.01(1), (4)(a) and (e), 5.04(5)(c) and (6), 5.07(2)(b), 5.12, 7.02(1)(intro.), (1)(a) to (f); and to create DFI-Sec 1.02(2)(d) to (f), 2.01(4)(a)1, 2.02(9)(d), 2.029, 4.01(1)(b), (2)(d), 4.06(1)(v), 4.09(2), 5.01(2)(f), (3), (4)(f), 5.05(14), 5.06(7), (14) to (23), 5.09(2), 5.11(4), 5.13, 7.01(2)(d), and 8.08(2); relating to securities definitions, securities registration procedures and registration exemptions, registration of securities broker-dealers and investment advisers, fraudulent practices, general provisions, administrative procedure and forms, and relating to franchise law disclosure document requirements.

Pursuant to the statutory authority specified below under the Wisconsin Uniform Securities Law and the Wisconsin Franchise Investment Law, the Division of Securities of the Department of Financial Institutions amends, adopts and repeals rules interpreting those sections as follows:

**SECTION 1.** Wherever the terms "license," "licenses," "licensed" or "licensing," appears in chapters DFI-Sec 1 to 9, as affected by this rule-making order, the terms "registration," "registrations," "registered," and "registration," respectively, are substituted.

**SECTION 2.** Wherever the term "national association of securities dealers, inc." or "national association of securities dealers" appears in chapters DFI-Sec 1 to 9, as affected by this rule-making order, the term "financial industry regulatory authority" is substituted.

**SECTION 3.** Wherever the term "federal covered adviser" appears in chapters DFI-Sec 1 to 9, as affected by this rule-making order, the term "federal covered investment adviser" is substituted.

**SECTION 4.** Wherever the term "customer" is used in chapter DFI-Sec 5, as affected by this rule-making order, the term "client" is substituted.

**SECTION 5. DFI-Sec 1.02(1) is amended to read:**

**DFI-Sec 1.02(1)** With respect to advertising ~~as defined in s. 551.02 (1r), Stats.,~~ as referenced in s. 551.202 (24) and (25), Stats., and s. DFI-Sec 2.01(4) and (5) :

Comment: The amendments to statutes under the current/repealed Wisconsin Securities Law and rules thereunder that are cross-referenced in this rule and other rules contained in this Rule-Making Order, reflect citations to the corresponding/applicable provisions in the new Securities Law in 2007 Wisconsin Act 196 [and to certain new rules contained in this Rule-Making Order].

**SECTION 6. DFI-Sec 1.02(1)(b) is amended to read :**

**DFI Sec 1.02(1)(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.~~ s. 551.102(11), 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.,~~ s. 551.202(13)(a), (am) and (24), Stats., or s. DFI-Sec 2.029 shall not be deemed circulation; and

Comment: This rule [which defines "circulation" of advertising materials] has been modified from its Public Comment Draft form based on a comment letter received incident to the public comment process. The comment letter recommended that the exclusion from the definition of "circulation" that exists under current Securities Law and rules for "individual accredited investors" and certain other "entity accredited investors" be retained by adding to the proposed rule, cross-references to statute sections s. 551.202(13)(a) and (am), Stats. The Division determined that such revisions were warranted and necessary, and therefore has added to the rule, cross-references to statute sections s. 551.202(13)(a) and (am), Stats.

**SECTION 7. DFI-Sec 1.02(1)(c) is repealed.**

Comment: This SECTION repeals the term "use" as it relates to securities advertising which, although it was a term used in the advertising filing requirement of s. 551.53, Stats., of the current/repealed Chapter

551, is not contained in the advertising provision of s. 551.504, Stats., of the new/recreated Law.

**SECTION 8. DFI-Sec 1.02(2) (Intro.) is amended to read:**

**DFI Sec 1.02 (2)** "Broker-dealer" as defined in ~~s. 551.02(3), Stats.~~ s. 551.102 (4), Stats., does not include:

**SECTION 9. DFI-Sec 1.02(2)(a) and (c) are amended to read:**

**DFI-Sec 1.02(2) (a)** A pension or profit sharing trust, when effecting transactions for its own account ;  
of .

**(c)** Any financial institution which by contract, agreement or other means associates with a broker-dealer licensed in Wisconsin or by the broker-dealer provides security services on the premises of the financial institution in accordance with ~~s. DFI-Sec 4.05(9)~~ s. DFI-Sec 4.05(8) .

**SECTION 10. DFI-Sec 1.02(2)(d), (e) and (f) are created to read:**

**DFI Sec 1.02(2)(d)** A personal representative, guardian, conservator or pledgee.

**(e)** A person whose dealings in securities are limited to transactions exempt by s. 551.202(11), Stats.

**(f)** A person licensed as a real estate broker under ch. 452 and whose transactions in securities are isolated transactions incidental to that business.

Comment: This SECTION makes what had been exclusions from the definition of broker-dealer in s. 551.02(3)(d) to (f), Stats., in current/repealed Chapter 551 (but were not 2002 Uniform Act provisions), into definitional exclusions by rule using the rule-making authority in s. 551.102(4)(e), Stats., of the new/re-created Law.

**SECTION 11. DFI-Sec 1.02(4) (Intro.) is amended to read:**

**DFI-Sec 1.02(4)** An "offer to sell " within the meaning of ~~s. 551.02 (11) (b), Stats.~~ s. 551.102(26), 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:

**SECTION 12. DFI-Sec 1.02(5)(a) and (b) are amended to read:**

**DFI Sec 1.02(5)(a)** For purposes of ~~s. 551.31 (1), Stats.~~ ss. 551.401(1) and 551.402(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.~~ ss. 551.403(1) and 551.404(1), 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

**SECTION 13. DFI-Sec 1.02(5)(c) 1 is renumbered DFI-Sec 1.02(5)(c), and as renumbered is amended to read:**

**DFI-Sec 1.02(5)(c)** Except as provided under ~~subd. 2.~~ s. DFI-Sec 5.12, for purposes of ~~s. 551.31(1) and (3), Stats., ss. 551.401(1), 551.402(1), 551.403(1) and 551.404(1), 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.

**SECTION 14. DFI-Sec 1.02(5)(c)2. is repealed.**

Comment: Because all the subsections of s. DFI-Sec 1.02(5)(c)2. [which currently are exclusions from the definition of "transacting business"] are made licensing exemptions under a new investment adviser rule in s. DFI-Sec 5.12, these definitional rules are repealed.

**SECTION 15. DFI-Sec 1.02(6) is repealed.**

Comment: This Section repeals the two definitional rules under current s.DFI-Sec 1.02(6) which defined the term "investment contract" to include both the "modified Howey" and "risk capital" tests, because both are expressly included [as par. (d) 1. and 2.] in the statutory definition of "security" in s. 551.102(28)

**SECTION 16. DFI-Sec 1.02(7)(a) and (b) are repealed and re-created to read:**

**DFI Sec 1.02 (7)** "Branch office" has the same meaning as "place of business" in s. 551.102(21), Stats.

Comment: The two current rules in s. DFI-Sec 1.02(7)(a) and (b) relating to the definition of "branch office" are repealed because the terminology "place of business" as defined in the new/re-created Law eliminates the need for a separate "branch office" definition in the rules.

**SECTION 17. DFI-Sec 1.02(8) is repealed.**

Comment: The current definitional rules in DFI-Sec 1.02(8) relating to "financial institution" are repealed to be substituted for by the additional categories of "institutional investor" contained in the registration exemption rule in s. DFI-Sec 2.02(4) under current s. 551.23(8), Stats., that are renumbered to become s. DFI-Sec 1.02(8) in a later SECTION. This is done because under the new/re-created Law, "institutional investor" is now a defined term contained in definitional section s. 551.102(11), Stats., paragraph (p) of which provides separate authority to, by rule, further specify other persons as "institutional investors."

**SECTION 18. DFI-Sec 1.02(10) and (11)(intro.) are amended to read:**

**DFI-Sec 1.02 (10)** For purposes of ~~s. 551.02(7), Stats.~~ s. 551.102 (15)(b) and (c), 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) (intro.)** For purposes of determining availability of the registration exemption of ~~s. 551.22 (1) (a), Stats.~~ s. 551.201(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:

**SECTION 19. DFI-Sec 1.02(13), (14) (intro.) and (14)(a) are amended to read:**

**DFI-Sec 1.02 (13)** An "offer" for purposes of use of the registration exemption in ~~s. 551.23 (11), Stats.~~ s. 551.202(14), 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) (intro.)** The following defined terms apply for purposes of the definition of "investment adviser representative" in ~~s. 551.02 (7m) (a), Stats.~~ s. 551.102 (16), Stats.:

**(a)** "Client" has the definition as that set forth in rule ~~275.203 (b) (3) 4~~ section 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.

**SECTION 20. DFI-Sec 1.02(14)(b), (c) and (d) are repealed.**

Comment: This SECTION repeals the defined terms "excepted person," "impersonal investment advice," and "percentage specified" which are not used for purposes of the rules under the new/re-created Law.

**SECTION 21. DFI-Sec 1.02(14)(e), (f) and (g) are renumbered (14)(b), (c) and (d), and (c) and (d) as renumbered, are amended to read:**

**DFI-Sec 1.02(14)(c)** "Third party solicitor" means a person soliciting clients on behalf of a licensed investment adviser or a federal covered investment adviser who is neither a partner, officer, director, or employee of the adviser, nor a supervised person of that adviser.

**(d)** "Investment adviser representative" as defined in ~~s. 551.02 (7m) (a), Stats.~~ s. 551.102 (16), Stats., does not include a supervised person of an investment adviser or federal covered investment adviser that does not have more than 5 natural persons as clients in the United States who are not excepted persons.

**SECTION 22. DFI-Sec 1.02(15), (16) and (17) are repealed.**

Comment: This SECTION does the following: (1) repeals the defined terms "place of business" and "principal office," that had been adopted in ss. DFI-Sec 1.02(15) and (16) for use under the current/repealed Securities Law, which terms have been superseded by new definitional rules adopted above based on the new/re-created Law; and (2) repeals (as no longer necessary), the terms "current brochure," and "current brochure supplement" contained in s. DFI-Sec 1.02(17).

**Section 23. DFI-Sec 2.01(1)(a) and (b) are amended to read:**

**DFI-Sec 2.01 Exempt securities. (1) (a)** Any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, is exempted under ~~s. 551.22 (4), Stats.~~ s. 551.201(1), Stats. , if any of the following are met :

**(a) 1.** The enterprise is a public utility described under ~~s. 551.22 (6), Stats.~~ s. 551.201(5), Stats. , having securities registered under section 12 of the securities exchange act of 1934, or is a wholly-owned subsidiary of one or more of such utilities.

**(a) 2.** Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale or loan arrangement, are covered securities under section 18(b)(1) of the securities act of 1933 or are exempt under ~~s. 551.22 (7), Stats.~~ s. 551.201(6), Stats.

**(a) 3.** A notice of the proposed offering is filed with the division prior to the offering, including a trust indenture meeting the requirements of s. DFI-Sec 3.04, an official statement or a prospectus meeting the requirements of s. DFI-Sec 3.03 that contains financial statements for the enterprise ~~meeting the requirements of s. DFI-Sec 3.02 (1) (p)~~ and additional information as the division may require, and the division does not by order deny the exemption within 10 days of the date the notice is filed.

**(b)** Any guarantee of, or any put option or similar agreement to purchase from a holder of, any security exempt under ~~s. 551.22 (1), Stats.~~ s. 551.201(1), Stats. , is exempted from ~~s. 551.21, Stats.~~ s. 551.301, Stats.

Comment: This SECTION updates the statutory cross-references to the current/repealed Law contained in the above rule provisions (relating to governmental/municipal revenue obligations payable from a nongovernmental industrial or commercial enterprise) to reflect the numbering of the corresponding statutory sections under the new/re-created Law. In modifications to the Public Comment Draft form of this SECTION as a result of the public comment process described in the Comment to the following SECTION, the reference to par.(c) in the treatment clause was deleted, as were the amendments in the SECTION to par.(c)(intro.)

#### **SECTION 24. DFI-Sec 2.01(1)(c) and (d) are repealed.**

Comment: In a comment letter received incident to the public comment process relating to the Public Comment Draft Form of rule revisions in the preceding SECTION 23 above, it was recommended that the entirety of rule s. DFI-Sec 2.01(1)(c) and its related rule s. DFI-Sec 2.01(1)(d) [which together list several permissible alternatives to full-GAAP financial statements] be repealed as unnecessary because the new/re-created governmental security exemption in s. 551.201(1)(a), Stats., no longer requires that financial statements of governmental securities issuers be prepared according to Generally Accepted Accounting Principles (GAAP) or accounting guidelines designated by rule of the Division. The Division determined that such modifications were warranted and necessary, and consequently, the treatments to DFI-Sec 2.01(1)(c)(intro.) in SECTION 23 were deleted, and this new SECTION 24 was created repealing the entirety of both rule sections ss. DFI-Sec 2.02(1)(c) and (d) as unnecessary and no longer needed.

#### **SECTION 25. DFI-Sec 2.01(2) is repealed.**

Comment: This SECTION repeals a rule which defined terminology used in the "regulated financial institution" exempt security provision of s. 551.22(3), Stats., of the current/repealed Law because the terminology (" subject to regulation in respect of the issuance or guarantee of its securities by any governmental authority") is not contained in the corresponding exemption of s. 551.201(3) Stats., of the new Law

#### **SECTION 26. DFI- Sec 2.01(3)(a) is renumbered DFI- Sec 2.01(3) and amended to read:**

**(3)** The Chicago stock exchange is designated as a national securities exchange qualifying for registration exemption status under ~~s. 551.22 (7), Stats.~~ s. 551.201(6), Stats. , but only with respect to Tier 1 securities listed on that exchange, provided that proposed rule changes with respect to its Tier 1 securities are approved by the U.S. securities and exchange commission, and provided that a Memorandum of Understanding is entered into and is in force and effect between the Chicago stock exchange and the north american securities administrators, inc. The designation is subject to the authority of the division to revoke the designation by order based upon a determination that the forecast

exchange's requirements for listing or maintenance for Tier 1 securities as contained in the Memorandum of Understanding and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The division also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the division under this paragraph shall be in accordance with the provisions of the Memorandum of Understanding relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

**SECTION 27. DFI-Sec 2.01(3)(b) is repealed:**

Comment: This SECTION repeals rule s. DFI-Sec 2.01(3)(b) [which provided exempt security status to warrants and rights to subscribe to exchange-listed federal covered securities under s. 551.22(7), Stats., of the current/repealed Law] because the requisite language is contained statutorily in s. 551.201(6) of the new Law.

**SECTION 28. DFI-Sec 2.01(4)(a) is amended to read:**

**DFI-Sec 2.01(4)(a)** ~~Any evidence of debt issued by a domestic non-profit corporation—~~ The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201(7) (Intro.), Stats, that is a domestic, Wisconsin corporation to persons other than its members is ~~exempted under s. 551.22 (8), Stats.,~~ available for use if the issuer or a licensed broker-dealer files a notice of the proposed issuance with the division prior to the offering, including: a trust indenture meeting the requirements of s. DFI-Sec 3.04, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. DFI-Sec 3.03 (1); and such additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days. ~~In addition, if the domestic non-profit corporation is or operates as a church, the offering shall meet the requirements of s. DFI-Sec 3.03 (4) (h), and if the domestic non-profit corporation is or operates as a health care facility, the offering shall meet the requirements of s. DFI-Sec 3.03 (4) (i).~~

**SECTION 29. DFI-Sec 2.01(4)(b) is repealed and re-created to read:**

**DFI-Sec 2.01(4)(b)** The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201(7) (Intro.), Stats, that is a domestic, Wisconsin corporation, is available for use without the need for a filing with the division if the securities are sold exclusively to its members. A person does not become a "member" for purposes of this subdivision solely by reason of the purchase of the issuer's securities.

Comment: The preceding 2 SECTIONS, together with the repeals and recreations in a later SECTION to current rule DFI-Sec 2.02(8), act to retain [as Exempt Security rules DFI-Sec 2.01(4) and (5)] all aspects of the registration exemption treatment under the current/repealed Law for the debt securities of both domestic/Wisconsin not-for-profit issuers as well as for non-Wisconsin not-for-profit issuers. This is accomplished by using the rule-making authority granted under s. 551.201(7) of the new Law [to limit the availability of the exemption and require notice filings for various categories of not-for-profit offerings] to do the following: (1) Placing in new rule DFI-Sec 2.01(4)(b), the current (self-executing) registration exemption treatment for domestic/Wisconsin not-for-profit issuers selling exclusively to its members that is present under s. 551.22(8) Stats., of the current/repealed Law. (2) Retaining (in amended DFI-Sec 2.01(4)(a) above), the registration exemption treatment in current rule s. DFI-Sec 2.02(4) for domestic/Wisconsin not-for-profit issuers selling to persons other than its members. (3) The existing exemption treatment (for use principally by non-Wisconsin not-for-profit issuers for their debt securities)

as set forth in ss. 551.23(15)(a) and (b), Stats., and rules ss. DFI-Sec 2.02(8)(a) and (b) thereunder are restructured and renumbered in a later SECTION as ss. DFI-Sec 5.01(a) and (b). Those exemption provisions are moved from the Exempt Transactions category of statutes under current s. 551.23 Stats., and rules under Section DFI-Sec 2.02, to the Exempt Security category of rules in Section DFI-Sec 2.01 to correspond with the Exempt Security nature of the statutory exemption in s. 551.201(7) of the new/re-created Law. (4) New rule s. DFI-Sec 2.01(5)(a) remains a 10-day notice filing-type exemption, and is comprised of current s. 551.23(15), Stats., (intro.), with (a)1. and (a)2. of the new rules retaining the "first mortgage" and "150% times-interest-earned" alternatives in current s. 551.23(15)(a) and (b), Stats. (5) Because the current Law as well as the new Law do not provide for merit review authority, the rule in DFI-Sec 2.02(8)(c) and the identical language contained in the last sentence of DFI-Sec 2.01(4)(a) that each require compliance with the specified NASAA Guidelines is not retained.

### **SECTION 30. DFI-Sec 2.01(5), (6), (7) and (8) are repealed:**

Comment: The repeals in this SECTION are for the following purposes: (a) the rules in s. DFI-Sec 2.01(5) restricting use of the "commercial paper" registration exemption in s. 551.22(9), Stats., of the current/repealed Law, are repealed because the new re-created Law does not contain a registration exemption for "commercial paper." (b) the rule in s. DFI-Sec 2.01(6) under s. 551.22(10), Stats., of the current/repealed Law that established a notice filing procedure to claim registration exemption status for certain employee plans, is repealed because the corresponding exemption in s. 551.202(21), Stats., of the new Law is self-executing. (c) the rule in s. DFI-Sec 2.01(7) under s. 551.22(14), Stats., of the current/repealed Law that established a notice filing procedure to claim registration exemption status for sales of securities issued by a licensed broker-dealer to its officers, partners or employees, is repealed because there is no corresponding exemption in the new Law. (d) the rule in s. DFI-Sec 2.01(8) adopted under the discretionary authority of s. 551.22(17), Stats., of the current/repealed Law that designated as exempt securities certain securities issued by international banks, is repealed because the securities of international banks are covered by exemption language in s. 551.201(3)(a), Stats., of the new Law.

### **SECTION 31. DFI-Sec 2.01(9) and (10)(a) are amended to read:**

**(9)** ~~Any~~ A registration exemption is available under s. 551.203, Stats., for any security, other than a revenue obligation, issued by the state of Wisconsin or any political subdivision or agency or corporate or other instrumentality of the state of Wisconsin, ~~is exempted under s. 551.22 (17), Stats.,~~ if it is a security which matures within 16 months of date of issue and the issuer has levied a direct annual irrevocable tax under article XI, section 3, Wis. Const. or otherwise pledged levied taxes sufficient in amount to pay the interest on the securities as it falls due and also to pay and discharge the principal on the securities at maturity.

**(10) (a)** ~~Any~~ A registration exemption is available under s. 551.203, Stats., for any security, other than a revenue obligation, issued by the state of Wisconsin or any political subdivision or agency or corporate or other instrumentality of the state of Wisconsin, ~~is exempted under s. 551.22 (17), Stats.,~~ if a notice of the proposed offering containing the information in par. (b) is filed with the division prior to the offering and the division does not by order deny the exemption within 10 days of the date the notice is filed.

Comment: The amendments to these rules change the statutes cross-referenced therein to reflect that the discretionary authority under the new Law to adopt registration exemptions by rule or order is in s. 551.203, Stats., of the new/re-created Law.

### **SECTION 32. DFI-Sec 2.02(1)(intro.) and (2) are amended to read:**

**DFI-Sec 2.02 Exempt transactions.** (1) An "isolated nonissuer transaction" within the meaning of ~~s.~~



~~551.23 (1), Stats.~~ s. 551.202(1), Stats. , means:

(2) In any nonissuer transaction effected by or through a ~~licensed~~ registered broker-dealer under ~~s. 551.23 (2), Stats.~~ s. 551.202(6), Stats. , pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the purchaser a written acknowledgment that the purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. This exemption includes only transactions between a broker-dealer and a purchaser of a security.

**SECTION 33. DFI-Sec 2.02(3)(intro.) and (a) are repealed.**

**SECTION 34. DFI-Sec 2.02(3)(b) is renumbered DFI-Sec 2.02(9)(o) and amended to read:**

**DFI-Sec 2.02(9)(o)** ~~With respect to a security qualifying under s. 551.23 (3)(d), Stats.,~~ Pursuant to s. 551.203, Stats., a transactional securities registration exemption is available for the sale of any outstanding security by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer at a price reasonably related to the current market price if the issuer or an applicant files with the division prior to the offering a notice of the proposed sale, including: the prospectus used in the most recent offering of the securities proposed to be sold; a copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect; any information specified in ss. DFI-Sec 3.02 and 3.03, and not contained in the filed prospectus; the trust indenture, if any, under which the securities proposed to be sold are issued; the information concerning the public market for the security; a balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing and statements of income and changes in financial position and analysis of surplus for such fiscal year meeting the requirements of s. DFI-Sec 7.06; an undertaking to file with the division within 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purpose) after the end of each fiscal year of the issuer comparable financial statements of the issuer for each such fiscal year; and an undertaking to furnish the division with a written report within 30 days after the happening of any material event affecting the issuer or the securities proposed to be sold. The exemption, unless disallowed by order of the division within 10 days, is effective so long as the information required to be furnished is kept current.

Comment: The two preceding SECTIONS do the following: (a) repeal the secondary trading exemption in current rule DFI-Sec 2.02(3)(a) , based on s. 551.23(3)(c) of the current/repealed Law because no equivalent provision is contained in the new Law; and (b) retain as an exempt transaction in renumbered rule DFI-Sec 2.02(9)(o) using the discretionary exemption authority in s. 551.203 of the new Law, the ability of a securities issuer to obtain secondary trading authority in Wisconsin using the same notice filing procedure provided under s. 551.23(3)(d) of the former/repealed law and rule DFI-Sec 2.02(3)(b) thereunder.

**SECTION 35. DFI-Sec 2.02(4)(intro.) and (a) through (f) are renumbered DFI-Sec 1.02(8)(intro.), (a) through (f), and as renumbered, (intro.) and (e) are amended to read:**

**DFI-Sec 1.02(8)(intro.)** ~~A "financial institution or institutional~~ An "institutional investor" within the meaning of ~~s. 551.23(8)(f), Stats.~~ ss. 551.102(11) and 551.202(13)(a), Stats. , includes:

(e) Any entity, all of the equity owners of which are persons designated in ~~s. 551.23(8), Stats.~~ s. 551.202(13)(a), Stats. , or rules thereunder, acting for its own account in the account solely of other persons designated in ~~s. 551.23(8), Stats.~~ s. 551.202(13)(a), Stats. , or rules thereunder.

Comment: This SECTION does the following: (1) renumbers the current definitional rules in s. DFI-Sec

2.02(4) [which add to the list of "institutional investors" for purposes of the registration exemption in s. 551.23(8), Stats., of the current/repealed Law] to be separate paragraphs of s. DFI-Sec 1.02(8). This is done because under the new/re-created Law, "institutional investor" is now a defined term contained in definitional section s. 551.102(11) Stats., paragraph (p) of which provides separate authority to, by rule, specify other persons as "institutional investors." and (2) updates the numbering of the registration exemption section cross-referenced in par. (e) to reflect the corresponding exemption under the new Law.

**SECTION 36. DFI-Sec 1.02(8)(g) and (h) are created to read:**

**DFI-Sec 1.02(8)(g)** The state or any of its agencies or political subdivisions.

**(h)** The federal government or any of its agencies or instrumentalities.

Comment: A comment letter received incident to the public comment process recommended that as part of the revisions in SECTION 34 of the Public Comment Draft (SECTION 35 above), the Division add to the list of "institutional investors," currently established by rule that are being moved to become subsections of s. DFI-Sec 1.02(8), the 2 categories of "institutional investors" listed in current statute s. 551.23(8)(d) and (e), Stats. Those 2 categories are: "The state or any of its agencies or political subdivisions." [par. (d)], and "The federal government or any of its agencies or instrumentalities." [par. (e)]. Such action by the Division would parallel identical rulemaking done in SECTION 91 of this Rule-Making Order [relating to rules ss. DFI-Sec 4.10(1)(a) and (b)], and in SECTION 136 [relating to rules ss. DFI-Sec 5.13(1)(a) and (b)] which recognizes both those categories of "institutional investors." The Division determined that such revisions were warranted and necessary in order to be consistent and continue the current definitional treatment of categories of "institutional investors" under Chapter 551 and rules thereunder, and has included them as ss. DFI-Sec 1.02(8)(g) and (h) in this SECTION.

**SECTION 37. DFI-Sec 2.02(4)(g) is repealed.**

Comment: This SECTION repeals current rule DFI-Sec 2.02(4)(g) [that permits the Division to designate by rule other persons as "institutional investors"] because that authority is present in par. (p) of the definition of "institutional investor" in s. 551.102(11)(p), Stats., of the new/re-created Law.

**SECTION 38. DFI-Sec 2.02(5)(intro.), (d)(intro.) and (d)2. are amended to read:**

**DFI-Sec 2.02 (5)** With respect to an offer or sale of a security exempted under ~~s. 551.23 (10) or (11), Stats.~~ ss. 551.202(14) or 551.202(24), Stats. :

**(d) (intro.)** The exemption for any offer or sale under ~~s. 551.23 (11), Stats.~~ s. 551.202(14), Stats. , is withdrawn with respect to:

**(d)2.** Any offering of securities if the issuer, any of its officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in ~~s. 551.23 (19), Stats.,~~ DFI-Sec 2.029 as a result of any of the causes specified in ~~s. 551.23 (19) (c) 1. a. to d., Stats.~~ DFI-Sec 2.029(3)(a)1. to 4. , except for any person or persons subject to a disqualification who meets the conditions for waiver in ~~s. 551.23 (19) (c) 2. a., Stats.~~ DFI-Sec 2.029 (3)(b)1. , or for any person who receives a waiver by the division upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be withdrawn.

Comment: In addition to the amendments in the above rules updating the statutes cross-referenced to reflect the new Law, the amendments to par.(d)2. [Relating to the "bad boy" disqualification provisions in

current/repealed s. 551.23(19) Stats.] change the cross-references to the appropriate subsections in new rule DFI-Sec 2.029 created in a following SECTION that contains the federal Regulation D Rule 505 registration exemption.

**SECTION 39. DFI-Sec 2.02(5)(c) is repealed.**

Comment: Incident to the public comment process, a comment letter was received regarding the proposed amendment to s. DFI-Sec 2.02(5)(c) in SECTION 36 of the Public Comment Draft [which rule permits payment of sales commissions to licensed broker-dealers and agents in transactions relying on the "25-offeree-per-12-month-period" registration exemption. The comment letter recommended that no amendment be made to s. DFI-Sec 2.02(5)(c) in that SECTION, and recommended instead that the entirety of rule DFI-Sec 2.02(5)(c) be repealed as unnecessary and superseded by legislation because the limited offeree exemption in s. 551.202(14) of the new/re-created Securities Law permits in subd. (a)2 thereof, payment of commissions to registered broker-dealers and agents. The Division determined that such modifications are warranted, and consequently removed the treatment to par. (c) from SECTION 38 above, and repealed rule DFI-Sec 2.02(5)(c) in this SECTION.

**SECTION 40. DFI-Sec 2.02(6) is repealed.**

Comment: This SECTION repeals a rule defining "class vote" for purposes of the merger/reorganization registration exemption in s. 551.23(13), Stats., of the current/repealed Law because the equivalent "merger/reorganization" exemption in s. 551.202(18), Stats., of the new/re-created Law does not contain that terminology.

**SECTION 41. DFI-Sec 2.02(7)(a) and (b) are amended to read:**

**DFI-Sec 2.02 (7) (a)** ~~"Stock split"~~ "Stock dividend or equivalent equity distribution" within the meaning of ~~s. 551.23 (14), Stats.~~ s. 551.202(22), Stats., and does not include any action by the corporation which has or may have the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class;

**(b)** "Stock dividend" within the meaning of ~~s. 551.23 (14), Stats.~~ s. 551.202(22), Stats., includes the issuance of shares under a dividend reinvestment plan in which the election by a shareholder to participate in the plan is voluntary and such election may be rescinded at any time upon notice to the issuer.

Comment: This SECTION does the following: (a) changes the defined term "Stock split" in s. DFI-Sec 2.02(7)(a) [used in the registration exemption s. 551.23(14), Stats., of the current/repealed Law] to reflect the different terminology used in the equivalent exemption in s. 551.202(22), Stats., of the new/re-created Law; and (2) updates the statutory cross-references to the current/repealed Law contained in each rule to reflect the numbering of the corresponding exemption section under the new Law.

**SECTION 42. DFI-Sec 2.02(8) is repealed and re-created as DFI-Sec 2.01(5)**

**DFI-Sec 2.01(5)** The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201(7) (Intro.), Stats, that is a not a domestic, Wisconsin corporation, is available for use if the issuer or a licensed broker-dealer files a notice of the proposed issuance with the division prior to the offering, identifying the security and the basis of its qualification under par. (a) or (b) and includes: a trust indenture meeting the requirements of s. DFI-Sec 3.04, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each

person to whom an offer of such evidence of debt is made at the time or times specified in s. DFI-Sec 3.03 (1); and such additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days. The security qualifies under this exemption if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation; and the security qualifies under either of the following:

(a) 1. The issuer and its predecessors have not been in existence for 3 years, and the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings which is or will become a first lien at or prior to the issuance of such evidences of debt, or provisions satisfactory to the division are made for impounding the proceeds from their sale until such first lien is established, and the total amount of such securities does not exceed 50% of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

2. A signed or conformed opinion of counsel for the issuer or other evidence satisfactory to the division shall be provided with respect to the validity and rank of the lien of the mortgage or deed of trust, and evidence satisfactory to the division shall be provided that the total amount of the securities proposed to be offered does not exceed 50% of the then fair market value of the land and buildings included in the mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

(b)1. The issuer or its predecessors have had an excess of revenues over expenses, excluding interest expense, provision for depreciation and extraordinary items, for each of the 2 fiscal years next preceding such offer or sale, or average net revenues for the last 3 fiscal years next preceding such offer or sale, of not less than 1-1/2 times the aggregate annual interest requirements on the issue of securities to be sold under this subsection and all securities of equal or prior rank to be outstanding immediately after such sale.

2. A balance sheet of the issuer as of the end of the last fiscal year preceding the date of filing, and statements of income and changes in financial position and an analysis of surplus of the issuer shall be filed for each of its 3 immediately preceding fiscal years meeting the requirements of s, DFI-Sec 7.06.

Comment: See the Comment to s. DFI-Sec 2.01(4).

#### **SECTION 43. DFI-Sec 2.02(9)(intro.) and (c) are amended to read:**

**DFI-Sec 2.02 (9)** The following transactions are exempted under ~~s. 551.23 (18), Stats.~~ s. 551.203, Stats. , without limiting the division's authority thereunder:

**(c)** Any transaction pursuant to an offer to existing security holders of the issuer, ~~other than an entity designated in s. 551.52 (1) (b), Stats.,~~ and to not more than ~~40~~ 25 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 months preceding the offer pursuant to ~~s. 551.23 (10) or (11), Stats.~~ ss. 551.202(14) and 551.202(24), Stats. , excluding persons ~~exempt under s. 551.23 (8), Stats.~~ listed in s. 551.102 (8), Stats., and rules thereunder , if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state; and if the issuer files with the division prior to the offering a notice specifying the terms of the offer, including any prospectus, circular or other material to be delivered to offerees in connection with the transaction and such other information as the division may require, and the division does not by order disallow the exemption within 10 days.

Comment: This SECTION, in addition to providing updated cross-references in the rule to reflect the corresponding statute provisions under the new Law, changes to 25 (from 10 under the current rule) the number of "other persons" that an issuer can make offers to in connection with an offer to its existing security holders. Such change will make this rule consistent with the "25 offeree per 12-month period "

registration exemption provision in s. 551.23(11) of the current/repealed Law as well as the equivalent exemption in s. 551.202(14), Stats., of the new/re-created Law.

**SECTION 44. DFI-Sec 2.02(9)(d) and (f) are repealed.**

Comment: This SECTION does the following: (1) Repeals the exempt transaction rule in sub. (9)(d) adopted under the discretionary rule-making authority of s. 551.23(18) of the current/repealed Law that covered merger/reorganization transactions for issuers other than corporations (which are covered by the statutory exemption in s. 551.23(13) of the current/repealed Law). The rule exemption is no longer needed because the merger/or organization exemption in s. 551.202(18) of the new Law applies to any issuer. (2) Repeals the exempt transaction rule in par. (9)(f) adopted under the discretionary rule-making authority of s. 551.23(18) of the current/repealed Law that covered stock option plans. The rule exemption is no longer needed because the employee benefit plan exemption in s. 551.202(21) of the new Law specifically covers option plans as well as other types of employee benefit plans.

**SECTION 45. DFI-Sec 2.02(9)(d) is created to read:**

**DFI-Sec 2.02(9)(d)** For purposes of the registration exemption in s. 551.202(2) Stats., any Standard & Poor's, Mergent or Fitch securities manual that contains, in whatever format, the information specified in s. 551.202(2)(d)1. to 4., Stats., is designated as a "nationally recognized securities manual" under s. 551.202(2)(d) Stats.

Comment: This SECTION makes operative the "manual" secondary training exemption in s. 551.202(2), Stats., of the new Law (based on the 2002 Uniform Securities Act provision), by designating in this rule section as "nationally recognized securities manuals" under sub. (2)(d) of the statute, the securities manuals of Standard & Poor's, Mergent and Fitch.

**SECTION 46. DFI-Sec 2.02(9)(g)1. and (i) are amended to read:**

**DFI-Sec 2.02(9)(g)1.** The securities are the subject of a registration statement filed under ~~s. 551.25 or 551.26, Stats.~~ ss. 551.303 or 551.304, Stats. , or a notice filed under ~~s. 551.22 (1) or (8) or 551.23 (12) or (15), Stats.~~ ss. 551.201(1) or (7), or 551.202(15), Stats. ;

**(i)** Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. DFI-Sec 2.027 ~~or~~ 2.028 or 2.029 .

Comment: This SECTION: (1) updates statute sections cross-referenced in s. DFI-Sec 2.02(9)(g)1; and (2) in sub. (9)(i), adds a cross-reference to a new exempt transaction s. DFI-Sec 2.029 created in a later SECTION. [That SECTION uses the discretionary exemption authority in s. 551.203, Stats., of the new/re-created Law to make the federal Regulation D/Rule 505 exemption in s. 551.23(19), Stats., of the current/repealed Law into a new exempt transaction rule in s. DFI-Sec 2.029.

**SECTION 47. DFI-Sec 2.02(9)(n)3. and 4. are amended to read:**

**DFI-Sec 2.02(9)(n)3.** The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under ~~s. 551.25 or 551.26, Stats.~~ ss. 551.303 or 551.304, Stats. , or to an accredited investor pursuant to an exemption available under ch. 551,

**4.** Neither the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's officers,

directors, general partners, beneficial owners of 10 % or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under ~~s. 551.23 (19) (c), Stats.~~ s. DFI-Sec 2.029(3)(a)1. to 4., absent an applicable waiver under ~~s. 551.23 (19) (c) 2., Stats.~~ s. DFI-Sec 2.029 (3)(b), and with the timing of the disqualification events described in ~~s. 551.23 (19) (c) 1., Stats.~~ s. DFI-Sec 2.029(3)(a) computed for purposes of this exemption from the date of the filing under subd. 9. of this section.

Comment: In addition to the amendments in the above rules updating the statutes cross-referenced to reflect the new Law, the amendments to s. DFI-Sec 2.02(9)(n)4. [Relating to the "bad boy" disqualification provisions in current/repealed s. 551.23(19), Stats.] change the cross-references to the appropriate subsections in new rule s. DFI-Sec 2.029 created in a following SECTION that contains the federal Regulation D Rule 505 registration exemption.

**SECTION 48. DFI-Sec 2.027(1), (1)(a)2, (1)(d), (1)(e) and (2)(b) are amended to read:**

**DFI-Sec 2.027 Exemption for solicitations of interest prior to registration or exemption. (1)** A transaction exemption is available under ~~s. 551.23 (18), Stats.~~ s. 551.203, Stats., for an offer, but not a sale, of a security made by or on behalf of an issuer pursuant to delivery of a written document or use of a newspaper publication or scripted media broadcast containing the information prescribed in the form in s. DFI-Sec 9.01 (1) (c), for the sole purpose of soliciting an indication of interest from prospective purchasers in receiving a prospectus, private placement memorandum or equivalent disclosure document for the security, if the following conditions are satisfied, except to the extent that sub. (2) is applicable.

**(1)(a)2.** Exempt from registration under an available exemption in any subsection of ~~s. 551.23, Stats.~~ s. 551.202, Stats., or any exemption rule under s. 551.203, Stats.

**(1) (d)** The offeror does not know, and in the exercise of reasonable care could not know, that any of the issuer's officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in ~~s. 551.23 (19), Stats.~~ s. DFI-Sec 2.029 as a result of any of the causes specified in ~~s. 551.23 (19) (c) 1. a. to d., Stats.~~ s. DFI-Sec 2.029(3)(a)1. to 4. except for any person or persons subject to a disqualification who meets the conditions for waiver in ~~s. 551.23 (19) (c) 2. a., Stats.~~ s. DFI-Sec 2.029(3)(b)1.

**(1)(e)** Solicitations of interest pursuant to this section shall not be made after the filing of either a registration statement under ch. 551, Stats., the filing of materials required for a claim of registration exemption under ~~s. 551.23, Stats.~~ ss. 551.202 or 551.203, Stats., or use of any available self-executing exemption under ~~s. 551.23, Stats.~~ ss. 551.202 or 551.203, Stats.

**(2)(b)** Where an exemption is established only through reliance upon this subsection, the failure to comply with the conditions in sub. (1) (a) to (f) shall constitute a basis for action that may be taken by the division under ~~s. 551.57, Stats.~~ s. 551.603, Stats., and shall constitute a basis for action that may be taken by the division under ~~s. 551.24, Stats.~~ s. 551.204, Stats., to deny or revoke the exemption as to a specific security or transaction.

Comment: The various amendments in this SECTION [relating to the registration exemption for Solicitations of Interest] update statutes cross-referenced therein to reflect the numbering of the relevant provisions under the new/re-created Law, as well as the Regulation D/Rule 505 registration exemption under current/repealed s. 551.23(19), Stats. that is adopted in rule form in s. DFI-Sec 2.029.

**SECTION 49. DFI-Sec 2.028(intro.), (1)(a) and (3) are amended to read:**

**DFI-Sec 2.028 Wisconsin issuer registration exemption by filing.** If all of the following conditions are met, other than any condition or conditions waived by the division upon a showing of good cause, a transaction registration exemption is available under ~~s. 551.23 (18), Stats.~~ s. 551.203, Stats. , for any offer or sale for cash of the securities of an issuer having, both before and upon completion of the offering, its principal office and a majority of the full-time employees located in this state:

**(1)(a)** Persons described in ~~s. 551.23 (8), Stats.~~ s. 551.102(8), Stats., and rules thereunder, and in s. 551.202(13)(am), Stats ;

**(3)** Neither the issuer, its officers, directors, general partners, controlling persons or affiliates, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under ~~s. 551.23 (19) (e), Stats.~~ s. DFI-Sec 2.029(3) .

Comment: The various amendments in this SECTION [relating to the Wisconsin Issuer Registration Exemption by Filing] update the citations to statutes cross-referenced in the rules to reflect the numbering of the relevant provisions under the new/re-created Law, as well as the Regulation D/Rule 505 registration exemption under current/repealed s. 551.23(19), Stats., that is adopted in rule form in s. DFI-Sec 2.029.

#### **SECTION 50. DFI-Sec 2.029 is created to read:**

**DFI-Sec 2.029 Federal regulation D rule 505 exemption by filing.** (1) Any offer or sale of securities made in reliance on the exemption provided by Rule 505 of Regulation D under the Securities Act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder constitutes a transaction exempt from registration under s. 551.203, Stats., if the offer or sale also satisfies the additional conditions and limitations in sub. (2) to (6).

(2) No commission or other remuneration may be paid or given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under sub. (1), except to broker-dealers and agents registered in this state or exempt from registration under ss. 551.401(2) or 551.402(2), Stats.

(3)(a) Unless the cause for disqualification is waived under subd. (b)2., no exemption under sub. (1) is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following applies to any of the persons described in 17 CFR 230.262 (a), (b), or (c):

1. The person has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to any state's law within 5 years before the filing of a notice required under sub. (4) denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

2. The person has been convicted of any felony or misdemeanor in connection with the offer, sale or purchase of any security or franchise, or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. The person is subject to an effective administrative order or judgment entered by a state securities administrator within 5 years before the filing of a notice required under sub. (4), which prohibits, denies or revokes the use of any exemption from securities registration, which prohibits the transaction of business by the person as a broker-dealer or agent, or which is based on fraud, deceit, an untrue statement of a material fact or an omission to state a material fact.

4. The person is subject to any order, judgment or decree of any court entered within 5 years before the

filing of a notice required under sub. (4), temporarily, preliminarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

(b)1. Any disqualification under this paragraph involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be registered in this state as a broker-dealer or agent after notifying the division of the act or event causing disqualification.

2. The division may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(4) Not later than the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under sub. (1), there is filed with the division a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the Securities Act of 1933, a completed Form D as prescribed by Rule 503 of Regulation D under the Securities Act of 1933, and a fee of \$200. Material amendments to the offering document shall be filed with the division not later than the date of their first use in this state.

(5) (a) As to all sales in this state, the issuer shall reasonably believe immediately before making any sale that:

1. The investment is suitable for the purchaser; and

2. The purchaser, either alone or with the purchaser's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment.

(5)(b) The failure to satisfy the conditions of par. (a) as to a purchaser does not affect the availability of the exemption under sub. (1) as to other purchasers.

(6) The division may, by order, increase the number of purchasers or waive any other conditions of the exemption under sub. (1) for a particular offering. The division shall not require the filing of advertising used in connection with offers or sales in reliance on the exemption. The exemption may be revoked by order of the division, but only if the offering constitutes or would constitute a violation of ss. 551.401(1) or 551.402(1), Stats., and notice thereof has been received by the issuer, or constitutes or would constitute a violation of s. 551.501, Stats.

Comment: This SECTION uses the discretionary exemption authority in s. 551.203, Stats., of the new/re-created Law to make the federal Regulation D/Rule 505 exemption in s. 551.23(19), Stats., of the current/repealed Law [that was not included in the new Law, but rather was left to rule-making] into a new exempt transaction rule in s. DFI-Sec 2.029 using identical language to that in s. 551.23(19), Stats., of the current/repealed Law.

## **SECTION 51. DFI-Sec 2.03 (1), (2), and (3) are amended to read:**

**DFI-Sec 2.03 Exemption proceedings.** (1) If a notice is required to be filed in order to seek to claim registration exemption status pursuant to ~~s. 551.22 or 551.23, Stats.~~ s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the notice shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. DFI-Sec 7.01 (2), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the division prior to the effective date of an exemption, in connection with the examination of any notice filed pursuant to ~~s. 551.22 or 551.23, Stats.~~ s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the notice is not deemed filed until



the information so required is filed with the division.

(3) An order of the division disallowing an exemption with respect to a specified security or transaction pursuant to ~~s. 551.22 or 551.23, Stats.~~ s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats. , has the same effect as an order denying or revoking an exemption pursuant to ~~s. 551.24, Stats.~~ s. 551.204, Stats.

Comment: The various amendments in this SECTION update the citations to statutes cross-referenced in the rules to reflect the numbering of the relevant provisions under the new Law.

## **SECTION 52. DFI-Sec 2.04(1)(a), (b), (c) and (2) are amended to read:**

**DFI-Sec 2.04 Federal covered security notice filings. (1) (a)** With respect to a federal covered security referred to in ~~s. 551.29 (1) (a), Stats.~~ s. 551.302(1)(a), Stats. , unless the security is registered or exempt from registration under ~~s. 551.22 or 551.23, Stats.~~ ss. 551.201, 551.202 or rule or order under 551.203, Stats. , the issuer or a person acting on behalf of the issuer shall file with the division not later than the initial offer of the security in this state, a consent to service of process signed by the issuer and the notice filing fee prescribed under ~~s. 551.52 (1) (a), Stats.~~ s. DFI-Sec 7.01(2)(d). If a completed Form NF as prescribed in s. DFI-Sec 9.01 (1) (d) is included with the consent to service of process and the notice filing fee, the issuer need not also include with the filing copies of any documents that are part of the registration statement filed under the securities act of 1933, although the division may at a later time require the filing of a copy of any document that is part of the registration statement filed under the securities act of 1933.

**(b)** After the initial offer in this state of a federal covered security referred to in ~~s. 551.29 (1) (a), Stats.~~ s. 551.302(1)(a), Stats. , if the issuer files an amendment to its registration statement with the U.S. securities and exchange commission under the securities act of 1933 that relates either to a name change of the issuer, or to a change in the designation of the federal covered security, the issuer or a person acting on behalf of the issuer shall file with the division concurrent with the federal filing, a fee of \$200, which shall be accompanied by a copy of each amendment-related document filed with the U.S. securities and exchange commission unless the issuer files with the division a completed Form NF as prescribed in s. DFI-Sec 9.01 (1) (d). The division may at a later time require the filing of a copy of any document relating to the amendment filed under the securities act of 1933.

**(c)** A unit investment trust or closed-end investment company may extend the offering of its securities beyond a one-year period pursuant to ~~s. 551.29 (1) (c), Stats.~~ s. 551.302(1)(c), Stats. , by filing a notice of extension not less than 30 days prior to the end of one year from the date of filing of the initial notice with the division, or an extension notice filed under this paragraph, whichever is most recent. A notice shall consist of a copy of an updated Form NF as prescribed in s. DFI-Sec 9.01 (1) (d), together with a fee of \$200, and at the option of the filing party, a cover letter identifying the most recent prior filing status with the division for the issuer's securities. ~~As required under s. 551.29 (1m), Stats., to be included with any rules promulgated under s. 551.29 (1) (c), Stats., for unit investment trusts or closed-end investment companies, it is restated herein that the statutory annual reporting and fee requirements applicable to an open-end management company or a face amount certificate company are set forth in s. 551.52 (1) (b) 2., Stats.~~

**(2)** With respect to a federal covered security referred to in ~~s. 551.29 (2), Stats.~~ s. 551.302(3), Stats. , unless the security is registered or exempt from registration under ~~s. 551.22 or 551.23, Stats.~~ ss. 551.201, 551.202 or rule or order under 551.203, Stats. , the issuer or a person acting on behalf of the issuer shall file with the division not later than 15 days after the first sale of the security in this state, a notice consisting of a completed Form D as prescribed by rule 503 of regulation D under the securities act of 1933, signed by the issuer, together with a \$200 fee.

Comment: The various amendments in this SECTION update the citations to statutes cross-referenced

in the above rules to reflect the numbering of the relevant provisions under the new/re-created Law. Also, the last sentence in par. (c) [which is language that was required under s. 551.29(1m), Stats., of the current/repealed Law] is repealed because such language is not contained in the new/re-created Law].

**SECTION 53. DFI-Sec 2.04(3) and (4) are repealed.**

Comment: This SECTION repeals the above-reference rules [which contain notice filing requirements for certain types of federal covered security offerings (namely, certain exchange offers, and certain non-Wisconsin governmental revenue obligation offerings) that had been adopted under statutory authority in s. 551.29(3), Stats., of the current/repealed Law] because such statutory language was not retained in the new/re-created Law.

**SECTION 54. DFI-Sec 3.01(Intro.), (1) (a) and (2) are amended to read:**

**DFI-Sec 3.01 Registration by coordination.** A registration statement under ~~s. 551.25, Stats.~~ s. 551.303, Stats., shall be submitted on Form U-1, shall contain the following information and be accompanied by the following documents in addition to the information specified in ~~ss. 551.25 (2) and 551.27 (2), Stats.~~ ss. 551.303(2) and 551.305, Stats., ~~and the consent to service of process on Form U-2 required by s. 551.65 (1), Stats.~~ :

**(1)(a)** ~~Copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters, any instrument governing the issuance of the security to be registered, a specimen of the security and, if~~ If the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture meeting the requirements of s. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown; and

**(2)** In any offering for which a registration statement on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 has been filed by coordination with the division, the requirement in ~~s. 551.25 (3) (a) 2., Stats.~~ s. 551.303(3)(b), Stats., that a registration statement be on file with the division for at least 10 days is reduced to a requirement that the registration statement be on file with the division for at least 7 days.

Comment: This SECTION does the following: (1) deletes certain additional informational items required in s. DFI-Sec 3.01(1)(a) under the current/repealed Law to be included with an application for Registration by Coordination because those informational items are required statutorily under ss. 551.303(2) and 551.305, Stats., of the new/re-created Law; and (2) revises the statute sections cross-referenced in the rules in this SECTION and following SECTIONS to reflect the numbering in the corresponding sections of the new Law.

**SECTION 55. DFI-Sec 3.02(1)(Intro.) is amended to read:**

**DFI-Sec 3.02 Registration by qualification.** (1) A registration statement under ~~s. 551.26, Stats.~~ s. 551.304(2), Stats., shall be submitted on Form U-1, shall contain the ~~following~~ information and ~~be accompanied by the following documents, in addition to the information specified in s. 551.27 (2), Stats., and the consent to service of process on Form U-2 required by s. 551.65 (1), Stats.,:~~ prescribed in ss. 551.304(2) and 551.305, Stats., and if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture meeting the requirements of s. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown.

**SECTION 56. DFI-Sec 3.02(1)(a) through (q) are repealed.**

Comment: The two preceding SECTIONS delete certain additional informational items required by rule under the current/repealed Law to be included with an application for Registration by Qualification because those informational items are required statutorily under ss. 551.304(2) and 551.305, Stats., of the new/re-created Law. Language is added in s. DFI-Sec 3.02(1) (intro.) requiring a trust indenture if the offering involves a debt security [paralleling the language required in the existing Registration by Coordination rule s. DFI-Sec 3.01(1)(a) above], which is adopted pursuant to the statutory authority in s. 551.305(11), Stats., of the new/re-created Law.

**SECTION 57. DFI-Sec 3.02(2) and (3) are amended to read:**

**DFI-Sec 3.02(2)** The division may permit the omission of the filing of any information or document ~~specified in sub. (1)~~ required under s. 551.304(2), Stats., if the division determines that the information or document is not required for the protection of investors.

**(3)** Any information ~~specified in~~ required under sub. (1) may be included in a prospectus meeting the requirements of s. DFI-Sec 3.03, if a cross-reference table is filed showing where the information appears in the prospectus.

**SECTION 58. DFI-Sec 3.03(2)(h) (Intro.) is amended to read:**

**DFI-Sec 3.03(2) (h)** If the offering is exempt under section 3 (a) (2), 3. (a) (4), 3. (a) (11) or 4 (2) of the securities act of 1933, and a filing is required to be made under ~~s. 551.26, 551.22 (1) (b), 551.22 (8) or 551.23 (15), Stats.~~ ss. 551.304, 551.201(1)(b) or 551.201(7), Stats., or rules promulgated thereunder, each of the following 2 statements in bold-face type, as applicable to the offering:

**SECTION 59. DFI-Sec 3.05 (1), (2) and (3) are amended to read:**

**DFI-Sec 3.05 Registration proceedings. (1)** If any information is reasonably required by the division prior to the effective date of a registration statement filed under ~~s. 551.25 or 551.26, Stats.~~ ss. 551.303 or 551.304, Stats., in connection with the examination of such registration statement, the registration statement is deemed filed when the information so required is filed with the division.

**(2)** Any registration statement which a registrant fails to complete or withdraw within one year from the date of filing shall be deemed materially incomplete under ~~s. 551.28 (1) (a), Stats.~~ s. 551.306(1)(a), Stats., and the division may issue a stop order denying effectiveness to such registration statement.

**(3)** The division may institute a proceeding under ~~s. 551.28, Stats.~~ s. 551.306, Stats., and may issue a stop order suspending or revoking the effectiveness of any registration statement filed under ~~ss. 551.25 or 551.26, Stats.~~ ss. 551.303 or 551.304, Stats., at any time during the period that the registration statement is effective and within one year thereafter.

**SECTION 60. DFI-Sec 3.07(2) is amended to read:**

**DFI-Sec 3.07 (2)** A registration statement relating to securities of a finance company licensed under s. 138.09, Stats., is deemed to include an application for the continuous offering of the securities. The offering period of the registration statement is automatically extended until it is permitted to be withdrawn or the division issues a stop order suspending or revoking its effectiveness pursuant to ~~s. 551.28, Stats.~~ s. 551.306, Stats., if the issuer files with the division not less than annually during the offering period, within 120 days of the end of its fiscal year, a prospectus updated in accordance with s. DFI-Sec 3.03 (6), a balance sheet of the issuer as of the end of the fiscal year, and a statement of income and change

in financial position and analysis of surplus of the issuer for the fiscal year meeting the requirements of s. DFI-Sec 7.06.

**SECTION 61. DFI-Sec 3.08 is amended to read:**

**DFI-Sec 3.08 Periodic reports.** Each issuer or registrant of securities registered under ~~s. 551.26, Stats.~~ s. 551.304, Stats., shall file with the division such additional reports of sales and financial statements as may be specified by order, and shall furnish the division with written notice within 30 days after the happening of any material event affecting the issuer or the securities registered.

**SECTION 62. DFI-Sec 4.01(1)(a) and (b) are renumbered DFI-Sec 4.01(1)(a)1. and 2.**

**SECTION 63. DFI-Sec 4.01(1) is renumbered DFI-Sec 4.01(1)(a) and is amended to read:**

**DFI-Sec 4.01 Licensing Registration procedure. (1)(a)** Applications for initial and renewal ~~licenses~~ registrations of broker-dealers and agents, as well as amendments, reports, notices, related filings and fees, shall be filed with:

Comment: The renumberings in the two preceding SECTIONS are for the purpose of making room under s. DFI-Sec 4.01(1) for new par. (b) created in the following SECTION that establishes when an application on behalf of an agent is deemed "filed" for purposes of the "30-day effectiveness clock" under s. 551.406(3), Stats.

**SECTION 64. DFI-Sec 4.01(1)(b) is created to read:**

**DFI-Sec 4.01(1)(b)** An application for registration as an agent of a broker-dealer is deemed filed under s. 551.406(1), Stats., on the "FILING DATE" reflected on the records of the central registration depository.

Comment: See the Comment to the preceding SECTION.

**SECTION 65. DFI-Sec 4.01(2)(a), (b), and (c) are amended to read:**

**(2) (a)** Except as provided in par. (b), an "application" for purposes of ~~s. 551.32(1)(b), Stats.~~ s. 551.406(1), Stats., means all information required by the form prescribed under sub. (1) together with any additional information required by the division.

**(b)** An application for initial ~~license~~ registration or for renewal of a ~~license~~ registration as a broker-dealer registered with the ~~national association of securities dealers, inc.~~ financial industry regulatory authority ~~consists of~~ includes the payment of the Wisconsin broker-dealer registration fee and, in the case of an initial application, the examination fee prescribed by s. DFI-Sec 7.01 (3) (a), to the central registration depository of the ~~national association of securities dealers, inc.~~ financial industry regulatory authority ~~as developed under contract with the North American securities administrators association.~~ An application for initial ~~license~~ registration as a broker-dealer under this paragraph shall be deemed filed under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats., on the date the application is transferred from "NO STATUS" to "PENDING" on the records of the central registration depository. An application for renewal of a ~~license~~ registration as a broker-dealer under this paragraph shall be deemed filed under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

(c) An "application" for initial ~~license registration~~ or for renewal of a ~~license registration~~ as a securities agent for a broker-dealer registered with the ~~national association of securities dealers, inc.~~ ~~financial industry regulatory authority~~ ~~consists of~~ includes the payment of Wisconsin agent registration ~~renewal~~ fees to the central registration depository. An application for initial ~~license registration~~ as an agent under this paragraph shall be deemed "filed" under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats. , on the date when the application is designated ready for approval on the records of the central registration depository. An application for renewal of a ~~license registration~~ as an agent under this paragraph shall be deemed "filed" under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats. , when the fee on deposit with the central registration depository has been allocated to the division.

Comment: The amendments in the two preceding SECTIONS and in following SECTIONS, make necessary changes resulting from the new/re-created Law with respect to statutes cross-referenced, and substituting "registration" terminology for "licensing" terminology. This SECTION, as well as following SECTIONS, reflect a name change for the National Association of Securities Dealers, Inc. which, as a result of its 2007 merger/combination with the regulatory arm of the New York Stock Exchange, is now the Financial Industry Regulatory Authority (FINRA).

**SECTION 66. DFI-Sec 4.01(2)(d) is created to read:**

(d) An electronic signature affixed to any filing made in compliance with the requirements of the central registration depository shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

Comment: This SECTION creates a new rule that establishes an electronic signature on a registration application filed with the central registration depository as legally binding for purposes of the registration application process in Wisconsin.

**SECTION 67. DFI-Sec 4.01(3) is amended to read:**

**DFI-Sec 4.01(3)** Unless waived under sub. (4), each applicant for an initial ~~license registration~~ as a broker-dealer or agent is required to take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository , either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination, and take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository , one of the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to take and pass, or receive a waiver from passing, each examination in pars. (b) to (h) that relates to the applicant's proposed securities activities:

Comment: The current language in this rule [that establishes the examination requirement for broker-dealers and agents and requires an applicant to pass either of the examinations specified ], does not impose a time restriction regarding how recently the applicant must have passed one of the two examinations, although a two-year requirement is contained in the examination waiver provisions of current rules ss. DFI-Sec 4.01(4)(a) and (b). Because the administrative rules of many states regarding broker-dealers, their agents and investment advisers and investment adviser representatives, require examinations to be passed within two years of the date of an initial application to ensure that the knowledge tested for remains fresh in the mind of the applicant (even though they may not have been employed in a capacity where they have been utilizing that knowledge on a regular basis), this SECTION adds a similar 2-year requirement. The same amendment is made to the investment adviser and investment adviser representative examination requirement in Chapter 5.

**SECTION 68. DFI-Sec 4.01(3)(a) amended to read:**

**(a)** The Series 7 General Securities Representative Examination ~~, or, in the case of applicants not registered with the national association of securities dealers, inc. or any organized stock exchange in the United States, the Series 2 Exchange Commission Only/National Association of Securities Dealers Non-Member General Securities Examination .~~

Comment: This amendment repeals as a qualifying examination, the Series 2 examination because it has not been given in over 10 years, and no longer can be relied on as a test of an applicant's securities knowledge.

**SECTION 69. DFI-Sec 4.01(4)(a) is amended to read**

**DFI-Sec 4.01(4)(a)** The applicant has passed ~~with a grade of at least 70%~~ the examinations required to be passed by the applicant under sub. (3) within 2 years prior to the date the application for registration is filed in this state.

Comment: The "grade of at least 70%" language is deleted because the examination "weighting" process for the exam questions varies with each test given, thus affecting the passing grade percentage.

**SECTION 70. DFI-Sec 4.01(6) is repealed and recreated to read:**

**DFI-Sec 4.01(6)(a)** Pursuant to s. 551.406(3)(b), Stats., the effective date of a registration application is deferred until noon on the 45th day after the filing of any amendment completing the application, unless the application otherwise becomes effective under s. 551.406(3)(a), Stats.

**(b)** For purposes of s. 551.406(3)(b), Stats., a written request for additional information is not limited to a request to the applicant or the applicant's employing broker-dealer, and the division may request additional information from third-party sources relevant to the review of the application.

**(c)** Before action on an application, the division may designate an employee to make an examination of the books, records and affairs of the applicant at the applicant's expense.

Comment: This SECTION does the following: (1) Repeals the current rules in s. DFI-Sec 4.01(6) [relating to when a license application becomes effective] because they are covered in s. 551.406(3), Stats., of the new/re-created Law. (2) Creates a rule in (a) [using the authority in s. 551.406(3)(b), Stats., of the new/re-created Law] to provide that the effective date of a license application is deferred until noon on the 45th day after the filing of any amendment completing the application, unless the application otherwise becomes effective under s. 551.406(3)(a), Stats. and (3) Creates new par. (b) to provide that the Division may direct inquiries to parties other than an applicant in order to investigate the applicant's background during the course of reviewing an initial application. The Division often must contact former employers, clearing firms and others in order to obtain needed additional information about the applicant. and (4) Adds as a new rule in par. (c), the language from s. 551.32(2), Stats., of the current/repealed Law to provide that the Division may have an employee examine the books, records and affairs of an applicant.

**SECTION 71. DFI-Sec 4.01(8)(intro.) is amended to read:**

**DFI-Sec 4.01 (8)** For an agent to simultaneously represent in this state more than one broker-dealer pursuant to s. 551.402(5)., Stats., or an issuer pursuant to ~~s. 551.34(2)(b)2~~ s. 551.402(6), Stats. , the following requirements shall be met, in addition to the regular agent registration requirements:

**SECTION 72. DFI-Sec 4.01(9) is repealed.**

**SECTION 73. DFI-Sec 4.04(3)(a) is renumbered DFI-Sec 4.04(3).**

**SECTION 74. DFI-Sec 4.04(3)(b) is repealed.**

Comment: The 3 preceding SECTIONS do the following: (1) Repeal current rules in s. DFI-Sec 4.01(9) and s. DFI-Sec 4.04(3)(b) which deal with, respectively, agents and broker-dealers seeking to also provide investment advisory services. That subject is covered statutorily under the new Law which provides that broker-dealers separately providing investment advisory services need to have a separate registration as an investment adviser, and also provides that agents for such firms need to have a separate registration as an investment adviser representative to provide advisory services. (2) The renumbering of s. DFI-Sec 4.04(3)(a) is done to preserve existing s. DFI-Sec 4.04(3)(a) as the sole rule provision under s. DFI-Sec 4.04(3).

**SECTION 75. DFI-Sec 4.04(7)(c) is repealed and re-created to read:**

**DFI-Sec 4.04(7)(c)** The notification required to be provided to the division under par. (a) or (b) shall be made electronically on Form BR via the central registration depository by broker-dealers eligible to file electronically, and shall be made directly with the division by broker-dealers that are not eligible to file electronically with the central registration depository.

Comment: This SECTION revises the language of this rule relating to a broker-dealer's notification obligations under s. DFI-Sec 4.04(7)(a) and (b) regarding the opening, closing or change of address of a "branch office" to require that the notification shall be provided on a prescribed form electronically via the Central Registration Depository by broker-dealers eligible to file electronically, and shall be made directly with the division by broker-dealers that are not eligible to file electronically.

**SECTION 76. DFI-Sec 4.04(8) is repealed and re-created to read:**

**DFI-Sec 4.04 (8)** Each broker-dealer shall file a branch office renewal notice annually with the central registration depository by broker-dealers eligible to file electronically, and shall be made directly with the division by broker-dealers that are not eligible to file electronically with the central registration depository.

Comment: See the Comment for s. DFI-Sec 4.04(7)(c) above.

**SECTION 77. DFI-Sec 4.05(1)(a) is amended to read:**

**DFI-Sec 4.05 ~~Rules of conduct~~ Practice rules. (1) (a)** Except as provided in pars. (b) and (c), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth the information prescribed in rule 10b-10 of the Securities and Exchange Act of 1934 and whether the transaction was unsolicited.

**SECTION 78. DFI-Sec 4.05(8)(b), (d), and (k)2. are amended to read:**

**DFI-Sec 4.05(8) (b)** Networking and brokerage affiliate arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements shall provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted

access to the financial institution's premises where the broker-dealer conducts ~~broker-dealer~~ securities services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its ~~broker-dealer~~ securities services. The broker-dealer shall ensure that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties. For purposes of this paragraph, "networking arrangement" and "brokerage affiliate arrangement" mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts ~~broker-dealer~~ securities services on the premises of a financial institution where retail deposits are taken.

**(d)** If ~~broker-dealer~~ securities services include any written or oral representations concerning insurance coverage, other than FDIC or similar insurance coverage, then clear and accurate, written or oral explanations of the coverage shall also be provided to the customers when the representations are first made.

**(k)2.** Establishment of a system under which the broker-dealer approves prior to use copies of all advertising used by the financial institution relating to the securities services conducted on the premises of the financial institution for the purpose of ensuring compliance with ~~ss. 551.41 and 551.53 Stats.~~ ss. 551.501 and 551.504, Stats. ; and

Comment: This SECTION amends 3 provisions under the Conduct Rule in s. DFI-Sec 4.05(8) [which establishes requirements for a broker-dealer conducting securities activities on the premises of a financial institution] to do the following: (1) change the terminology in sub. (8)(b) and (d) from "broker-dealer services" to a more inclusive "securities services," which is a defined term in s. DFI-Sec 1.02(9) ; and (2) change the statutory cross-references in par. (k)2 to reflect the adoption of the new Law.

#### **SECTION 79. DFI-Sec 4.06(1) is amended to read:**

**DFI-Sec 4.06(1) Prohibited ~~business practices~~ conduct** . (1) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by a broker-dealer under ~~s. 551.34(1)(g), Stats.~~ s. 551.412(4)(m), Stats. , without limiting those terms to the practices specified herein:

Comment: The amendments in this SECTION update the statutory cross-reference to the new/re-created Law, as well as it change the terminology of the Title to "prohibited conduct" to more appropriately cover the various types of prohibited activities listed and described in this Section of the rules.

#### **SECTION 80. DFI-Sec 4.06(1)(c)2.a. and b. are amended to read:**

**a.** The customer has an annual gross income of at least ~~\$45,000~~ \$70,000 and a net worth of at least ~~\$45,000~~ \$70,000 exclusive of the customer's principal residence and its furnishings and personal use automobiles; or

**b.** The customer has a net worth of at least ~~\$150,000~~ \$250,000 , exclusive of the customer's principal residence and its furnishings and personal use automobiles.

Comment: These amendments raise the dollar amounts for customer income and/or net worth suitability requirements for broker-dealer recommendations of direct participation plan to reflect identical increases contained in model rules currently proposed by NASAA.

#### **SECTION 81. DFI-Sec 4.06(1)(f) is amended to read:**



**DFI-Sec 4.06(1) (f)** Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders ~~or both~~ pursuant to rule 2510(d)(1) of the financial industry regulatory authority;

Comment: The amendment to this rule [relating to exercising discretionary power in a customer's account] is amended by adding a reference to the specific FINRA rule regarding time and price discretion.

**SECTION 82. DFI-Sec 4.06(1)(o), (s) and (t) are amended to read:**

**DFI-Sec 4.06(1) (o)** Executing orders for the purchase by a customer of securities not registered under ~~s. 551.25 or 551.26, Stats.~~ s. 551.303 or 551.304, Stats. , unless the securities are exempted under ~~s. 551.22, Stats.~~ s. 551.201, Stats. , or the transaction is exempted under ~~s. 551.23, Stats.~~ 551.202, Stats. ;

**(s)** Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not licensed under ch. 551, Stats., unless the customer is a person described in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.401(2) or s. DFI-Sec 4.10;

**(t)** Recommending to a customer that the customer engage the services of an investment adviser, broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person described in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.401(2)(h) or 551.402(2)(i), Stats., or DFI-Sec 4.10;

Comment: This SECTION updates the statutory cross-references in the above rules to reflect their numbering in the new Law.

**SECTION 83. DFI-Sec 4.06(1)(v) is created to read:**

**DFI-Sec 4.06(1) (v)** Disclosing the identity, investments, or other financial information of any customer or former client unless required by law to do so, or unless consented to by the client.

Comment: This new rule addresses identity theft and federal Regulation SP by making it a Prohibited Conduct/dishonest or unethical business practice for a broker-dealer to disclose a customer's personally identifiable information without the customer's consent or as required by law. A later SECTION adds a cross-reference to this rule for purposes of the prohibited conduct/dishonest or unethical business practice rule for agents in s. DFI-Sec 4.06(2)(i),

**SECTION 84. DFI-Sec 4.06(2)(intro.) and (a) are amended to read:**

**DFI-Sec 4.06(2)** The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under ~~s. 551.34(1)(g), Stats.~~ s. 551.412(4)(m), Stats. , without limiting those terms to the practices specified in this subsection:

**(a)** Borrowing money or securities from, or lending money or securities to, a customer of the agent or the broker-dealer that employs the agent unless that customer is a financial institution or institutional investor designated in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.401(2)(b) or (c), Stats. ;

Comment: This SECTION updates the statutory cross-references in the above rules to reflect their numbering in the new Law.

**SECTION 85. DFI-Sec 4.06(2)(i) is amended to read**

**DFI-Sec 4.06(2)(i)** Engaging in any of the practices specified in sub. (1) (a), (b), (c), (d), (e), (f), (g), (h), (o), (p), (q), (r), ~~and (t) and (v)~~.

Comment: As referenced in an earlier SECTION, this amendment adds for purposes of the prohibited conduct/dishonest or unethical business practice rule for agents in s. DFI-Sec 4.06(2)(i), a cross-reference to the new rule in s. DFI-Sec 4.06(1)(v) making it a Prohibited Conduct/dishonest or unethical business practice for a broker-dealer to disclose a customer's personally identifiable information without the customer's consent or as required by law.

**SECTION 86. DFI-Sec 4.07 is repealed and re-created to read:**

**DFI-Sec 4.07 Registration period.** (1) The registration of an agent is not effective during any period when any of the following apply:

- (a) The broker-dealer that the agent represents is not registered.
  - (b) When the securities of the issuer that the agent represents are not subject to an effective registration statement or an effective exemption, or upon termination of the offering.
  - (c) The agent's status with the financial industry regulatory authority or a national securities exchange is deficient for failure to meet continuing education requirements.
- (2) The division may by order limit the period of, or specify an earlier expiration date for, any registration.

Comment: This SECTION does the following: (a) repeals current ss. DFI-Sec 4.07(1)(a) through (c) [which relate to expiration of broker-dealer and agent licenses] because those provisions are covered in s. 551.406(4), Stats., of the new/re-created Law; (b) repositions current s. DFI-Sec 4.07(2)(a) [first part] as new sub. (1), s. 4.07(2)(a) [second part] as new sub. (2), and s. 4.07(2)(c) as new sub. (3). and (c) retains as new sub. (4), current s. DFI-Sec 4.07(1)(d) that permits the Division to, by order, limit the period of, or specify an earlier expiration date for, any registration.

**SECTION 87. DFI-Sec 4.08(1) and (2) are amended to read:**

**4.08(1) Withdrawal of licenses.** (1) An application for withdrawal from the status of a licensed registered broker-dealer under ~~s. 551.32(9)(a), Stats.~~ s. 551.409, Stats. , shall be filed by the ~~licensee~~ registrant on Form BDW with the central registration depository. If the ~~licensee~~ registrant has any open customer accounts in this state, the settlement of those accounts is a condition of its withdrawal. Additional information may be required by the division and withdrawal is not effective until electronically noticed through the central registration depository.

(2) An application for withdrawal from the status of a licensed registered agent shall be filed by the broker-dealer or issuer which the agent represents within 30 days of the termination of the agent's employment on Form U-5 prescribed in s. DFI-Sec 9.01 (1), together with any additional information required by the division.

**SECTION 88. DFI-Sec 4.085 is repealed.**

Comment: This SECTION repeals the current rule dealing with Temporary Agent Licensing and the temporary registration procedures under the Central Registration Depository because that subject is covered statutorily in s. 551.408(2), Stats., of the new/re-created Law.

**SECTION 89. DFI-Sec 4.09 is renumbered DFI-Sec 4.09(1) and amended to read:**

**DFI-Sec 4.09 Denial, suspension, revocation and censure. (1)** Any order denying, suspending or revoking the ~~license~~ registration of a broker-dealer or agent or censuring a ~~licensee~~ registrant may include such other sanctions as the division finds appropriate.

**SECTION 90. DFI-Sec 4.09(2) is created to read:**

**DFI-Sec 4.09(2)** For purposes of s.551.412(1), the public interest or protection of investors does not require a showing of ongoing harm to summarily deny an application for a registration as a broker-dealer or agent.

Comment: The preceding 2 SECTIONS do the following: (a) renumber the existing rule relating to Denial, suspension, revocation and censure to make room for a new rule in sub. (2); (b) the new rule in sub. (2) provides that a showing of ongoing harm to investors is not required for purposes of issuance of a summary order denying registration of a license application based on the applicant's past history or other factors known to the Division.

**SECTION 91. DFI-Sec 4.10 is repealed and re-created to read:**

**DFI-Sec 4.10 Registration exemptions. (1)** For purposes of s. 551.401(2)(h) and 551.402(2)(i), a broker-dealer or agent is exempt from the registration requirement if the broker-dealer's or agent's only transactions effected in this state are with:

- (a) This state or any of its agencies or political subdivisions or the state investment board.
  - (b) The federal government or any of its agencies or instrumentalities.
- (2) For purposes of s. 551.402(2), Stats., an agent is exempt from the registration requirement if the agent represents an issuer in effecting transactions in a security exempted by s. 551.201, Stats.
- (3) A person who gives a group presentation relating to an issuer or the securities of an issuer at a meeting or seminar sponsored by a broker-dealer registered under this chapter is not required to register as an agent if the person makes no solicitations, offers or sales of the issuer's securities on an individual basis with any person in this state and if the person does not in any other way transact business in this state as an agent.
- (4)(a) A broker-dealer that is registered in good standing in Canada and that does not have a place of business in this state is exempt from registration if it complies with all of the requirements of s. 551.401(4)(a), Stats., and discloses to each customer in this state that the broker-dealer and its agents are not registered under Chapter 551, Stats.
- (b) An agent of a broker-dealer located in Canada that is exempt from registration on the basis of compliance with s. 551.401(4)(a), Stats., is exempt from the registration requirement in s. 551.402, Stats.

Comment: This SECTION does the following: (1) repeals current rule s. DFI-Sec 4.10 governing Bank agency transactions as being superseded by changes in the bank-related exclusions from the definition of "broker-dealer" in s. 551.102(4)(c), Stats., of the new/re-created Law which are based on federal Graham-Leach-Bliley provisions giving banks more authority to conduct certain securities-related activities; (2) provides new rules in (1)(a) & (b), (2) and (3) to cover several exemptions from broker-dealer and agent registration that are contained in the current/repealed Law [see ss. 551.31(1)(a) and 551.23(8)(d) and (e), 551.02(2)(a), and 551.31(1)(b), Stats.], but are left to rulemaking under the new/re-created Law; (3) adopts rules in (4)(a) and (b) to make operative the registration exemption in s. 551.401(4), Stats., of the new/re-created Law for Canadian broker-dealers and agents that are registered in Canada and that do not have a place of business in Wisconsin, provided they comply with the

requirements set forth in ss. 551.401(4)(a) and (b), Stats.

In connection with the public comment process, a comment letter recommended that language be added to rule s. DFI-Sec 4.10(1)(intro.) to clarify that the entities and persons listed in rule paragraphs ss. DFI-Sec 4.10(1)(a) and (b) are in addition to the list of entities and persons specified in ss. 551.401(2)(a) through (f), Stats., and in ss. 551.402(2)(a) through (hm), Stats. The Division determined that a clarification was warranted, and therefore modified the proposed rule by adding to the statute sections cross-referenced in the rule, the specific paragraphs [par. (h) of s. 551.401(2), Stats., and par. (i) of s. 551.402(2), Stats.] which each provide that the Division can "exempt by rule any **other** person or individual" (emphasis supplied).

#### **SECTION 92. DFI-Sec 4.11 is repealed.**

Comment: This SECTION repeals the current rule provision governing broker-dealer marketing of certificates of deposit as no longer necessary inasmuch as the Division for several years has neither seen nor had to deal with advertising materials used by brokerage firms marketing bank certificates of deposit.

#### **SECTION 93. DFI-Sec 5.01(1) is repealed and re-created to read:**

**DFI-Sec 5.01 Registration procedure. (1)** Applications for initial and renewal registration of investment adviser and investment adviser representatives, as well as amendments, reports, notices, related filings and fees, shall be filed with:

**(a)** The division on forms prescribed by the division in s. DFI-Sec 9.01 (1); or

**(b)** The investment adviser registration depository on forms established for the investment adviser registration depository

Comment: This SECTION consolidates the existing filing procedure rules in ss. DFI-Sec 5.01(1)(a), (b) and (c) to provide that registration applications are to be filed either with the Investment Adviser Registration Depository using its forms, or with the Division using forms prescribed by the Division.

#### **SECTION 94. DFI-Sec 5.01(2)(a), (b) and (c) are amended to read:**

**DFI-Sec 5.01(2) (a)** A ~~licensing~~ registration application for purposes of ~~s. 551.32(1), Stats.~~ s. 551.406, Stats., consists of all information required by the form prescribed under ~~sub.(1)(e)~~ sub. (1), any additional information required by the division and all required fees. Any documents or fees required to be filed with the division that are not permitted to be filed with or cannot be accepted by the investment adviser registration depository or the central registration depository shall be filed directly with the division.

**(b)** An application for initial ~~license~~ registration as an investment adviser under this paragraph shall be deemed filed under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats., on the date the application is transferred from "NO STATUS" to "PENDING" on the records of the investment adviser registration depository. An application for renewal of a ~~license~~ registration as an investment adviser under this paragraph shall be deemed filed under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(4), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

**(c)** An "application" for initial ~~license~~ registration or for renewal of a ~~license~~ registration an investment adviser representative for an investment adviser ~~licensed~~ registered under this chapter or

a federal covered investment adviser notice filed under this chapter consists of the payment of Wisconsin investment adviser representative ~~license registration~~ or renewal fees to the central registration depository. An application for initial ~~license registration~~ as an investment adviser representative under this paragraph shall be deemed "filed" under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats., on the date when the application is designated ready for approval on the records of the Center registration repository. An application for renewal of a ~~license registration~~ as an agent under this paragraph shall be deemed "filed" under ~~s. 551.32(1)(a), Stats.~~ s. 551.406(1), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

Comment: This SECTION, as do following SECTIONS, contain changes both to the statutory cross-references in the above rules to reflect adoption of the new Law, and substitutes "registration" terminology used under the new Law for the "license" terminology in the current/repealed Law.

**SECTION 95. DFI-Sec 5.01(2)(d)1. is repealed, and DFI-Sec 5.01(2)(d) 2. and 3. are renumbered DFI-Sec 5.04(3)(b) and (3)(c).**

Comment: This SECTION does the following: (1) repeals subd. (d)1. because its subject matter [which includes filing requirements for investment advisers and investment adviser representatives relating to amendments] is covered statutorily under the new Law. [See s. 551.407 Stats., of the new Law] ; and (2) because the rules in ss. DFI-Sec 5.01(2)(d) 2. and 3 are of a reporting nature, they are renumbered and moved to be more appropriately placed as new paragraphs (3)(b) and (c) within the Reporting Requirements Section DFI-Sec 5.04.

**SECTION 96. DFI-Sec 5.01(2)(f) is created to read:**

**DFI-Sec 5.01(2)(f)1.** Pursuant to s. 551.406(3)(b), Stats., the effective date of a registration application is deferred until noon on the 45th day after the filing of any amendment completing the application, unless the application otherwise becomes effective under s. 551.406(3)(a), Stats.

**(f)2.** For purposes of s. 551.406(3)(b), a written request for additional information is not limited to the applicant or the applicant's employing investment adviser, but may include other requests of third-party sources relevant to the application.

Comment: This SECTION parallels similar revisions in Chapter 4 made to s. DFI-Sec 4.01(6), and does the following: (1) creates a rule in (f)1. [using the authority in s. 551.406(3)(b), Stats., of the new Law] to provide that the effective date of a license application is deferred until noon on the 45th day after the filing of any amendment completing the application, unless the application otherwise becomes effective under s. 551.406(3)(a), Stats.; and (2) creates a new rule in (f)2 to provide that the Division may direct inquiries to parties other than an applicant in order to investigate the applicant's background during the course of reviewing an application. The Division often must contact former employers, clearing firms and others in order to obtain needed additional information about the applicant.

**SECTION 97. DFI-Sec 5.01(3)(intro.), (a) and (b) are renumbered DFI-Sec 5.01(3)(a), (3)(a)1. and (3)(a)2., and (3)(a) as renumbered, is amended to read:**

**DFI-Sec 5.01(3)(a)** Unless waived under sub. (4), each applicant for an initial ~~license registration~~ as an investment adviser or as an investment adviser representative after January 1, 2000, and each applicant whose application has not become effective by January 1, 2000, is required to provide the division with proof that he or she has obtained a passing score on the shall take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository, the post-1999 version of the examination specified in par. (a) par. (a)1. , or each the post-1999 version of the Series 66 examination specified in par. (b) par. (a)2 .

**SECTION 98. DFI-Sec 5.01(3)(b) is created to read:**

**DFI-Sec 5.01(3)(b)** If the investment adviser is an entity, then a supervisory or control individual shall take and pass the examination required in par. (a).

Comment: The revisions in the two preceding SECTIONS do the following: (1) Delete the references to January 1, 2000 in (3)(a) because those dates are no longer relevant. (2) Add language paralleling revisions to s. DFI-Sec 4.01(3) in an earlier SECTION to impose a 2-year time restriction regarding how recently the applicant must have passed the examinations. Because the administrative rules of many states as well as the NASAA Model Rules regarding broker-dealers, their agents and investment advisers and investment adviser representatives, require examination to be passed within two years of the date of an initial application to ensure that the knowledge tested for remains fresh in the mind of the applicant (even though they may not have been employed in the capacity with a have been utilizing at knowledge on a regular basis), this SECTION adds a similar 2-year requirement. and (3) creates a new rule in par. (3)(b) [based on existing NASAA Model Rules] requiring non-natural person investment advisers to have a supervisor take and pass the same qualification examination as an investment adviser representative.

Incident to the public comment process, a comment memorandum was received which recommended that the examination requirement for investment advisers and investment adviser representatives in rule s. DFI-Sec 5.01(3)(a) be revised to provide that passage of the examination specified in subd. (3)(a)1 [the Series 65 examination] and subd. (3)(a)2 [the Series 7 and Series 66 examinations] be the post-1999 version of the Series 65 and Series 66 examinations. The Agency determined that such a revision was warranted and necessary, and accordingly, such "post-1999 version" language was added to rule s. DFI-Sec 5.01(3)(a) in two places.

**SECTION 99. DFI-Sec 5.01(4)(a) is repealed and re-created to read:**

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

Comment: Current s. DFI-Sec 5.01(4)(a) provides a waiver of the examination requirement if the applicant has passed the Series 7 and Series 63 securities agent examinations. Wisconsin has been virtually unique in providing a waiver based on those examinations and it is not contained in the NASAA Model Rules regarding examinations and exam waivers. Although the Series 7 Examination does test product knowledge, neither of the current examinations address investment adviser regulations or practices and thus are an insufficient basis on which to grant a waiver, such that passage of either the Series 65 or, alternatively, the Series 66 plus the Series 7 examinations, are substituted as a basis for waiver.

**SECTION 100. DFI-Sec 5.01(4)(d)(intro.) is amended to read:**

**DFI-Sec 5.01(4)(d)** The applicant provides the division with proof that he or she currently holds one of the following professional designations and at the time of filing an application is current and in good standing with the granting authority:

Comment: This amendment adopts a NASAA Model Rule proposal on the subject that would codify an interpretation used by most states since 2000.

**SECTION 101. DFI-Sec 5.01(4)(d)5. is amended to read:**

**DFI-Sec 5.01(4)(d)5.** Chartered Investment Counselor (CIC) granted by the Investment Counsel ~~Association of America.~~

Comment: This amendment reflects a recent name change of the Association.

**SECTION 102. DFI-Sec 5.01(4)(e) is repealed and re-created to read:**

**DFI-Sec 5.01(4)(e)** The applicant is registered as an agent of a broker-dealer that conducts investment advisory services under its broker-dealer registration who is not required by the agent's home state to make a separate filing on the central registration depository as an investment adviser representative, but who has previously met the examination requirement in sub. (3) or received a waiver from that requirement under sub.(4)(a) thru (d) and (f) and has provided proof that the home state permits transacting business as an investment adviser representative under the agent's registration.

Comment: This SECTION does the following: (1) Repeals as being outdated, current s. DFI-Sec 5.01(4)(e) [which provided an examination waiver if an applicant was licensed in any state jurisdiction on January 1, 2000]. and (2) Creates a new rule establishing a waiver designed to remedy a situation faced by applicants from states where, as an agent for a broker-dealer that conducts investment advisory services under its broker-dealer registration, a filing on the Central Registration Depository as an investment adviser representative is not required. Essentially, the new rule provides a waiver if proof of status equivalent to an investment adviser representative is submitted to the Division.

**SECTION 103. DFI-Sec 5.01(4)(f) is created to read:**

**5.01(4)(f)1.** The applicant was registered as an investment adviser or registered as an investment adviser representative in this state on December 31, 2008, except that the administrator may require additional examinations for any individual found to have violated any state or federal securities law.

**(f)2.** The applicant was registered in this state on December 31, 2008 as an agent for a registered broker-dealer that was also approved to act as an investment adviser in this state and who also met the examination requirement in sub. (3), except that the administrator may require additional examinations for any individual found to have violated any state or federal securities law.

Comment: This SECTION creates a new rule establishing a "grandfathering" waiver for investment adviser representatives and agents of a broker-dealer that conduct investment advisory services under its broker-dealer registration who were licensed or otherwise qualified as investment adviser representatives in Wisconsin at the end of 2008.

**SECTION 104. DFI-Sec 5.01(6) is amended to read:**

**DFI-Sec 5.01(6)** Any application for registration which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete under ~~s. 551.34(1)(a), Stats.~~ s. 551.412(4)(a), Stats. , and the division may issue an order denying effectiveness to the application.

**SECTION 105. DFI-Sec 5.01(8) is repealed.**

Comment: This SECTION repeals -- as being outdated and virtually never used -- the "temporary hardship exemption" in current s. DFI-Sec 5.01(8) that had been adopted a number of years ago by the US Securities & Exchange Commission and by many state jurisdictions (including Wisconsin) for applicants experiencing technical difficulties preventing electronic filing with the Investment Adviser Registration Depository. To the best of the Division staff's knowledge, no federal or state adviser has ever sought to claim use of such hardship exemption, such that repeal of this rule is warranted.

**SECTION 106. DFI-Sec 5.02(1) and 5.02(5) (intro.) are amended to read:**

**DFI-Sec 5.02 Net capital- worth requirement. (1)** Each investment adviser ~~licensed~~ registered or required to be ~~licensed~~ registered under ch. 551, Stats., whose principal office is in this state and who accepts prepayment of fees exceeding ~~\$500~~ \$1,200 per client that are collected six or more months in advance, shall maintain at all times a positive net worth. The division may require that a current appraisal be submitted in order to establish the worth of any asset.

**(5)** For purposes of this section, the term "~~net capital~~" "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets any of the following:

Comment: This SECTION does the following: (1) Combines in one SECTION, amendments to 2 separate rules dealing with the terminology "Net Worth". (2) Changes the "net capital" terminology in the Section title to "net worth," to be consistent with the terminology used in NASAA's Model Rules. Although "net capital" is terminology regularly used in the broker-dealer context, that is not the case for investment advisers where "net worth" is a term with more relevance to the investment advisory business. (3) Raises from \$500 to \$1200 per client, the dollar threshold in s. DFI-Sec 5.02 [for triggering applicability of the net worth requirement] for advisers who receive prepayment of advisory fees. The dollar threshold amendment is patterned after a similar rule change recently proposed by the U.S. Securities and Exchange Commission.

**SECTION 107. DFI- Sec 5.02(5)(d) is amended to read:**

**DFI- Sec 5.02(5)(d)** Advances or loans to partners or members , if the investment adviser is a partnership or limited liability company.

Comment: This amendment is necessary to make the rule requirement applicable also to limited liability companies which are increasingly becoming the organizational entity of choice for many businesses.

**SECTION 108. DFI-Sec 5.03(1)(m) is amended to read:**

**DFI-Sec 5.03(1)(m)** A record or information demonstrating compliance with the ~~net capital~~ net worth requirement in s. DFI-Sec 5.02.

Comment: See the Comment to s. DFI-Sec 5.02(1) and (5) above.

**SECTION 109. DFI-Sec 5.03(1)(o) is amended to read:**

**DFI-Sec 5.03(1)(o)** A record of the initial offer and delivery , evidenced by the client's written acknowledgement, as well as the annual offer or delivery, or both , to each client of the adviser's brochure or other document used to comply with s. DFI-Sec 5.05 (8).

COMMENT: These amendments add a "delivery" requirement to this rule requiring an adviser to



provide clients annually with a copy of its disclosure brochure.

**SECTION 110. DFI-Sec 5.03(3) is amended to read:**

**DFI-Sec 5.03 (3)** Every registered investment adviser shall preserve for a period of not less than ~~6~~ 5 years, the first 2 years in an easily accessible place, all records required under ~~sub. (1)~~ subs. (1) and (2) except that records respecting an account required under sub. (1) (i), (j) and (k) shall be preserved by the investment adviser for a period of not less than ~~6 years after the closing of the account~~ 5 years from the end of the first fiscal year during which the last entry was made on such record and records required under sub. (1) (a) shall be preserved by the investment adviser for a period of not less than ~~6~~ 3 years after withdrawal or expiration of its registration in this state. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record has been preserved for 2 years as required in this subsection, a microfilm copy may be substituted for the remainder of the required period.

COMMENT: This SECTION does the following: (1) Makes the record retention requirements of this rule applicable to investment adviser records required under both sub. (2) and sub. (1). (2) Incident to the public comment process, a comment memorandum recommended that the 6-year records retention requirement for investment advisers specified in two places in this rule be revised to provide for 5-year and 3-year retention periods, respectively, to thereby be consistent with the federal records retention requirements under the Investment Advisers Act of 1940. The Division determined that such revisions were warranted and necessary, and the records retention periods in this rule are changed accordingly.

**SECTION 111. DFI-Sec 5.03(5) and (6) are amended to read:**

**DFI-Sec 5.03(5)** The records required in ~~sub. (5)~~ sub. (4) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place. Upon closing of the branch office, the records shall be transferred to the home office for the duration of the required retention period. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. If a record has been preserved for the first year of the 3-year period required in this subsection, a microfilm copy may be substituted for the remainder of the required retention period.

**(6)** The requirements of subs. (1) to ~~(6)~~ (5) shall not apply to any investment adviser that has its principal office in a state other than this state, provided that the investment adviser is registered in that state and is in compliance with that state's books and records requirements, if any.

Comment: These amendments correct erroneous cross-references in each of the two rules (which mistakenly refer to themselves as an unintended consequence of a prior repeal of a rule that was lower in the numbering sequence, but where the subsection numbers cross-referenced in these two rules were not revised to reflect such).

**SECTION 112. DFI-Sec 5.035(1)(f) is amended to read:**

**DFI-Sec 5.035(1)(f)** ~~Unless exempt under subd. 4., an~~ An adviser who has custody as defined in sub. (4) (a) as a result of having fees directly deducted from client accounts, as described in subd. (4) (a) 2., shall comply with all of the following:

Comment: The amendment to this rule deletes a cross-reference to a separate definitional rule that does not relate to the subject matter of this rule.

**SECTION 113. DFI- Sec: 5.04(1) is amended to read:**

**DFI-Sec 5.04 Reporting requirements. (1)** Every investment adviser shall file with the division immediate notice via facsimile or other electronic means whenever the net ~~capital~~ worth of the investment adviser is less than is required under s. DFI-Sec 5.02 (1), specifying the amount of net ~~capital~~ worth on the date of the notice and the steps the investment adviser has taken or will take to come into compliance.

Comment: See the Comment to ss. DFI-Sec 5.02(1) and (5) (intro.).

**SECTION 114. DFI-Sec 5.04(3) is renumbered DFI-Sec 5.04(3)(a).**

Comment: This renumbering is for the purpose of providing room to add as paragraphs (b) and (c), the rules in ss. DFI-Sec 5.01(2)(d) 2. and 3. that were renumbered ss. DFI- Sec 5.04(3)(b) and (c) in an earlier SECTION of this Rule-Making Order. As noted in the Comment to that SECTION, those two rules are of a reporting nature and thus are more appropriately placed as paragraphs within this Reporting Requirements Section 5.04.

**SECTION 115. DFI-Sec 5.04(5)(a) and (b) are amended to read:**

**DFI-Sec 5.04(5) (a)** Each investment adviser shall notify the division in writing within 14 days of either the opening or the change of address in this state of any branch office as defined in s. DFI-Sec 1.02(7).

**(b)** Each investment adviser shall notify the division in writing within 14 days after the closing in this state of any branch office as defined in ~~s. DFI-Sec 1.02 (7)(b)~~ s. DFI-Sec 1.02 (7) .

Comment: The amendments to these two rules make more precise the cross-references to the definition of "branch office" in s. DFI-Sec 1.02 (7).

**SECTION 116. DFI-Sec 5.04(5)(c) is repealed and re-created to read:**

**DFI-Sec 5.04(5)(c)** The notification provided to the division under par. (a) or (b) shall be made through the investment adviser registration depository for registered investment advisers. Federal covered investment advisers shall provide the notification directly to the division.

Comment: This re-created rule specifies where the notifications required under pars. (a) and (b) regarding branch offices should be filed.

**SECTION 117. DFI-Sec 5.04(6) is repealed and re-created to read:**

**DFI-Sec 5.04(6)(intro.)** Each investment adviser shall file a branch office renewal notice annually under par. (a) or (b), as applicable.

**(a)** Through the investment adviser registration depository for registered investment advisers;

**(b)** Directly with the division for federal covered investment advisers, not later than November 30.

Comment: This re-created rule specifies where the notifications required under pars. (a) and (b) regarding branch offices should be filed.

**SECTION 118. DFI-Sec 5.05 (1) is amended to read:**

**DFI-Sec 5.05 ~~Rules of conduct~~ Practice and advisory contract rules.** (1) Each investment adviser shall establish written supervisory procedures and a system for applying the procedures, which may reasonably be expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall include the designation and ~~license~~ registration of a number of supervisory employees reasonable in relation to the number of its ~~licensed~~ registered investment adviser representatives, offices and activities in this state.

Comment: This SECTION does the following: (1) revises the Title of this rule Section to more appropriately describe its subject matter in view the terminology used under the new Law, as well as the nature of the various rules (including amendments) contained in this Section; and (2) substitutes "registration" terminology for "license" terminology contained in each rule to reflect the new Law.

**SECTION 119. DFI-Sec 5.05(2)(a) and (3) are amended to read:**

**DFI-Sec 5.05(2)(a)** Provides for compensation to the investment adviser on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client other than a person specified in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.403(2), Stats., or s. DFI-Sec 5.12 .

**(3)** Subsection (2) (a) shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in sub. (2) (b) includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. As used in sub. (2), "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than persons specified under ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.403(2), Stats. or s. DFI-Sec 5.12.

Comment: The amendments to statutes and rules cross-referenced in these rules reflect citations to the applicable provisions in the new Law and certain new rules contained in this Rule-Making Order.

**SECTION 120. DFI-Sec 5.05(8)(a), (b)1., (b)3., (8)(c), (e)1, (e)2., (e)3. , and (g) are amended to read:**

**DFI-Sec 5.05(8)(a)** Unless otherwise provided in this subsection, each investment adviser shall ~~offer and deliver~~ furnish to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and any required supplement shall contain all information required by Part 2 of Form ADV and such other information as the division may require.

**(b)1.** Each investment adviser shall ~~deliver~~ furnish the current brochure required by this section, and the current brochure supplement for each investment adviser representative who will provide advisory services, to a client or prospective client.

**(b)3.** The documents required in sub. 1. shall be ~~delivered~~ furnished at the following times:

**(c)** Each investment adviser shall, at least once a year, without charge, ~~deliver~~ furnish or offer in writing to ~~deliver~~ furnish to each of its clients the current brochure and any current brochure

supplements required by par. (a). If a client accepts the written offer, the investment adviser shall send to that client the current brochure and supplements not later than seven days after the investment adviser is notified of the acceptance.

**(e)1.** Each investment adviser that is a sponsor of a wrap fee program shall ~~deliver~~ furnish to a client or prospective client in lieu of the brochure required in par. (b), a wrap fee brochure containing all information required by Form ADV. All information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

**(e)2.** An investment adviser is not required to offer or ~~deliver~~ furnish the wrap fee brochure if another sponsor of the wrap fee program offers or ~~delivers~~ furnishes to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.

**(e)3.** A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to ~~deliver~~ furnish under par. (b) 1.

**(g)** Each investment adviser that renders substantially different types of investment advisory services to different clients may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure ~~delivered~~ furnished to a client may omit any information required by Part 2 of Form ADV if such information is applicable to only a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

Comment: This SECTION substitutes for the "delivered" terminology in the current rule sections amended above, terminology based on "furnished" which is used under the NASAA Model Rules.

**SECTION 121. DFI-Sec 5.05(11)(d)2. is amended to read:**

**DFI-Sec 5.05(11)(d)2.** Establishment of a system under which the investment adviser approves, prior to use, copies of all advertising used by the financial institution relating to the investment advisory services conducted on the premises of the financial institution for the purpose of ensuring compliance with ~~ss. 551.41 and 551.53, Stats.~~ ss. 551.501, 551.502 and 551.504, Stats.; and

Comment: These amendments renumber the statutes cross-referenced in this rule to reflect the corresponding statute sections in the new Law.

**SECTION 122. DFI-Sec 5.05(14) is created to read:**

**DFI-Sec 5.05(14)** Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under s. 551, Stats. or rules thereunder.

Comment: This SECTION creates a new rule based on the existing NASAA Model Rule on this subject.

**SECTION 123. DFI-Sec 5.06 (intro.) and (6) are amended to read:**

**DFI-Sec 5.06 Prohibited conduct.** Except as otherwise provided in sub. (13), the following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a client" by an investment adviser or an investment adviser representative under ~~s. 551.34(1)(g), Stats.~~ s. 551.412(4)(m), Stats. , without limiting those terms to the practices specified in this section:

**(6)** Borrowing money or securities from, or lending money or securities to, a client, unless that client is a financial institution or institutional investor designated in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.401(2)(b) or (c), Stats.

Comment: These amendments renumber the statutes cross-referenced in this rule to reflect the corresponding statute sections in the new Law.

**SECTION 124. DFI-Sec 5.06(7) is created to read:**

**DFI-Sec 5.06 (7)** Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

Comment: This SECTION replaces the current Business Practices rule in s. DFI-Sec 5.06(7) prohibiting an adviser or a representative from misrepresenting their business title, services, qualifications or fees with the NASAA Model Rule on the subject [Rule 5.02(6)-(h)].

**SECTION 125. DFI-Sec 5.06(9) and (10) are amended to read:**

**DFI-Sec 5.06(9)** Placing an order for a client, or recommending that the client place an order, to purchase or sell a security through a broker-dealer or agent not registered under ch. 551, Stats., unless the client is a person described in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.403(2)(a), Stats or s. DFI-Sec 5.12(1) .

**(10)** Recommending to a client that the client engage the services of a broker-dealer, agent or investment adviser not registered under ch. 551, Stats., unless the client is a person described in ~~s. 551.23(8)(a) to (f), Stats.~~ s. 551.403(2)(a), Stats or s. DFI-Sec 5.12(1), Stats.

**SECTION 126. DFI-Sec 5.06(14) , (15), (16), (17), (18), (19), (20), (21), (22) and (23) are created to read:**

**DFI-Sec 5.06(14)** Providing a report or recommendation to any client prepared by someone other than the investment adviser, investment adviser representative or federal covered investment adviser without disclosing that fact. This prohibition does not apply to a situation where the investment adviser, investment adviser representative or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative or federal covered investment adviser orders such a report in the normal course of providing service.

**(15)** Charging a client an unreasonable fee.

**(16)(intro.)** Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

**(a)** Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

**(b)** Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative or federal covered investment adviser or its employees, or affiliated persons.

**(17)(a)** While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

**(b)** The prohibitions of this subsection shall not apply to any transaction with a client of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

**(c)** The prohibitions of this subsection shall not apply to any transaction with a client of a broker-dealer if the broker-dealer acts as an investment adviser solely:

**(c)1.** By means of publicly distributed written materials or publicly made oral statements;

**2.** By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

**3.** Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

**4.** any combination of the foregoing services.

**(d)** Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under s. 551, Stats.

**(e)** In this subsection:

**(e)1.** "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

**2.** "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

**(18)** Guaranteeing a client that a specific result will be achieved with advice rendered.

**(19)** Publishing, circulating or distributing any advertisement which directly or indirectly does any one of the following:

**(19)(a)** Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

**(b)** Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

**(b)1.** The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

**2.** A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

**(c)** Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

**(d)** Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

**(e)** Represents that the division has approved any advertisement.

**(f)** Contains any untrue statement of a material fact, or that is otherwise false or misleading.

**(g)** In this subsection, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

**(g)1.** Any analysis, report, or publication concerning securities.

**2.** Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.

**3.** Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

**4.** Any other investment advisory service with regard to securities.

**(20)** Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which

they are made, not misleading.

**(21)** Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

**(22)** Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

**(23)** Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under s. 551, Stats., or any rule thereunder.

Comment: This SECTION does the following: (1) adds as new Prohibited Conduct provisions in subs. DFI-Sec 5.06(14) to (21), a number of NASAA Model Rules for investment advisers and investment adviser representatives governing a number of conflict-of-interest, compensation, contract, trading, advertising and unethical practice issues. Of particular note, two areas covered by the new rules [that are not covered under the current/repealed Law or the new Law, nor under the NCCUSL 2002 Uniform Securities Act] address principal trading by an investment adviser [new sub. (17)], and making it clear that the statutory anti-fraud provisions apply to solicitations made by or on behalf of and an investment adviser as well as to normal investment advisory services [new sub. (20)]. (2) A new rule in sub. (22) addresses the subject of identity theft by making it an unethical practice to disclose a client's personally identifiable information without the client's consent, or unless required by law to do so. A similar rule for agents is being created in s. DFI-Sec 4.06(2)(i) in a previous SECTION.

**SECTION 127. DFI-Sec 5.07(1) and (2)(a) are amended to read:**

**DFI-Sec 5.07 License Registration and notice filing period.** (1) The license registration of an investment adviser expires on December 31 of each year. Each licensed registered investment adviser seeking renewal of its license registration shall file for renewal with the investment adviser registration depository according to the depository's schedule.

**(2) (a)** The license registration of an investment adviser representative expires on the same day as the expiration of the license registration of the investment adviser or the notice filing of the federal covered investment adviser which the person represents. The license registration of an investment adviser representative is not effective during any period when the investment adviser which that person represents is not licensed registered, or when the federal covered investment adviser that the person represents does not have an effective notice filing with the division, or during any period when the representative is not employed either by a specified investment adviser licensed registered under ch. 551, Stats., or a federal covered investment adviser that has filed a notice with the division under ~~s. 551.32(1m)(a), Stats.~~ s. 551.405, Stats. Each licensed registered investment adviser representative seeking renewal of his or her license registration shall file for renewal with the central registration depository according to the depository's schedule.

Comment: The amendments to the two rules in this SECTION do following: (1) change the statutory sections cross-referenced in the rule to reflect the numbering of the corresponding statute sections in the new Law; and (2) substitute for the "license" terminology used in the current rules (that were adopted under the current/repealed Law), the "registration" terminology used under the new Law.

**SECTION 128. DFI-Sec 5.07(2)(b) is repealed and re-created to read:**

**DFI-Sec 5.07(2)(b)** An agent of a broker-dealer that is also registered as an investment adviser or



notice filed as a federal covered investment adviser shall also register as an investment adviser representative of that investment adviser or federal covered investment adviser pursuant to s. 551.404, Stats.

Comment: The current rule in s. DFI-Sec 5.07(2)(b) [which relates to agents providing advisory services] is repealed and re-created to reflect that under the new Law, not only must broker-dealers separately providing investment advisory services be registered also as an investment adviser, but that agents for such firms must be separately registered as an investment adviser representative in order to provide advisory services.

**SECTION 129. DFI-Sec 5.08(1) and (2) are amended to read:**

**DFI-Sec 5.08 Withdrawal of licenses registration. (1)** An application for withdrawal from the status of a ~~licensed~~ registered investment adviser under ~~s. 551.32(9), Stats.~~ s. 551.409, Stats., shall be filed with the investment adviser registration depository on Form ADV-W.

**(2)** An application for withdrawal from the status of a ~~licensed~~ registered investment adviser representative shall be filed with the central registration depository on Form U-5 within 30 days of the termination of the representative's employment pursuant to ~~s. 551.31(4)(c), Stats.~~ s. 551.409, Stats.

Comment: This SECTION contains: (1) amendments renumbering the statutes cross-referenced in this rule to reflect the corresponding statute sections in the new Law; and (2) substitute for the "license" terminology in the current rules (that were adopted under the current/repealed Law), the "registration" terminology used under the new Law.

**SECTION 130. DFI-Sec 5.09 is renumbered DFI-Sec 5.09 (1) and amended to read:**

**DFI-Sec 5.09 (1) Denial, suspension, revocation and censure. (1)** Any order denying, suspending or revoking the ~~license~~ registration of an investment adviser or an investment adviser representative or censuring a ~~licensee~~ registrant may include such other sanctions as the division finds appropriate.

Comment: This SECTION renumbers current s. DFI-Sec 5.09 to make room for a new rule created in the following SECTION that also deals with the subject matter of denial, suspension, revocation and censure of an applicant or registrant

**SECTION 131. DFI-Sec 5.09(2) is created to read:**

**DFI-Sec 5.09(2)** For purposes of s. 551.412(1), Stats., the public interest or protection of investors does not require a showing of ongoing harm to summarily deny an application for a registration as an investment adviser or investment adviser representative.

Comment: This new rule parallels a similar rule created in s. DFI-Sec 4.09(2) and provides that a showing of ongoing harm to investors is not required for purposes of issuance of a summary order denying registration of a license application based on the applicant's past history or other factors known to the Division.

**SECTION 132. DFI-Sec 5.10 is amended to read:**

**DFI-Sec 5.10 Electronic filing.** ~~The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as the investment adviser registration depository or the central registration depository provides for receipt of such filings and fees and the division provides 30 days notice of the change.~~ Any documents or fees required to be filed with the

division that are not permitted to be filed with, or cannot be accepted by, the investment adviser registration depository or the central registration depository shall be filed directly with the division.

Comment: This amendment deletes outdated language relating to the initial phase-in periods (going back a number of years ago) for the electronic filing systems of the investment adviser registration depository and the central registration depository.

**SECTION 133. DFI-Sec 5.11(1), (2) and (3) are amended to read:**

**DFI-Sec 5.11 federal covered investment adviser notice filing procedure. (1)** The notice filing for a federal covered investment adviser pursuant to ~~s. 551.32(1m), Stats.~~ s. 551.405, Stats., shall be filed with the investment adviser registration depository on Form ADV. A notice filing for a federal covered investment adviser shall be deemed filed when the fee on deposit with the investment adviser registration depository has been allocated to the division. Any documents or fees required to be filed with the division that are not permitted to be filed with, or cannot be accepted by, the investment adviser registration depository shall be filed directly with the division.

**(2)** A federal covered investment adviser shall file all amendments to its Form ADV with the investment adviser registration depository according to the instructions to Form ADV.

**(3)** Each federal covered investment adviser seeking renewal of its notice filing shall file for renewal with the investment adviser registration depository according to the investment adviser registration depository's schedule and instructions. An application for renewal of a notice filing under this paragraph shall be deemed filed under ~~s. 551.32(1m), Stats.~~ s. 551.405, Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

Comment: This SECTION contains: (1) amendments renumbering the statutes cross-referenced in this rule to reflect the corresponding statute sections in the new Law; and (2) amendments substituting for the "federal covered adviser" terminology in the current rules (that were adopted under the current/repealed Law), the "federal covered investment adviser" terminology used under the new Law.

**SECTION 134. DFI-Sec 5.11(4) is created to read:**

**DFI-Sec 5.11(4)** Each federal covered investment adviser shall pay its branch office renewal fees prescribed in s. 551.614(2), Stats., to the division by December 1 of each year.

Comment: As a result of the public comment process, this rule SECTION [which deals with identifying for fee purposes, Wisconsin branch offices of federal covered investment advisers], has been significantly revised from its Public Comment Draft form. The Agency responded to a comment letter -- which stated that the language of the rule created a state reporting requirement that would not be permitted under Section 222(a) of the federal Investment Advisers Act of 1940 -- by determining that a modification to the rule was warranted and necessary. Accordingly, the language of the rule was modified to delete language requiring a "report," and instead structured the rule language to be a *de facto* "billing" that only requires payment of the prescribed renewal fee for each Wisconsin branch office on the basis that specific language in the Note to subs. (a) and (b) of Section 203A of the Investment Advisers Act of 1940 expressly preserves state authority to receive investment adviser licensing/registration fees.

**SECTION 135. DFI-Sec 5.12 is repealed and re-created to read:**

**DFI-Sec 5.12 Transition filing.** An agent who is registered in this state on December 31, 2008 for a registered broker-dealer that was also approved to act as an investment adviser in this state and who

also met the examination requirement in DFI-Sec 5.01(3), shall make a transition filing electronically with the investment adviser registration depository not later than June 1, 2009.

Comment: This SECTION does the following: (1) Repeals the outdated Transition filing rules in current s. DFI-Sec 5.12 (some of which contain references to various dates in 2001). and (2) Creates a new Transition filing rule (to provide a way of obtaining "grandfather" status) for use by an agent for a registered broker-dealer that was also approved to act as an investment adviser in this state. The agent must meet the examination requirement and make a transition filing electronically with the investment adviser registration depository not later than June 1, 2009.

**SECTION 136. DFI-Sec 5.13 is created to read:**

**DFI-Sec 5.13 Registration exemptions.** (1) For purposes of s. 551.403(2) and 551.404(2), an investment adviser or an investment adviser representative is exempt from the registration requirement if its only transactions effected in this state are with:

- (a) This state or any of its agencies or political subdivisions or the state investment board.
- (b) The federal government or any of its agencies or instrumentalities.
- (2) Any person who complies with Rule 206 (4)-3. of the Investment Advisers Act of 1940 and solicits or refers fewer than 10 persons in Wisconsin for or to any one investment adviser or federal covered investment adviser within a calendar year is not considered to be "soliciting" for purposes of s. DFI-Sec 1.02(5)(c), s. DFI-1.02(14)(c), and ss. 551.403(1) and 551.404(1), Stats.
- (3) For purposes of s. 551.102(16)(c), Stats., "associated with" does not include third party solicitors whose only relationship with a federal covered investment adviser is a contract to solicit or refer clients in return for compensation.

Comment: This new Section does the following: (1) Establishes in sub.(1), categories of registration exemptions for investment advisers or investment adviser representatives by rule that were contained under the current/repealed Law, but were not included statutorily in the new Law, but rather were left to rule-making. Specifically, the exemption rules in ss. DFI-Sec 5.13(1)(a) and (b) are derived from s. 551.31(1)(a), Stats., of the current/repealed Law and the cross reference therein that includes ss. 551.23(8)(d) and (e), Stats. (2) Sub. (2) is a relocation of the existing definitional rule in s. DFI-Sec 1.02(5)(c) relating to "transact business," but because its practical result for solicitors is an exemption, the rule is more appropriately placed in this new subsection. (3) A similar situation results from the new rule in sub. (3) which clarifies what "associated with" means for purposes of the exclusion from the definition of investment adviser representative in s. 551.102(16)(c), Stats.

**SECTION 137. DFI-Sec 6.01 is amended to read:**

**DFI-Sec 6.01 Application of proceeds.** An issuer of securities or any person who is an officer, director or controlling person of the issuer is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities within the meaning of ~~s. 551.41 (1), Stats.~~ s. 551.501(1), Stats. , if the person applies or authorizes or causes to be applied any material part of the proceeds from the sale of the securities in any material way contrary to the purposes specified in the prospectus used in the offering of the securities and not reasonably related to the business of the issuer as described in the prospectus.

**SECTION 138. DFI-Sec 6.02 (Intro. ) and DFI-Sec 6.03 are amended to read:**

**DFI-Sec 6.02 Stock distributions.** A person authorizing or causing the distribution of securities as a stock dividend by a corporation other than the issuer, without registration of the securities under ch. 551, Stats., or the securities act of 1933, is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities in broker-dealer transactions, within the meaning of ~~s. 551.41 (1), Stats.~~ s. 551.501(1), Stats. , if:

**DFI-Sec 6.03 Securities transfers.** An issuer of outstanding securities registered under ~~s. 551.25 or 551.26, Stats.~~ s. 551.303 or 551.304, Stats. , or transactions in which are exempted from registration under ~~s. 551.23 (3) (c) or (d), Stats.~~ s. DFI-Sec 2.02(9)(o) , or any controlling person of the issuer, is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities within the meaning of ~~s. 551.41 (1), Stats.~~ s. 551.501(1), Stats. , if the issuer fails to provide adequate facilities for the transfer and delivery of the securities to the purchasers thereof without unreasonable delay, either directly or through its transfer agent for the securities.

#### **SECTION 139. DFI-Sec 6.04 is repealed.**

Comment: This Section repeals existing rule DFI-Sec 6.04 [which designated violations of specified subsections under 15c1, 15c2 and 15(g) of the federal Securities Exchange Act of 1934 as anti-fraud violations under s. 551.43, Stats., of the former/repealed Law]. There is no equivalent statutory section under the new/re-created Law to provide authority for this type of rule; however, the anti-fraud provisions in s. 551.501(1) and (3), Stats., of the new/re-created Law prohibiting "employing a device, scheme, or artifice to defraud" or "engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon another person," would cover the conduct specified in current rule s. DFI-Sec 6.04.

#### **SECTION 140. DFI-Sec 6.05(1) (Intro.) is amended to read:**

**DFI-Sec 6.05 Going private transactions.** (1) An issuer whose equity securities of any class have been registered under ch. 551, Stats., or predecessor laws or section 12 of the securities exchange act of 1934, and which, on the date of the initial offer, notice or solicitation relating to the proposed transaction, are held of record by 100 or more persons in this state, which number of holders constitutes 20% or more of the total number of holders of record of the securities, or any affiliated person of the issuer, is deemed to employ a "device, scheme or artifice to defraud" holders of the securities within the meaning of 551.501(1), Stats. , or to engage in an "act, practice or course of business which operates or would operate as a fraud or deceit" upon the holders, within the meaning of ~~s. 551.41, Stats.~~ s. 551.501(3), Stats. , if the issuer or person enters into any transaction (including a series of transactions) in this state involving a purchase of any equity security of the issuer, other than an arm's length purchase by a person not affiliated with the issuer, which transaction has, or may have, either of the effects described in sub. (2) unless:

#### **SECTION 141. DFI-Sec 7.01(1) (title) is amended to read:**

**DFI-Sec 7.01 (1) REGISTRATION OF SECURITIES MATTERS.** (a) Application for post-effective amendment of a registration statement \$200.

Comment: Because the new Law substitutes "registration" terminology for the "licensing" terminology used under the current/repealed Law, language making that distinction is added to the title of this securities registration fee rule as well as to the "licensing" rule in ss. DFI-Sec 7.01(2)(a) and (3)(title).

#### **SECTION 142. DFI-Sec 7.01(1)(c) is repealed.**

Comment: This SECTION repeals a rule provision which specified fees that could be charged by the Division under current/repealed s. 551.27(5) Stats., in the event the Division conducted a field examination of the business and records of an issuer filing a registration statement with the Division. No field examinations for registration statements had been conducted by the Division for many years, such that the statutory authority in the current/repealed Law was not retained in the new Law, thus warranting repeal of this fee rule.

**SECTION 143. DFI- Sec 7.01(2) (title), (a) and (b) are amended to read:**

**DFI- Sec 7.01 (2) REGISTRATION EXEMPTION AND FEDERAL REGULATION D MATTERS.**

**(a)** Application for order of exemption under ~~s. 551.22 or 551.23, Stats.~~ s. 551.203, Stats. \$200.

**(b)** Notice filing for purposes of claiming registration exemption status under ~~s. 551.22 or 551.23, Stats.~~ ss. 551.201, 551.202, or 551.203, Stats. , or rules promulgated thereunder. \$200.

Comment: This SECTION revises the title to s. DFI-Sec 7.01(2) per the Comment to s. DFI-Sec 7.01(1), and revises the statute sections cross-referenced in the rules to reflect the numbering in the corresponding sections of the new Law.

**SECTION 144. DFI- Sec 7.01(2)(d) is created to read:**

**(d)** Filing under s. 551.302(3), Stats, or DFI-Sec 2.029. \$200.

Comment: This SECTION creates, consistent with current statute and rule fees, a specific \$200 filing fee for: (i) federal covered security notice filings for Regulation D Rule 506 filings under s. 551.302(3), Stats., of the new Law; and for (ii) federal Regulation D Rule 505 offerings [which currently are being made under s. 551.23(19) Stats., but after January 1, 2009 will be made under the discretionary registration exemption rule in s. DFI-Sec 2.029 created in SECTION 50 of this Rule-Making Order pursuant to the rule-making authority in s. 551.203 of the new Law].

**SECTION 145. DFI-Sec 7.01(3) (title), (a), (c) (intro.), (d) (intro.), (4)(a) and (b), and (5)(title)(a) and (b) are amended to read:**

**DFI-Sec 7.01(3) LICENSING- BROKER-DEALER AND INVESTMENT ADVISER REGISTRATION MATTERS.** **(a)** Application for an initial license of a broker-dealer or investment adviser or a successor under ~~s. 551.32 (1) or (3), Stats.~~ s. 551.401, 551.403, or 551.411(4), Stats. , \$200.

**(c)** Field examination of applicant for initial license as broker-dealer or investment adviser under ~~s. 551.32 (2), Stats.~~ s. 551.411(4), Stats. \$100 per day per examiner plus, if the examination is conducted outside of Wisconsin, each of the following costs incurred:

**(d)** Periodic examination of a broker-dealer or investment adviser under ~~s. 551.33 (4), Stats.~~ s. 551.411(4), Stats. , \$100 per day per examiner plus, if the examination is conducted outside of Wisconsin, each of the following costs incurred:

**(4) (a)** Advertising filed with a notice or application under ~~s. 551.22, 551.23, 551.25 or 551.26, Stats.~~ s. 551.303, or 551.304, Stats., or rule adopted under s. 551.201(7), Stats. No charge.

**(b)** Advertising , other than advertising specified in par. (a), filed under ~~s. 551.53 or 551.23 (9), Stats.~~ s. 551.504, Stats. \$10 per item.

**(5) OTHER MATTERS.** (a) Issuance of a certificate under ~~s. 551.64 (4), Stats.~~ s. 551.606(3), Stats. , relating to the existence or non-existence of documents or entries on file or contained in the records of

the division's office. \$50 plus \$1 per page for copies included with the certificate.

(b) Application for issuance of an interpretive opinion under ~~s. 551.64 (5), Stats.~~ s. 551.605(4), Stats. \$500.

Comment: This SECTION revises the title to s. DFI-Sec 7.01(3) per the Comment to s. DFI-Sec 7.01(1), and revises the statute sections cross-referenced in each of the rules being amended to reflect the numbering in the corresponding sections of the new Law.

**SECTION 146. DFI-Sec 7.01(7) is repealed.**

Comment: This SECTION repeals two rule provisions establishing separate \$4 dollar charges for obtaining pamphlet copies of the Securities Law, Take-over Law and Franchise Law statutes and rules. Because all the statutes and rules administered by the Division are available for downloading online through the DFI Website, the Division no longer has pamphlet reprints made.

**SECTION 147. DFI-Sec 7.02(1) (intro.), pars. (1)(a) through (f), and sub. (2) are repealed and recreated to read:**

**DFI-Sec 7.02 Advertising. (1)** The advertising materials listed in s. 551.504(1), Stats, that are particularized in any of the following paragraphs and that are intended to be used in connection with the offer or sale of a security in this state are required to be included with the filings made under the respective statute or rule cited:

**(a)** Any sales literature, pamphlet, form letter or other advertising record, other than a prospectus, to be used in an offering for which a registration statement has been filed under s. 551.303 or 551.304, Stats.

**(b)** Any sales literature, pamphlet, form letter or other advertising record, other than a prospectus or offering circular, to be used in an offering for which a notice filing has been made for purposes of use of the registration exemption in s. 551.201(7), Stats., and rules thereunder.

**(c)** A circular, form letter, or other advertising record to be used in connection with a going-private transaction that is subject to the filing requirement in DFI-Sec 6.05(1)(b).

**(2)** Advertising filed under sub. (1) shall include any fee applicable under sub. DFI-Sec 7.01(4).

Comment: This SECTION repeals current rule s. DFI-Sec 7.02(1), pars. (a) through (f) which set forth various exemptions from the general advertising filing requirement in s. 551.53, Stats., of the former/repealed Law. Because the advertising provision in s. 551.504, Stats., of the new Law requires the Division to specify by rule situations when advertising materials relating to a security need to be filed [and noting that s. 551.504(2), Stats., of the new Law precludes requiring advertising to be filed in connection with the use of registration exemptions (other than the not-for-profit exemption)], the new rule paragraphs in (a), (b) and (c) particularize the types of advertising materials required to be submitted in connection with registration filings [par. (a)], with not-for-profit exemption filings under s. 551.201(7), Stats., and rules thereunder [par.(b)], or a going-private filing under s. DFI-Sec 6.05(1)(b).

**SECTION 148. DFI-Sec 7.03(1) is amended to read:**

**DFI-Sec 7.03 Civil liabilities. (1)** For purposes of ~~s. 551.59 (1) and (2), Stats.~~ s. 551.509(2) and (3), Stats. , any person who places an order or effects a transaction involving the purchase or sale of a security for the account of a customer pursuant to discretionary authority is deemed to be offering or selling or purchasing a security.

**SECTION 149. DFI-Sec 7.03(2) is repealed:**

Comment: This SECTION repeals a rule adopted under the Civil liabilities statute in s. 551.59(6), Stats., of the current/repealed Law which permitted the Administrator to, by rule, reduce the 30-day period during which a purchaser could consider whether to accept a rescission offer. The new Law does not contain rule-making authority to shorten the duration of a rescission offer period; rather, under s. 551.511(2), Stats., the Administrator must act by Order to reduce the 30-day period to any shorter period (of not less than 3 days).

**SECTION 150. DFI-Sec 7.03(3) and (4) are amended to read:**

**DFI-Sec 7.03 (3)** Every rescission offer to repurchase or return securities made pursuant to ~~s. 551.59 (6) (a) or (b), Stats.~~ s. 551.511(1), Stats., shall include, in addition to the information specified in ~~those paragraphs~~ that subsection, the price at which the security was sold or purchased, the price of the security on the date the offer is made and such additional information as the division may require in connection with specific offers.

**(4)** The division may require any person named in any administrative order issued under ~~s. 551.60 (2), Stats.~~ s. 551.604, Stats., to satisfy any civil liabilities arising under ~~s. 551.59, Stats.~~ s. 551.509, Stats., in connection with the matters set forth in the order, prior to registering any securities offered for sale by the person or ~~licensing~~ registering the person as a broker-dealer, agent, ~~or~~ investment adviser or investment adviser representative.

**SECTION 151. DFI-Sec 7.06(4)(a) (intro.) is amended to read:**

**DFI-Sec 7.06(4)(a)** Financial statements and financial information that have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement that has been filed with the division under ~~s. 551.25 or 551.26, Stats.~~ s. 551.303 or 551.304, Stats., on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 and that complies with the following conditions applicable to the type of form being used for the offering:

**SECTION 152. DFI-Sec 8.08 is renumbered DFI-Sec 8.08(1).**

**SECTION 153. DFI-Sec 8.08(2) is created to read:**

**DFI-Sec 8.08 (2)** The division may use information acquired after issuance of a summary order of denial of an application for a license as a broker-dealer, investment adviser, agent or investment adviser representative at a hearing in the matter to provide additional support for the allegations that provided the basis for the application denial.

Comment: (1) The two preceding SECTIONS do the following: (1) Renumber existing s. DFI-Sec 8.08 as sub. (1) so that with the addition of new rule s. DFI-Sec 8.08(2) in the following SECTION, there will be the minimum required number of two subsections under s. DFI-Sec 8.08. (2) Create a new rule as sub. (2) under the discovery/taking and preserving of evidence provision of this Administrative Procedure Chapter to clarify that the Division can use information acquired after issuance of a summary order of denial of an application for a license as a broker-dealer, investment adviser, agent or investment adviser representative at a hearing in the matter to provide additional support for the allegations that provided the basis for the application denial.

**SECTION 154. DFI-Sec 9.01(1)(b)7 and (b) 9 are amended to read:**

**DFI-Sec 9.01(1)(b)7.** ~~BDBrO(WI)~~ BR Broker-dealer ~~Wisconsin~~ uniform branch office ~~designated location renewal~~ registration form.

9. ADV. Uniform application for investment adviser license, and the form that shall be used by a federal covered investment adviser making an initial or renewal filing under ~~s. 551.32 (1m) (a) or (b), Stats.~~ s. 551.405(3) or (4), Stats.

Comment: This SECTION does the following: (1) adopts in par. (b)7. the uniform branch office registration form to substitute for the current Wisconsin form; and (2) updates the statutory citation cross-referenced in par. (b)9. to substitute the corresponding statute in the new Law.

**SECTION 155. DFI-Sec 31.01(8) is amended to read:**

**DFI-Sec 31.01(8)** "Timely" within the meaning of s. 553.41(4), Stats., means at least ~~40 business~~ 14 calendar days prior to the execution of an agreement or the taking of consideration constituting the sale of the franchise.

**SECTION 156. DFI-Sec 32.06 is amended to read:**

**DFI-Sec 32.06 Form of registration by notification.** A notification to register a franchise shall be filed using the cover page of the ~~uniform franchise registration application adopted on April 25, 1993~~ 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association, together with a disclosure document prepared in conformance with those Disclosure Guidelines, and containing the information and accompanied by the fee required in s. 553.26(1), Stats.

**SECTION 157. DFI-Sec 32.07 is amended to read:**

**DFI-Sec 32.07 Amendment to registration statement.** An application to amend the registration statement shall be filed using the cover page of the ~~uniform franchise registration application adopted on April 25, 1993~~ 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association and containing the information and accompanied by the fee required in s. 553.26(1), Stats., and shall be accompanied by a copy of the ~~amended offering circular~~ disclosure document prepared in conformance with those Disclosure Guidelines, and the \$200 filing fee prescribed in DFI-Sec 35.01.

**SECTION 158. DFI-Sec 35.01(5) is amended to read:**

**DFI-Sec 35.01(5)** Per copy cost of ~~Guidelines for Preparation of the Uniform Franchise Offering Circular~~ 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association and Related Documents... \$20.

Comment regarding the Franchise Law rules amendments in the four SECTIONS above:

The adoption by the Federal Trade Commission of its FTC Franchise Rule ("the FTC Franchise Rule," which became effective for use on a voluntary basis for franchisors on July 1, 2007, and on a mandatory basis July 1, 2008) supersedes and preempts several existing Wisconsin franchise rules establishing requirements for disclosure documents used in connection with the offer and sale of franchises to persons in Wisconsin. Consequently, the Wisconsin franchise rules so impacted need to be revised to be consistent with the FTC Rule.

The existing Wisconsin Franchise Law provision in s. 553.27(4), Stats., that deals with providing a



franchise disclosure document to a prospective franchise purchaser in Wisconsin states that the disclosure document can be either in a form permitted under the Federal Trade Commission's regulation 16 CFR 436 (or a successor regulation -- including the new FTC Franchise Rule), or a form that the Division requires by rule.

The Wisconsin Franchise Law disclosure document-related rules impacted by the changes to the FTC Franchise Rule need to be revised and updated to thereby facilitate compliance by franchisors seeking to offer and sell franchises to persons in Wisconsin. In that regard, for purposes of providing regulatory consistency among the 15 state jurisdictions (including Wisconsin) that regulate offers/sales of franchises, the Franchise and Business Opportunity Project Group of the North American Securities Administrators Association ("NASAA") developed revised 2008 Franchise Registration and Disclosure Guidelines ("Franchise Guidelines") that were adopted by the NASAA membership on June 6 2008, which state jurisdictions that register franchise offerings can adopt as the required format for franchise disclosure documents. Those Franchise Guidelines were developed to be, and are, consistent with the FTC Franchise Rule which allows franchise law states to impose additional disclosure requirements that are consistent with the FTC Franchise Rule. The (NASAA) Franchise Guidelines adopt the FTC form of franchise disclosure document with the addition of a state cover page, and include new instructions for franchisors to file registrations with state administrators, as well as revised application forms. The proposed Wisconsin Franchise Rule revisions include, via incorporation by reference, the above-described NASAA Franchise Guidelines and the state cover page, together with the new instructions and forms.

The specific revisions to the Franchise Law rules in the SECTIONS above consist of the following: (1) Changing the rule defining "timely" in s. DFI-Sec 31.01(8) [with respect to providing required disclosures to a prospective franchise purchaser in Wisconsin] from the previous 10 business day requirement to the new 14 calendar day requirement under the new FTC Franchise Rule and as established in amended s. 553.27(4), Wis. Stats., in 2007 Wisconsin Act 150; and (2) Amending the franchise registration and registration amendment filing procedures in ss. DFI-Sec 32.06 and 32.07 to reference the recently developed and adopted NASAA 2008 Franchise Registration Disclosure Guidelines that conform to the new FTC Franchise Rule and its Disclosure Document requirement.

\* \* \* \* \*

The rules and amendments contained in this Order shall take effect as provided pursuant to s. 227.22(2)(b), Stats., on January 1, 2009, which will coordinate with the effective date of the repealed and re-created Wisconsin Uniform Securities Law in 2007 Wisconsin Act 196.

DATED at Madison Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

[SEAL]

\_\_\_\_\_  
PATRICIA D. STRUCK  
Administrator  
Division of Securities

October 30, 2008

**ANALYSIS AND REPORT PREPARED BY THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES  
RELATING TO FINAL FORM OF 2008 RULES REVISION**

**CLEARINGHOUSE RULE 08-077**

## Analysis and Statement Explaining Need for Rules

Because the repeal and recreation of the Wisconsin Securities Law in 2007 Wisconsin Act 196 (signed by the Governor on March 27, 2008) -- which involved the adoption of the 2002 Uniform Securities Act ("2002 USAct") as developed by the National Conference of Commissioners on Uniform State Laws -- resulted in changes to all aspects of Wisconsin securities regulation (definitions, securities registration procedures and registration exemptions, securities licensing, enforcement powers and procedures, as well as general administrative powers), the corresponding administrative rule chapters and provisions relating to those aspects/categories of law changes need to be updated and made consistent. Such rule revisions are necessary to facilitate compliance by securities issuers and securities professionals of the Securities Law changes for the benefit of Wisconsin public investors. Also, because the effectiveness date for 2007 Wisconsin Act 196 is January 1, 2009, the proposed rule-making process has been conducted under a timing schedule to enable the rules to be finalized concurrent with the effectiveness of the legislation.

Separately, because the adoption by the Federal Trade Commission of its FTC Franchise Rule ("the FTC Franchise Rule," which became effective for use on a voluntary basis for franchisors on July 1, 2007, and becomes effective on a mandatory basis July 1, 2008) supersedes and preempts several existing Wisconsin franchise rules establishing requirements for disclosure documents used in connection with the offer and sale of franchises to persons in Wisconsin, the Wisconsin franchise rules so impacted need to be revised to be consistent with the FTC Rule. As a related matter, remedial franchise-related legislation was enacted in 2007 Wisconsin Act 150 (effective April 5, 2008) which made a necessary statutory change to make Wisconsin's timing deadline within which franchisors must provide a franchise disclosure document to a prospective purchaser, consistent with the recent FTC Franchise Rule change on that subject.

Additionally, the Wisconsin Franchise Law disclosure document-related rules impacted by the changes to the FTC Franchise Rule need to be revised and updated as necessary to be made consistent and thereby facilitate compliance by franchisors seeking to offer and sell franchises to persons in Wisconsin. For purposes of providing regulatory consistency among the 15 state jurisdictions (including Wisconsin) that regulate offers/sales of franchises, the Franchise and Business Opportunity Project Group of the North American Securities Administrators Association ("NASAA") developed revised 2008 Franchise Registration and Disclosure Guidelines ("Franchise Guidelines") that were adopted by the NASAA membership in April 2008, that state jurisdictions which register franchise offerings can adopt as the required format for franchise disclosure documents. Those Franchise Guidelines were developed to be, and are, consistent with the FTC Franchise Rule which allows franchise law states to impose additional disclosure requirements that are consistent with the FTC Franchise Rule. In that regard, the Franchise Guidelines adopt the FTC form of franchise disclosure document with the addition of a state cover page, and include new instructions for franchisors to file registrations with state administrators, as well as revised application forms. The proposed Wisconsin Franchise Rule revisions will include, via incorporation by reference, the above-described NASAA Franchise Guidelines and forms.

A summary of the subject matter and nature of the more significant of the rule revisions follows:

1. In the definitional Chapter of the Securities rules, rules DFI-Sec 1.02(6)(a) and (b), which define the term "investment contract" to include both the "modified Howey" and "risk capital" tests, are being repealed because both are expressly included [as subsections (d) 1 and 2] in the statutory definition of "security" in new s. 551.102(28), Wis. Stats.
2. The additional categories of "institutional investor" contained in the registration exemption rule of DFI-Sec 2.02(4) under current s. 551.23(8), Wis. Stats., are moved to the Definitions Chapter of the rules

because under the new statute, "institutional investor" is now a defined term contained in definitional section s. 551.102(11), Wis. Stats., para. (b) of which provides separate authority to, by rule, further specify other persons as "institutional investors."

3. The registration exemption treatment for both domestic (Wisconsin) as well as non-Wisconsin not-for-profit-issuers that is currently scattered in several different places in both the statutes and rules, is consolidated in 4 distinct subsections of a single exempt security rule adopted under the statutory authority of new s. 551.201(7), Wis. Stats.

4. Because the federal Regulation D, Rule 505 securities registration exemption contained in current s. 551.23(19), Wis. Stats., was not retained in the new law, but rather was to be adopted by rule, that federal Rule 505 exemption is made an exempt transaction rule (s. DFI-Sec 2.029) under the discretionary exemption rule-making authority of s. 551.203, Wis. Stats.

5. Designating by rule for purposes of the "manual" registration exemption in new statute section 551.202(2)(d), Wis. Stats., certain nationally recognized securities manuals.

6. Among the broker-dealer-related rule revisions, the temporary agent licensing rule in DFI-Sec 4.085 is repealed because that procedure is included in new statute 551.408(2), Wis. Stats.

7. The extensive series of bank agency transactions rules in current DFI-Sec 4.10 are repealed as being superseded by the language of the exclusion from the definition of broker-dealer in s. 551.102(4)(c) of the new law [based on federal Graham-Leach-Bliley legislation] relating to permitted securities-related activities of banks.

8. The extensive series of rules in DFI-Sec 4.11 dealing with brokered certificates of deposit (i.e. sales to persons in Wisconsin by broker-dealers of federally insured certificates of deposit in specified financial institutions) are also repealed.

9. Included among the investment adviser-related rule revisions are additional "dishonest or unethical practices" under existing rule DFI-Sec 5.06 based on current NASAA Model Rules (such as guaranteeing results, offering "free" reports or analyses that really are not free, or disclosing clients' identity or financial information) which, under new s. 551.412(4)(m), Stats., can be a basis for denial, suspension or revocation of an investment adviser registration. Also added are currently proposed NASAA Model Rules on subject areas that include principal trading by an adviser, making misrepresentations or omissions of material facts in soliciting advisory customers, and effectuating certain prohibited agency cross-transactions.

10. Revisions to existing advisory rules would raise (up to \$1200 from the current \$500) the dollar threshold of permitted prepayment of adviser fees six months or more in advance to thereby harmonize with a pending SEC proposal on that subject.

11. The examination waiver provided for investment advisers and investment adviser representatives in current DFI-Sec 5.01(4)(a) based upon passage of the Series 7 and Series 63 examination is repealed to

make Wisconsin uniform with other state jurisdictions -- virtually none of which recognize such exams as a basis for waiver of the investment adviser examination requirement.

12. The "temporary hardship exemption" from compliance with the electronic-filing-with-the IARD requirement currently contained in DFI-Sec 5.01(8) is being repealed because in the seven years since the SEC and states (including Wisconsin) have adopted that exemption,, the Division's information is that it has never been used or relied on at the federal or state level.

13. Added to the Administrative Procedure Chapter is a rule clarifying the ability of the Division to utilize information acquired subsequent to issuance of a summary order.

14. Revisions to the Franchise Law rules include (i) changing the rule defining "timely" in DFI-Sec 31.01(8) [with respect to providing required disclosures] from the previous 10 business day requirement to the new 14 calendar day requirement under the new FTC Franchise Rule and as established in amended s. 553.27(4), Wis. Stats., in 2007 Wisconsin Act 150; and (ii) amendments to the franchise registration and registration amendment filing procedures in DFI-Sec 32.06 and 32.07 to reference the new FTC Franchise Rule and its Disclosure Document requirement, as well as to incorporate by reference the recently developed and adopted conforming NASAA 2008 Franchise Registration Disclosure Guidelines. In that regard, the Division requested and has received from the Wisconsin Attorney General's Office, authorization to incorporate by reference in those Wisconsin Franchise Law rules, the NASAA 2008 Franchise Registration Disclosure Guidelines.

Each Section that adopts, amends or repeals a rule is followed by a separate Comment which discusses the nature of the revision as well as the reason for it.

## **Statutory Authority**

For the Securities Law-related rule changes based on 2007 Wisconsin Act 196:

551.605(1)(a), (b) and (c), (2), (3) and (4), 551.102(2), (4)(e), (11)(p), (15)(h), (16)(d) and (28)(h), 551.105, 551.201(1)(b), (3)(c), (6), and (7)(intro.), (a), and (b), 551.202(6), (13)(c), (14)(b) and (23), 551.203, 551.302(intro.), (1)(a), (b) and (c), (3) and (5), 551.304(2)(intro.) and (r), (3) and (5), 551.305(2), (7), (9), (10) and (11), 551.306(1)(b), 551.401(2)(h),and (4)(intro.), 551.402(2)(i) and (5), 551.403(2)(c), 551.404(2)(b) and (4), 551.405(2)(a)4 and (c), (3), (4)(b) and (c), 551.406(1), (3)(b), (4) and (5), 551.407(4), 551.408(5), 551.409, 551.411(1), (2), (3)(a) and (c), (5), (6), (7) and (8), 551.411(4)(b) and (5), 551.502(2) and (3), 551.504(1), 551.606(3), 551.608(2)(intro.), 551.611(1), 551.614(1)(b) 1 and 2, and (4), Wis. Stats.

For the Franchise Law-related changes under Chapter 553, Wis. Stats:

553.58(1), 553.26, 553.31(1), and 553.27(4), Wis. Stats.

## **Comparison with Federal Regulations, and Comparison with Similar Rules in Illinois, Iowa, Michigan and Minnesota**

There are no newly-developed or proposed federal securities law-related regulations that are intended to be addressed by the proposed Wisconsin Securities Law rulemaking. However, the existing Wisconsin Securities Law and rules that currently coordinate with federal securities registration, registration exemption, broker-dealer and investment adviser licensing provisions will continue to be coordinated with corresponding federal requirements, consistent with current 551.67, Wis. Stats., and recently enacted 551.615, Wis. Stats. Each of those statute sections provide that "This Chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the 'Uniform Securities Act' and to coordinate the interpretation and administration of this Chapter with related federal regulation."

With regard to the proposed Wisconsin Franchise Law-related rulemaking, as stated in the above Analysis paragraphs, such rulemaking is necessary in order to make Wisconsin's franchise disclosure document-related rules consistent with the Federal Trade Commission's recently adopted FTC Franchise Rule.

With respect to similar rulemaking in adjacent states, during the preceding 18 months, both Iowa and Minnesota repealed and re-created their respective state Securities Laws for the purpose of adopting the 2002 Uniform Securities Act -- as Wisconsin did pursuant to 2007 Wisconsin Act 196 -- and Iowa and Minnesota also conducted extensive related rulemaking to implement the statutory changes to their Securities Laws, which the Division is now doing as well via this Rule-Making Order.

### **Summary of factual data and analytical methodologies**

No final regulatory flexibility analysis is required to be included on the basis that the Division of Securities has determined, after complying with s. 227.114, Wis. Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

No economic impact report was required to be prepared for purposes of s. 227.137, Stats.

No changes are required to the Fiscal Estimate previously prepared for the Rules -- which Fiscal Estimate provided that there were no one-time revenue fluctuations, no annual fiscal effects, no long-range fiscal implications, and no fiscal effect on local units of government.