

## Chapter DFI-Sec 5

### REGISTRATION AND NOTICE FILING PROCEDURES FOR INVESTMENT ADVISERS, FEDERAL COVERED INVESTMENT ADVISERS, AND INVESTMENT ADVISER REPRESENTATIVES

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**History:** Chapter SEC 5 was renumbered chapter DFI-Sec 5 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

**DFI-Sec 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.

(2) (a) A registration application for purposes of s. 551.406, Stats., consists of all information required by the form prescribed under 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 registration as an investment adviser under this paragraph shall be deemed filed under 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 registration as an investment adviser under this paragraph shall be deemed filed under 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 registration or for renewal of a registration as an investment adviser representative for an investment adviser registered under this chapter or a federal covered investment adviser notice filed under this chapter consists of the payment of Wisconsin investment adviser representative registration or renewal fees to the central registration depository. An application for initial registration as an investment adviser representative under this paragraph shall be deemed "filed" under 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 registration as an agent under this paragraph shall be deemed "filed" under s. 551.406 (1), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

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

(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.

2. For purposes of s. 551.406 (3) (b), Stats., 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.

(3) (a) Unless waived under sub. (4), each applicant for an initial registration as an investment adviser or as an investment adviser representative 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 subd. 1., or the post-1999 version of the Series 66 examination specified in subd. 2.

1. The Series 65 Uniform Investment Adviser Law Examination.

2. The Series 7 General Securities Representative Examination as well as the Series 66 Uniform Combined State Law Examination.

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

(4) The examination requirement in sub. (3) shall be waived for any applicant who meets any of the following criteria:

(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).

(b) The applicant has been registered as an investment adviser or registered as an investment adviser representative in any jurisdiction in the United States within 2 years prior to the date the application is filed.

(c) The applicant has received an order of the division, issued under such conditions as the division may prescribe, waiving the requirement to take and pass the examination in sub. (3).

(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:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.

2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania.

3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants.

4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research.

5. Chartered Investment Counselor (CIC) granted by the Investment Adviser Association.

(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 pars. (a) through (d) and (f) and has provided proof that the home state permits transacting business as an investment adviser representative under the agent's registration.

(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.

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.

(5) Prior to issuance of a registration as an investment adviser, at least one employee located at the principal office of the investment adviser must be designated in the registration application on the form prescribed in s. DFI-Sec 9.01 (1) (b) and filed with the division to act in a supervisory capacity and be registered as an investment adviser representative for the investment adviser, and must satisfy the examination requirement in sub. (3) unless the examination is waived under sub. (4).

(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. 551.412 (4) (a), Stats., and the division may issue an order denying effectiveness to the application.

(7) Every investment adviser whose principal office is located in this state shall have at least one person registered as an investment adviser representative employed on a full-time basis at its principal office.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) and (6), renum. (4) (b) and (c) to be (4) (c) and (d), cr. (4) (b), r. and recr. (5), Register, December, 1980, No. 300, eff. 1-1-81; am. (3) to (5), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and (2), r. and recr. (3) and (4), Register, December, 1983, No. 336, eff. 1-1-84; am. (3), renum. (4) (g) to be (4) (h), cr. (4) (g), Register, December, 1986, No. 372, eff. 1-1-87; renum. (3) to be (3) (a) and am., renum. (4) (b) to (h) to be (4) (c) to (i), r. (4) (intro.) and (a), cr. (3) (b), (4) (a) and (b), Register, December, 1987, No. 384, eff. 1-1-88; renum. (4) (c) to (i) to be (4) (c) 1. to 4., (4) (b) 3. and 4. and (c) 5. and; am. (3), r. and recr. (4), Register, December, 1992, No. 444, eff. 1-1-93; am. (4) (b) 3. and 4., cr. (4) (c) (intro.), Register, December, 1988, No. 396, eff. 1-1-89; renum. (4) (a), (c) 1. to 5. to be (4) (a) (intro.) and 2. to 6. and am. (intro.), cr. (4) (a) 1., am. (4) (b) (intro.), r. (4) (c) (intro.), Register, December, 1990, No. 420, eff. 1-1-91; am. (3), r. and recr. (4), Register, December, 1992, No. 444, eff. 1-1-93; renum. (3) (a) to (3), r. (3) (b), Register, December, 1994, No. 468, eff. 1-1-95; r. and recr. (3), am. (4) (a) and (5), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), (3) (intro.), (4) (b), (5) and (7), Register, December, 1998, No. 516, eff. 1-1-99; r. and recr. (3), am. (4) (a), cr. (4) (d), Register, December, 1999, No. 528, eff. 1-1-00; emerg. am. (4) (b), cr. (4) (e), eff. 1-1-00; am. (4) (b), cr. (4) (e), Register, May, 2000, No. 533, eff. 6-1-00; emergency r. and recr. (1) and (2), cr. (8), eff. 1-1-01; CR 01-025: r. and recr. (1) and (2), cr. (8), Register July 2001, No. 547 eff. 8-1-01; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register December 2001 No. 552; CR 02-102: renum. (1) (a) to be (1) (a) 1. and am., renum. (1) (b) to be (1) (b) 1. and am., cr. (1) (a) 2., (1) (b) 2., am. (2) (a), (c) (d) 3. and (e), Register December 2002 No. 564, eff. 1-1-03; CR 08-077: am. (title), (2) (a) to (c), (4) (b), (d) (intro.), 5., (5) and (6), r. and recr. (1), (4) (a) and (e), r. (2) (d) 1. and (8), renum. (2) (d) 2. and 3. to be DFI-Sec 5.04 (3) (b) and (c), renum. (3) to be (3) (a) and am. (3) (a) (intro.), cr. (2) (f), (3) (b) and (4) (f) Register December 2008 No. 636, eff. 1-1-09; corrections in (2) (c), (3) (a) (intro.) and (4) (e) made under s. 13.92 (4) (b) 6. and 7., Stats., Register December 2008 No. 636.

**DFI-Sec 5.02 Net worth requirement.** (1) Each investment adviser registered or required to be registered under ch. 551, Stats., whose principal office is in this state and who accepts prepayment of fees exceeding \$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.

(2) Except as follows, each investment adviser registered or required to be registered under ch. 551, Stats., whose principal office is in this state who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000:

(a) Investment advisers having custody solely as a result of a direct fee deduction, as described in s. DFI-Sec 5.035 (4) (a) 2., who comply with all of the conditions in s. DFI-Sec 5.035 (1) (f), and who make and maintain the records required in s. DFI-Sec 5.035 (3) (b), shall not be required to comply with the net worth requirement in this subsection.

(b) Investment advisers having custody solely as a result of advising pooled investment vehicles, as defined in s. DFI-Sec 5.035 (4) (a) 3., who comply with all of the conditions in s. DFI-Sec 5.035 (1) (g) or (2) (c) and who create and maintain the records required in s. DFI-Sec 5.035 (3) (c), shall not be required to comply with the net worth requirement in this subsection.

(3) If an investment adviser is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the investment adviser is registered.

(4) The requirements of subs. (1) and (2) 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 minimum net capital requirements, if any.

(5) For purposes of this section, the term "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:

(a) Prepaid expenses, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of an intangible nature.

(b) Home, home furnishings, automobiles and any other personal items not readily marketable, if the investment adviser is an individual.

(c) Advances or loans to stockholders and officers, if the investment adviser is a corporation.

(d) Advances or loans to partners or members, if the investment adviser is a partnership or limited liability company.

(6) The division may by order exempt any investment adviser whose principal office is in this state from the provisions of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business or the particular facts and circumstances of the application, the division determines that compliance with the provisions is not necessary in the public interest or for the protection of investors.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; cr. (3), Register, December, 1992, No. 444, eff. 1-1-93; am. (1), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), renum. (2) and (3) to be (3) and (6) and am. (6), cr. (2), (4) and (5), Register, December, 1998, No. 516, eff. 1-1-99; r. and recr. (1) and (2), Register, December, 1999, No. 528, eff. 1-1-00; CR 04-074: am. (2) Register December 2004 No. 588, eff. 1-1-05; CR 08-077: am. (1), (2) (intro.), (3), (4), (5) (intro.) and (d) Register December 2008 No. 636, eff. 1-1-09.

**DFI-Sec 5.03 Investment advisers' records.**

(1) Every registered investment adviser whose principal office is in this state shall prepare and keep current at that office, or at a designated office located in this state, as specified in writing to, and

permitted by, the division, or at an office under the direct supervision and control of the principal or designated office, the following books and records relating to its business:

(a) All partnership agreements, or all articles of incorporation, by-laws, minute books and stock certificate books of the investment adviser.

(b) A general ledger (or other records in the case of a sole proprietor) reflecting all asset, liability, income, expense, and capital accounts.

(c) A record showing all payments received, including date of receipt, purpose, and from whom received; and all disbursements, including date paid, purpose, and to whom made.

(d) A record showing all receivables and payables.

(e) All trial balances, financial statements, and internal audit working papers which may be prepared relating to the business of the investment adviser.

(f) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(g) Copies of all written communications, correspondence, confirmations, appraisals and other records relating to investment activities of clients.

(h) A separate file containing a copy of all complaints made or submitted by clients relating to investment activities for clients, and all investigative inquiries made by law enforcement and securities regulatory authorities to the investment adviser or its investment adviser representatives regarding their securities and investment advisory business, and containing evidence, including representative copies, of the responses made by the investment adviser and its investment adviser representatives to the complaint or investigation. In this paragraph, "complaint" means any written or oral statement of a client or any person acting on behalf of a client alleging a grievance involving the activities of persons under the control of the investment adviser in connection with providing investment advice or placing orders on behalf of clients.

(i) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(j) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser or to a third party.

(k) A copy of all written agreements entered into by the investment adviser with any client, or with any other person if the agreement relates to the business of the investment adviser.

(L) A file containing any advertisement (as defined within the meaning of section 206 (4)-1. of the investment advisers act of 1940) used in connection with the offering of the investment advisory services in this state.

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

(n) A record that complies with Rule 204-2 (a) (12) under section 204 of the investment advisers act of 1940 containing information for all securities transactions effected for the account of the investment adviser or any of its employees subject to that rule, including the title and amount of the security involved, the date and nature of the transaction, the execution price, and information regarding client transactions in the same security.

(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).

(p) 1. A copy of each brochure and supplement and each amendment or revision to the brochure or supplement, given or sent to any client or prospective client of the investment adviser as required by s. DFI-Sec 5.05 (8);

2. A summary of material changes that are required by Part 2 of Form ADV, but are not contained in the brochure or supplement; and

3. A record of the dates that each brochure and supplement, each amendment or revision thereto, and each summary of material changes, was given or offered to any client or to any prospective client who subsequently becomes a client.

(q) Copies bearing signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to the disclosure reporting pages of Form U-4. These documents shall be retained by the investment adviser who prepared the filing on behalf of the investment adviser representative.

(2) Each registered investment adviser who renders investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, maintain and keep current:

(a) Records for each client showing the securities purchased or sold on advice of the adviser, and the date, amount, and price of each purchase and sale.

(b) Records identifying the client and the current amount or interest owned by each client for each security in which any client has a current position.

(c) Written information concerning a client's net worth, annual income and other financial information, investment objectives and experience and such other information necessary and relied upon by the investment adviser to determine the suitability of any investment recommendation or investment advice to the client. The written information shall be updated when the investment adviser receives information from the client that results in material changes to the client's annual income, net worth, investment objectives or other changes to information affecting the investment adviser's ability to make suitable recommendations for the client as required under s. DFI-Sec 5.06 (4).

(3) Every registered investment adviser shall preserve for a period of not less than 5 years, the first 2 years in an easily accessible place, all records required under 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 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 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.

(4) Every branch office as defined in s. DFI-Sec 1.02 (7), of a registered investment adviser whose principal office is in this state, shall prepare and keep current the records described in subs. (1) (c), (f), (g), (h), (k) and (L) and (2) (a), (b) and (c).

(5) The records required in 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 (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.

(7) The division may by order exempt any investment adviser from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the division finds that issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. (1), renum. (2) and (3) to be (3) and (4) and am., cr. (2), Register, December, 1980, No. 300, eff. 1-1-81; am. (3), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (h), Register, December, 1989, No. 408, eff. 1-1-90; am. (1) (intro.), renum. (4) to be (6), cr. (4) and (5), Register, December, 1991, No. 432, eff. 1-1-92; am. (1) (intro.), renum. (6) to be (7), cr. (6), Register, December, 1992, No. 444, eff. 1-1-93; am. (4), Register, December, 1994, No. 468, eff. 1-1-95; cr. (1) (m) and (n), Register, December, 1995, No. 480, eff. 1-1-96; am. (1) (intro.), renum. (2) to (5) and (7) to be (3) to (6) and (8) and am. (5) and (6), cr. (2) and (7), r. (6), Register, December, 1998, No. 516, eff. 1-1-99; cr. (1) (o), am. (5), Register, December, 1999, No. 528, eff. 1-1-00; am. (1) (h) and (5), renum. (1) (o) to be (3) (c) and am., cr. (1) (o), Register, December, 2000, No. 540, eff. 1-1-01; emerg. cr. (1) (p) and (q), eff. 1-1-01; CR 01-025: cr. (1) (p) and (q), Register, July, 2001, No. 547, eff. 8-1-01; CR 04-074: r. (2), renum. (3) to (8) to be (2) to (7) Register December 2004 No. 588, eff. 1-1-05; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register December 2004 No. 588; CR 08-077: am. (1) (intro.), (f) to (k), (m) to (o) and (2) to (6) Register December 2008 No. 636, eff. 1-1-09; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register December 2008 No. 636.

#### DFI-Sec 5.035 Investment advisors with custody.

(1) Except as provided in sub. (2), and subject to the definitions in sub. (4), it shall be a prohibited business practice for an investment adviser registered, or required to be registered, to have custody of client funds or securities unless the investment adviser complies with all of the following:

(a) The investment adviser notifies the division promptly in writing on Form ADV that the investment adviser has or may have custody.

**Note:** Form ADV is available online at the website of the Investment Adviser Registration Depository, [www.iard.com](http://www.iard.com), and may be filled out and submitted electronically.

(b) A qualified custodian maintains the funds and securities in a separate account for each client under that client's name or in accounts that contain only client funds and securities, under the investment adviser's name as agent or trustee for the clients.

(c) When an investment adviser opens an account with a qualified custodian on a client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

(d) Account statements shall be sent to clients in compliance with one of the following:

1. If client funds or securities are held by a qualified custodian, the investment adviser shall have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

2. If client funds or securities are held by the adviser:

a. The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; and

b. The investment adviser shall engage an independent certified public accountant to verify all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year. The accountant shall file a copy of the special examination report with the division within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

c. Within one business day of the finding of any material discrepancies identified during the course of the examination under subd. 2. b., the accountant shall notify the division of the discrepancy by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the division.

3. If the investment adviser is a general partner of a limited partnership, is a managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under par. (d) 1. or 2. a., shall be sent to each limited partner, member or other beneficial owner or their independent representative.

(e) If a client does not receive account statements and notices directly from the adviser or custodian, the investment adviser shall obtain from the client a written designation of an independent representative to receive, on the client's behalf, notices and account statements as required under pars. (c) and (d).

(f) 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 sub. (4) (a) 2., shall comply with all of the following:

1. The adviser shall obtain written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

2. Except as provided in subd. 4., each time a fee is directly deducted from a client account, the adviser shall concurrently do both of the following:

a. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and

b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

3. The investment adviser notifies the division on Form ADV that the investment adviser intends to comply with subs. 1. and 2.

4. An investment adviser having custody as described in sub. (4) (a) 2. and who complies with the safekeeping requirements in pars. (a) through (f), is not required to meet the financial requirements for custodial advisers prescribed in s. DFI-Sec 5.02 (2).

(g) An investment adviser who has custody as described in sub. (4) (a) 3. and who does not meet the exception provided under sub. (2) (c) shall comply with each of the following:

1. The investment adviser shall hire an independent party as defined in sub. (4) (b) to review all fees, expenses and capital withdrawals from the pooled accounts.

2. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal, and the method of calculation so that the independent party can do both of the following:

a. Determine that the payment is in accordance with the pooled investment vehicle standards set forth in the partnership agreement or membership agreement.

b. Forward to the qualified custodian, written approval for payment of the fee, expense or capital withdrawal, and provide a copy to the investment adviser.

3. The investment adviser shall notify the division on Form ADV that the investment adviser intends to comply with subs. 1. and 2.

4. An investment adviser having custody as described in sub. (4) (a) 3. and who complies with the safekeeping requirements in pars. (a) through (e), together with the requirements in par. (g), will not be required to meet the financial requirements for custodial advisers prescribed in s. DFI-Sec 5.02 (2).

(2) (a) With respect to shares of an open-end investment company as defined in section 5 (a) (1) of the investment company act of 1940, an investment adviser may use the investment company's transfer agent in lieu of a qualified custodian for purposes of complying with sub. (1).

(b) 1. An investment adviser is not required to comply with sub. (1) with respect to securities that meet all of the following requirements:

a. The securities are acquired from the issuer in a transaction or series of transactions not involving a public offering.

b. The securities are uncertificated, and ownership is recorded only on the records of the issuer or its transfer agent in the name of the client.

c. The securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

2. The exemptions contained in subd. 1. are available with respect to securities held for the account of a limited partnership, limited liability company, or other type of pooled investment vehicle, only if the entity has audited financial statements that are distributed in compliance with par. (c), and the investment adviser notifies the division on Form ADV that the investment adviser intends to distribute the audited financial statements as prescribed above.

(c) An investment adviser is not required to comply with par. (d) with respect to the account of a limited partnership, limited liability company, or another type of pooled investment vehicle that is subject to audit at least annually and distributes annually its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners, members, or other beneficial owners, within 120 days of the end of its fiscal year. The investment adviser shall notify the division on Form ADV that the investment adviser intends to comply with the audit safeguards described above.

(d) An investment adviser is not required to comply with sub. (1) with respect to the account of an investment company registered under the investment company act of 1940.

(e) An investment adviser is not required to comply with the safekeeping requirements of sub. (1) or the net worth requirements of s. DFI-Sec 5.02 (2) if the investment adviser has custody solely because the investment adviser is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

1. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the adviser. Those relationships shall include "step" relationships.

2. For each account under subd. 1., the investment adviser complies with each of the following:

a. The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of sub. (1) and the reasons why the investment adviser will not be complying with those requirements.

b. The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subd. 2. a.

c. The investment adviser maintains a copy of the documents required in subd. 2. a. and b. until the account is closed or the investment adviser is no longer trustee.

(f) Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in sub. (4) (c) shall first obtain approval from the division and shall comply with all of the applicable safekeeping provisions under

sub. (1), including taking responsibility for those requirements that are designated to be performed by a qualified custodian.

(3) (a) If an investment adviser receives or obtains a client's securities or funds inadvertently, but returns them to the client within three business days of receipt, or forwards third party checks within 24 hours of receipt, the adviser will not be considered to have custody, but shall keep the following records relating to the inadvertent custody:

1. A ledger or other listing of all securities or funds held or obtained, including the following information:

a. Issuer.

b. Type of security and series.

c. Date of issue.

d. For debt instruments, the denomination, interest rate and maturity date.

e. Certificate number, including alphabetical prefix or suffix.

f. Name in which registered.

g. Date given to the adviser.

h. Date sent to client or sender.

i. Form of delivery to client or sender, or copy of the form of delivery to client or sender.

j. Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

2. If an investment adviser obtains possession of securities that are acquired from an issuer in a transaction or series of transactions not involving any public offering that qualify for the exception from custody under sub. (2) (b), the adviser shall keep the following records:

a. A record showing the issuer or current transfer agent's name, address, telephone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

b. A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Each registered investment adviser whose principal office is in this state who has custody or possession of securities or funds of any client shall maintain and keep current the following books and records in addition to those required under sub. (1):

1. A copy of all documents required in sub. (1) (f) if the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

2. A journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts.

3. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

4. Copies of confirmations of all transactions effected by or for the account of any client.

5. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

6. A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

7. If applicable to the adviser's situation, a copy of the auditor's report and financial statements and letter verifying the completion of the examination by an independent certified public

accountant and describing the nature and extent of the examination.

8. A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

9. If applicable, evidence of the client's designation of an independent representative.

(c) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in sub. (4) (a) 3., the adviser shall also keep the following records:

1. True, accurate and current account statements;
2. If the investment adviser complies with sub. (2) (c), the investment adviser shall make and maintain each of the following records:

- a. A record of the date of the audit.
- b. A copy of the audited financial statements.
- c. A record evidencing the mailing by the issuer of its audited financial statements to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

3. If the adviser complies with sub. (1) (g), the investment adviser shall make and maintain the following records:

- a. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

- b. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(4) (a) "Custody" for purposes of this section, means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them, or having the ability to appropriate them in the following contexts, without limitation:

1. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them, except that receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if they are forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under sub. (3) (a);

2. Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

3. Acting in any capacity, such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust, that provides an investment adviser or a supervised person out of the investment adviser, legal ownership of, or access to, client funds or securities.

(b) "Independent party" for purposes of sub. (1) (g), means a person that meets all of the following:

1. The person is engaged by the investment adviser to act as an intermediary for the payment of fees, expenses and capital withdrawals from a pooled investment.

2. The person does not control, is not controlled by, and is not under common control with, the investment adviser.

3. The person does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(c) "Qualified custodian" for purposes of sub. (1), includes a broker-dealer registered under ch. 551, Stats., or any of the following independent institutions or entities:

1. A bank or savings association whose deposits are insured by the federal deposit insurance corporation under the federal deposit insurance act.

2. A registered futures commission merchant registered under section 4f(a) of the commodity exchange act, holding the client assets in client accounts, but only with respect to clients'

funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery or options thereon.

3. A foreign financial institution that customarily holds financial assets for its clients, provided that the foreign financial institution keeps the advisory clients' assets in client accounts segregated from its proprietary assets.

(d) "Independent representative" for purposes of this section means a person that satisfies the requirements in each of the following paragraphs:

1. The person acts as an agent for an advisory client, and the person by law or contract is obliged to act in the best interests of the advisory client. An advisory client includes, in the case of a pooled investment vehicle, a limited partner of a limited partnership, a member of a limited liability company, or a beneficial owner of another type of pooled investment vehicle.

2. The person does not control, is not controlled by, and is not under common control with, the investment adviser.

3. The person does not have, and has not had within the past two years, a material business relationship with the investment adviser.

**History:** Cr. Register, December, 1999, No. 528, eff. 1-1-00; CR 04-074: renum. (4) (a) from s. DFI-Sec 1.02 (17) and r. and recr. Register December 2004 No. 588, eff. 1-1-05; CR 08-077: am. (1) (intro.), (b) to (f), (2) (b) 1. b., (f), (3) (a) (intro.), 1. h. to j., 2. a., (b), (4) (a), (c) and (d) 1. Register December 2008 No. 636, eff. 1-1-09.

**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 worth of the investment adviser is less than is required under s. DFI-Sec 5.02 (1), specifying the amount of net worth on the date of the notice and the steps the investment adviser has taken or will take to come into compliance.

(2) Each investment adviser shall file with the division a copy of any complaint related to its business, transactions, or operations in this state, naming the investment adviser or any of its partners, officers or investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the investment adviser; a copy of any answer or reply to the complaint filed by the investment adviser within 10 days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) (a) Except as provided in subs. (2) and (4), each investment adviser shall file with the division any notice of change of control or change of name, as well as any material change in the information included in the investment adviser's most recent application for registration, in an amendment to Form ADV filed with the division within 30 days of the date of the change.

(b) Each investment adviser shall file a complete, updated Form ADV with the investment adviser registration depository within 90 days of the end of its fiscal year.

(c) Each investment adviser representative and his or her employing investment adviser or federal covered investment adviser shall update information contained in an investment adviser representative's application by filing an amendment to Form U-4 with the central registration depository within 30 days of the date of the event that requires filing of the amendment.

(4) Each investment adviser shall notify the division in writing within 10 days from the first date the person who is the designated supervisor under s. DFI-Sec 5.05 (7) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the division in writing a substituted designated supervisor within the 45 day period provided under s. DFI-Sec 5.05 (7).

(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 at least 14 days after the closing in this state of any branch office as defined in s. DFI-Sec 1.02 (7).

(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.

(6) 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.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) to (4), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and cr. (1) (b), Register, December, 1982, No. 324, eff. 1-1-83; cr. (5), Register, December, 1989, No. 408, eff. 1-1-90; am. (1) (a), r. and recr. (3), r. (4), renun. (5) to be (4), Register, December, 1990, No. 420, eff. 1-1-91; am. (1) (a), cr. (5) and (6), Register, December, 1991, No. 432, eff. 1-1-91; am. (1) (a), cr. (1) (c), Register, December, 1994, No. 468, eff. 1-1-95; r. and recr. (1), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), cr. (7) and (8), Register, December, 1998, No. 516, eff. 1-1-99; am. (1), Register, December, 1999, No. 528, eff. 1-1-00; CR 01-082: am. (5) (a), Register December 2001 No. 552, eff. 1-1-02; CR 02-102: r. (7) and (8), Register December 2002 No. 564, eff. 1-1-03; **CR 08-077: am. (1), (5) (a) and (b), renun. (3) to be (3) (a) and am., (3) (b) and (c) renun. from DFI-Sec 5.01 (2) (d) 2. and 3. and am. (3) (c), r. and recr. (5) (c) and (6) Register December 2008 No. 636, eff. 1-1-09.**

#### DFI-Sec 5.05 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 registration of a number of supervisory employees reasonable in relation to the number of its registered investment adviser representatives, offices and activities in this state.

(2) An investment adviser shall not enter, extend, or renew any investment advisory contract if the contract:

(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. 551.403 (2), Stats., or s. DFI-Sec 5.12.

(b) Fails to provide, in substance, that no assignment of the contract may be made without the consent of the client; or

(c) Fails to provide, in substance, that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after such change.

(d) Fails to disclose, in substance, the term of the advisory agreement, the fee to be charged by the adviser, the formula for computing the advisory fee, the formula for computing the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

(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. 551.403 (2), Stats., or s. DFI-Sec 5.12.

(4) An investment adviser shall not enter any contract with a client if the contract contains any condition, stipulation or provision binding the client to waive any rights under ch. 551, Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(5) No registered investment adviser may enter into, extend or renew any investment advisory contract with a client in this state unless the contract is in writing and a copy of the contract is given to the client within 20 days after the execution of the contract.

(6) Each investment adviser who renders account supervisory or management services shall provide at least annually to each Wisconsin client a written summary of the client's account which includes information setting forth the name, quantity and market value of each security under management, and the total value of cash and securities under management.

(7) Every registered investment adviser shall employ at its principal office or designated office of supervision in accordance with s. DFI-Sec 5.03 (1), at least one person designated in writing on the form prescribed in s. DFI-Sec 9.01 (1) (b) and filed with the division to act in a supervisory capacity who is registered as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. DFI-Sec 5.01 (5). If a registered investment adviser is not in compliance with the requirements of this paragraph, it has 45 days from the first date of noncompliance to meet the requirements of this paragraph.

(8) (a) Unless otherwise provided in this subsection, each investment adviser shall 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 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.

2. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services for a client if the investment adviser representative does any of the following:

- a. Regularly communicates investment advice to that client.
- b. Formulates investment advice for assets of that client.
- c. Makes discretionary investment decisions for assets of that client.

d. Solicits, offers or negotiates for the sale of or sells investment advisory services.

3. The documents required in subd. 1. shall be furnished at the following times:

a. Not less than 48 hours prior to entering into any investment advisory contract with a client or prospective client.

b. At the time of entering into any contract, if the contract specifically provides that the client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) Each investment adviser shall, at least once a year, without charge, furnish or offer in writing to 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 7 days after the investment adviser is notified of the acceptance.

(d) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection, the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a separate client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership is also considered to be a limited partnership.

(e) 1. Each investment adviser that is a sponsor of a wrap fee program shall 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.

2. An investment adviser is not required to offer or furnish the wrap fee brochure if another sponsor of the wrap fee program offers or 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.

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

(f) Each investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients not more than 30 days from the date that the information contained in the brochure or brochure supplement becomes materially inaccurate. The investment adviser shall comply with the instructions to Part 2 of Form ADV regarding updating and delivery.

(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 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.

(h) Nothing in this subsection shall relieve any investment adviser from any obligation pursuant to any provision of ch. 551, Stats., or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(i) Each investment adviser shall deliver to each of its clients its current brochure and all required brochure supplements not later than January 1, 2002.

(9) Each investment adviser that participates in a wrap fee arrangement with a broker-dealer shall disclose to each client under the arrangement the portion of the wrap fee that is attributable to advisory services. This requirement may be satisfied if the information is contained in the brochure provided to the client either by the investment adviser or the sponsor of the wrap fee arrangement.

(10) No investment adviser may associate with a bank, savings institution, trust company, savings and loan association or credit union by contract, agreement or other means for the purpose of that entity publishing or circulating advertising promoting the services offered by the investment adviser or assisting or providing information to persons to establish an advisory relationship with the investment adviser unless the promotional functions are performed by persons registered as representatives of the investment adviser.

(11) Each investment adviser which by contract, agreement or other means provides investment advisory services on the premises of a financial institution that is not registered as an investment adviser shall:

(a) Perform the investment advisory services within a specific area on the premises of the financial institution designated by

agreement between the investment adviser and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the investment advisory services;

(b) Prominently display the identity of the registered investment adviser in the area on the premises of the financial institution designated under par. (a);

(c) Disclose the identity of the registered investment adviser in, without limitation because of enumeration, all advertising, correspondence, business cards, promotional materials and records relating to the investment adviser's services provided on the premises of the financial institution. Materials described in this paragraph may not display the financial institution's name or logotype in a manner that would mislead clients as to the financial institution's role in connection with the investment advisory services being offered by the investment adviser. For purposes of this paragraph, if the investment adviser's name is no less prominent in the materials than the name of the financial institution in the size, style or color of type or in the placement or by use of logotypes, the materials are presumed to be not misleading.

(d) Establish written supervisory procedures and a system for applying the procedures. The procedures shall comply with s. DFI-Sec 5.05 (1) and shall be designed to accomplish certain supervisory functions, including but not limited to the following:

1. Prevention and detection of violations of ch. 551, Stats., and any applicable rules and orders under ch. 551, Stats.

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. 551.501, 551.502 and 551.504, Stats.; and

3. Establishment of a system that ensures that all books and records required by rule or order under ch. 551, Stats., are properly maintained.

(e) Disclose in writing prior to or at the time of entering into each investment advisory agreement that the investment advisory services are provided by the investment adviser and not by the financial institution, that non-deposit investment products are not guaranteed by the financial institution, are not deposits or other obligations of the financial institution, are not subject to any federal deposit insurance protection and involve risk, including possible loss of principal.

(f) Notify the division at the time of filing notice of opening or change of address of a branch office as required in s. DFI-Sec 5.04 (5), that the office is located on the premises of a financial institution in this state, which notification shall include the identity of the institution.

(12) No investment adviser or its investment adviser representative, in connection with a telephone or electronic solicitation, shall:

(a) Fail to provide both the caller's identity and the identity of the investment adviser with whom the caller is affiliated, at the beginning of any telephone or electronic solicitation.

(b) Telephone any person in this state between the hours of 9:00 PM and 8:00 AM local time at the called person's location without the individual's prior consent.

(c) Telephone or electronically solicit any person in this state after that individual has requested that they not be telephoned.

(d) Make repeated telephone or electronic solicitations in an annoying, abusive or harassing manner, either individually or in concert with others.

(e) Use threats, intimidation or obscene language in connection with securities recommendations, transactions or other investment advisory activities.



(13) Each investment adviser shall provide clients with a written notification or invoice of fees due for investment advisory services. The notification or invoice shall specify the time period covered by the fee for ongoing supervisory or management services or shall detail the services rendered for preparation of financial plans or analyses.

(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.

**History:** Cr. December, 1977, No. 264, eff. 1-1-78; am. (1), r. (5) and (6), cr. (2) (d), (5) to (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (7), Register, December, 1982, No. 324, eff. 1-1-83; cr. (8), Register, December, 1987, No. 384, eff. 1-1-88; am. (2) (a) and (7), Register, December, 1989, No. 408, eff. 1-1-90; am. (5), Register, December, 1991, No. 432, eff. 1-1-92; am. (7), Register, December, 1992, No. 444, eff. 1-1-93; cr. (9), Register, December, 1994, No. 468, eff. 1-1-95; am. (7), Register, December, 1995, No. 480, eff. 1-1-96; am. (2) (a), (3), cr. (10) to (12), Register, December, 1996, No. 492, eff. 1-1-97; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1998, No. 508; am. (1), (11) (d) 3. and (12) (intro.), Register, December, 1998, No. 516, eff. 1-1-99; cr. (11) (f), Register, December, 1999, No. 528, eff. 1-1-00; cr. (13) and (14), Register, December, 2000, No. 540, eff. 1-1-01; emerg. r. and recr. (8), eff. 1-1-01; CR 01-025: r. and recr. (8), Register July, 2001, No. 547 eff. 8-1-01; CR 02-102: r. (14), Register December 2002 No. 564, eff. 1-1-03; **CR 08-077: am. (title), (1), (2) (a), (b), (3) to (7), (8) (a), (b) 1., 3. (intro.), (c), (e), (g), (9), (10), (11) (intro.), (b), (c) and (d) 2., cr. (14) Register December 2008 No. 636, eff. 1-1-09.**

**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. 551.412 (4) (m), Stats., without limiting those terms to the practices specified in this section:

(1) Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a client without first obtaining written discretionary authority from the client unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(2) Placing an order to purchase or sell a security for the account of a client upon instructions of a third party without first having obtained written third party trading authorization from the client;

(3) Inducing trading in a client’s account that is excessive in size or frequency in view of the financial resources and character of the account;

(4) Recommending to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client’s investment objectives, financial situation and needs, and any other information known by the investment adviser;

(5) Placing an order to purchase or sell a security for the account of a client without authority to do so;

(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. 551.401 (2) (b) or (c), Stats.

(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.

(8) Placing an order for the purchase or sale of a security if the security is not registered or the security or transaction is not exempt from registration under ch. 551, Stats.

(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. 551.403 (2) (a), Stats., or s. DFI-Sec 5.12.

(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. 551.403 (2) (a), Stats., or s. DFI-Sec 5.12, Stats.

(11) Failing accurately to describe or disclose in advertising or other materials used in connection with the promotion or transaction of investment advisory services in this state, the identity of the investment adviser or the nature of the investment advisory services offered or the employment relationship between the investment adviser and its representatives. For purposes of this subsection, “other materials” include, but are not limited to, business cards, business stationery and display signs.

(12) Taking or having custody of client funds or securities without being in compliance with s. DFI-Sec 5.035 and the net worth requirement in s. DFI-Sec 5.02 (2).

(13) The subsections of this section shall apply to an investment adviser representative of a federal covered investment adviser only to the extent permitted by section 203 (b) (2) of the investment advisers act of 1940, and only to the extent the prohibited conduct involves fraud or deceit.

(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) 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:

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 ch. 551, Stats.

(e) In this subsection:

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:

(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:

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:

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 ch. 551, Stats., or any rule thereunder.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (intro.) and (1), renum. (2) to be (8) and am., cr. (2) to (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (9), cr. (10), Register, December, 1986, No. 372, eff. 1-1-87; cr. (11), Register, December, 1989, No. 408, eff. 1-1-90; am. (9), (10), Register, December, 1996, No. 492, eff. 1-1-97; am. (intro.), cr. (12) and (13), Register, December, 1998, No. 516, eff. 1-1-99; am. (6), Register, December, 1999, No. 528, eff. 1-1-00; CR 04-074: am. (12) Register December 2004 No. 588, eff. 1-1-05; **CR 08-077: am. (title), (intro.) to (6), (9), (10) and (13), r. and recr. (7), cr. (14) to (23) Register December 2008 No 636, eff. 1-1-09; corrections in (9) and (10) made under s. 13.92 (4) (b) 7., Stats., Register December 2008 No. 636.**

**DFI-Sec 5.07 Registration and notice filing period.**

**(1)** The registration of an investment adviser expires on December 31 of each year. Each registered investment adviser seeking renewal of its registration shall file for renewal with the investment adviser registration depository according to the depository's schedule.

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

(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.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am., Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1994, No. 468, eff. 1-1-95; am. (1) and (2), cr. (3) and (4), Register, December, 1998, No. 516, eff. 1-1-99; emerg. r. and recr. eff. 1-1-01; CR 01-025: r. and recr., Register July 2001, No. 547 eff. 8-1-01; CR 02-102: am. (1), renum. (2) to be (2) (a) and am., cr. (2) (b), Register December 2002 No. 564, eff. 1-1-03; correction in (2) (b) made under s.

13.93 (2m) (b) 7., Stats., Register December 2004 No. 588; CR 08-077: am. (title), (1) and (2) (a), r. and recr. (2) (b) Register December 2008 No. 636, eff. 1-1-09.

**DFI-Sec 5.08 Withdrawal of registration.** (1) An application for withdrawal from the status of a registered investment adviser under 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 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. 551.409, Stats.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (2), Register, December, 1979, No. 288, eff. 1-1-80; am. (2), Register, December, 1982, No. 324, eff. 1-1-83; am. Register, December, 1994, No. 468, eff. 1-1-95; am. (2), Register, December, 1998, No. 516, eff. 1-1-99; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1999, No. 524; CR 01-025: r. and recr., Register July 2001, No. 547 eff. 8-1-01; CR 02-102: am. (2), Register December 2002 No. 564, eff. 1-1-03; CR 08-077: am. Register December 2008 No. 636, eff. 1-1-09.

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

(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.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1998, No. 516, eff. 1-1-99; CR 08-077: renum. to be (1) and am., cr. (2) Register December 2008 No. 636, eff. 1-1-09.

**DFI-Sec 5.10 Electronic filing.** 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.

**History:** emerg. cr. eff. 1-1-01; CR 01-025: cr. Register July 2001, No. 547 eff. 8-1-01; CR 02-102: am. Register December 2002 No. 564, eff. 1-1-03; CR 08-077: am. Register December 2008 No. 636, eff. 1-1-09.

**DFI-Sec 5.11 Federal covered investment adviser notice filing procedure.** (1) The notice filing for a federal covered investment adviser pursuant to s. 551.405, 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. 551.405, Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

(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.

**History:** emerg. cr. eff. 1-1-01; CR 01-025: cr. Register July 2001, No. 547 eff. 8-1-01; CR 02-102: am. (3), Register December 2002 No. 564, eff. 1-1-03; CR 08-077: am. (title) and (1) to (3), cr. (4) Register December 2008 No. 636, eff. 1-1-09.

**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 s. DFI-Sec 5.01 (3), shall make a transition filing electronically with the investment adviser registration depository not later than June 1, 2009.

**History:** emerg. cr. eff. 1-1-01; CR 01-025: cr. Register July 2001, No. 547 eff. 8-1-01; CR 02-102: am. (4), Register December 2002 No. 564, eff. 1-1-03; CR 08-077: r. and recr. Register December 2008 No. 636, eff. 1-1-09.

**DFI-Sec 5.13 Registration exemptions.** (1) For purposes of ss. 551.403 (2) and 551.404 (2), Stats., 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) and (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.

**History:** CR 08-077: cr. Register December 2008 No. 636, eff. 1-1-09.