DFI 1, 2, & 5 - INVESTMENT
ADVISOR - REQUIREMENT 98-114

PXD

cc for JCRAR / Senate Co-chair

State of Wisconsin

Department of Financial Institutions

Tommy G. Thompson, **Governor** | Richard L. Dean, **Secretary**

October 6, 1998

The Honorable Brian Rude
President
Wisconsin State Senate
Attn: Donna Doyle
c/o Office of Senate Journal and Records
1 E. Main St., Ste. 402
Madison, WI 53702

The Honorable Scott Jensen
Speaker of the Assembly
Attn: Ken Stigler
c/o Office of Assembly Records
1 E. Main St., Ste. 402
Madison, WI 53702

Re: Clearinghouse Rule 98-114/Administrative Rule-Making Notice and Report to Legislative Standing Committees Under secs. 227.19(2) and (3), Wis. Stats.

Gentlemen:

The Division of Securities of the Department of Financial Institutions hereby submits for filing with the Wisconsin Legislature pursuant to the administrative rule-making requirements of secs. 227.19(2) and (3), Wis. Stats., copies in triplicate of the Notice and Report required thereunder consisting of:

(1) Proposed administrative rules in proposed final draft form as specified in sec. 227.14(1), Wis. Stats.

(2) A Report as prescribed in sec. 227.19(3), Wis. Stats.

(3) A fiscal estimate for the proposed rules.

(4) A copy of the Clearinghouse Report of the Wisconsin Legislative Council relating to the published, public comment draft form of the proposed rules.

If you have any comments or questions regarding the above, please telephone me at 266-3414.

Very truly yours,

Randall E. Schumann
Legal Counsel for the Division

RES:gat
Attachments
cc: Revisor of Statutes
Joint Committee for Review of Administrative Rules
Patricia D. Struck, Administrator, Division of Securities
David Anderson, Executive Assistant, DFI

Division of Securities
101 W. Pleasant Ave. Ste 203 PO Box 593 Milwaukee WI 53212 • (414) 227-4484 • Fax: (414) 227-4488 • www.wdfi.org

PROPOSED FINAL ORDER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN
ADOPTING, AMENDING AND REPEALING RULES

To repeal 2.01(3)(a) to (d), 2.02(9)(a) and (L), 3.01(2); to renumber 5.02(2) and (3), 5.03(2) to (7); to amend 1.02(2)(b), 1.02(5)(c)2(intro.) and 2a., 1.02(7)(b), Chapter DFI-Sec 2 (title), 2.01(1)(a)2, 2.01(9) and (10)(a), 3.01(1)(a), 3.02(1)(h) and (m), 3.03(3), 3.07(1) and (2), 5.01(1) and (3), 5.02(1), 5.03(1), (5) and (6), 5.04(1), 5.05(11)(d) 3 and (12), 5.06(intro.) and (7), 5.07(title), (1) and (2), 5.08(2), 5.09, 7.07(1)(a), (d) and (f), 9.01(1)(b) 12 and 13; to repeal and recreate Chapter DFI-Sec 5 (title), 5.03(7); and to create 1.02(5)(c) 2d, 1.02(14) to (18), 2.04(1) to (4), 5.02(2), (4) and (5), 5.03(2), 5.04(7) and (8), 5.06(12) and (13), 5.07(3) and (4), 9.01(1)(b)(intro.),(b)20, and (d), Wis. Adm. Code, Rules of the Division of Securities; relating to federal covered securities, federal covered advisers and investment adviser representatives.

Pursuant to 551.63(1) and (2); 551.02(7m)(a) and (b); 551.29(1) to (4); 551.31(4)(c); 551.32(1)(a) and (b), (1m)(a), (4), (5), (6), (8)(a) 3 and (9)(a); 551.33(1), (2) and (8); 551.52(1)(b)1 and 2., Wis. Stats., the Division of Securities of the Department of Financial Institutions repeals, amends and adopts rules interpreting those sections as follows:

PROPOSED FINAL FORM OF
AMENDMENTS TO RULES OF THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS

SECTION 1. DFI-Sec 1.02(2)(b) is amended to read:

DFI-Sec 1.02(2)(b) A licensed investment adviser or federal covered adviser when placing orders for the accounts of its clients in accordance with rules prescribed by the division, provided that no commission or other remuneration is received by the investment adviser solely for placing the orders.

ANALYSIS: The amendment to this rule (which currently provides an exclusion from the definition of broker-dealer for licensed investment advisers) extends the exclusion to also cover "federal covered advisers." Federal covered advisers are a new category of investment advisers designated by statute in 1997 Wisconsin Act 316, corresponding to federal legislation impacting state securities laws under the National Securities Markets Improvement Act ("NSMIA").

SECTION 2. DFI-Sec 1.02(5) (c)2. (intro.) and 2.a. are amended to read:

DFI-Sec 1.02(5)(c)2. Any person who complies with Rule 206(4)-3. of the investment advisers act of 1940 and meets any of the following conditions is not considered to be "soliciting" for purposes of ~~s. 551.31(3), Stats.~~ subd.1 .

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

ANALYSIS: These amendments do the following: (1) In (c)2. (intro.), correct the cross-reference used in the rule to reflect the proper administrative rule provisions that are applicable; and (2) in (c)2.a., deletes the term "qualified" as it applies to investment adviser representatives because 1997 Wisconsin Act 316 replaced the prior "qualification" requirement with a licensing requirement.

SECTION 3. DFI-Sec 1.02(5) (c)2.d. is created to read:

DFI-Sec 1.02(5)(c)2.d. The person is a federal covered adviser.

ANALYSIS: This amendment adds the category of "federal covered adviser," as created under 1997 Wisconsin Act 316, to the list of persons who can qualify for an exclusion from the definition of "soliciting" if the person complies with the requirements of Rule 206(4)-3 of the federal Investment Advisers Act of 1940.

SECTION 4. DFI-Sec 1.02(7)(b) is amended to read:

DFI-Sec 1.02(7)(b) "Branch office" for purposes of the investment adviser provisions of ch. 551, Stats., and chs. DFI-Sec 1 to 9 means any office in this state ~~of an investment adviser~~ that is held out to the public by any means as a business location of ~~the~~ an investment adviser or federal covered adviser required to make a filing under s. 551.32(1m) (a), Stats.

ANALYSIS: The amendments are needed to make this rule (defining "branch office" for purposes of the investment adviser provisions of the Wisconsin Securities Law and rules) apply also to federal covered advisers, as created in 1997 Wisconsin Act 316. However, in a revision made to the rule as a result of the public hearing and comment process, language was added to provide that the rule is applicable to federal covered

advisers only to the extent that the federal covered adviser is required to make a filing under s. 551.32(1m)(a), Wis. Stats. Section 307(b) of NSMIA allows states to continue receiving filing and licensing fees in effect at the time NSMIA was enacted (notwithstanding the other amendments made by NSMIA). The revision is necessary to eliminate an anomalous situation that otherwise would occur under the rule where a federal covered adviser that would not be subject to the basic filing requirement (with a prescribed $200 fee) under sec. 551.32(1m)(a) [because it qualified for the filing exclusion under sec. 551.31(4m)(a)] would be subject to the $30 branch office filing fee under sec. 551.52(2), Wis. Stats.

SECTION 5. DFI-Sec 1.02(14) is created to read:

DFI-Sec 1.02(14) The following defined terms apply for purposes of the definition of "investment adviser representative" in s. 551.02(7m)(a), Stats:

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

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

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

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

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

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

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

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

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

ANALYSIS: The rules in paras. (14)(a) to (f) of this SECTION define all of the substantive terms contained in the definition of "investment adviser representative" created in 551.02(7m)(a) by the 1997 Wisconsin Act 316, with language corresponding to federal statutes and rules defining those same terms. In particular: (1) "supervised person" in para. (e) corresponds with language in section 202(a)(25) of the Investment Advisers Act of 1940 as created in Title III of NSMIA, except for references to "federal covered adviser" added at the end of subd. (a)1, 2 and 3, and an exclusion for "clerical or ministerial employes" in subd. (a)2 based on language contained in the definition of "investment adviser representative" in section 401(g) of the Uniform Securities Act of

1956; (2) "client" in para. (a) corresponds with the federal rule definition cited, including that non-U.S. residents need not be counted; (3) "excepted person" and "impersonal investment advice" in paras. (b) and (c) correspond with the federal rule definitions in 203A-3(a)3(i) and 3(ii) under the Investment Advisers Act of 1940. As a result of the public hearing and comment process, the language in para. (b) was changed from a recitation of the text of federal rule 203A-3(a)3(i) under the Investment Advisers Act of 1940 to instead be a cross-reference to that federal rule (which was recently amended effective August 31, 1998); (4) "percentage specified" became a new para. (d) as a result of being moved from its Public Comment Draft form [as DFI-Sec 1.02(16)] following the recommendation of the Legislative Council Rules Clearinghouse. The rule establishes 10% as the percentage of clients of a supervised person "who are natural persons that are not excepted persons", which is the same percentage used in federal rule 203A-3(a)(1) [as amended effective July 8, 1997] under the Investment Advisers Act of 1940. As a result of recent changes effective August 31, 1998 made by the U.S. Securities and Exchange Commission to the definition of "investment adviser representative," a "five natural person" alternative was created to the "10% test" this rule is based upon. Consequently, the Division has created an equivalent "5 natural person" alternative in DFI-Sec 1.02(18). (5) "third party solicitor" in para. (f) is based on the U.S. Securities and Exchange Commission's commentary to its investment adviser rulemaking relating to the cash solicitation rule in 2.06(4)-3 under the Investment Advisers Act of 1940.

SECTION 6. DFI-Sec 1.02(15) is created to read:

DFI-Sec 1.02(15) "Place of business" for purposes of the investment adviser provisions of ch. 551, Stats., and chs. DFI-Sec 1 to 9, means any location held out to the public by any means at which an investment adviser or an investment adviser representative regularly provides investment advisory services, or solicits, meets with, or otherwise communicates with clients or prospective clients.

ANALYSIS: This rule defines the term "place of business" for purposes of the investment adviser licensing statutes and rules based on subsection (b)(1) of the federal definition of "place of business" in rule 203A-3 [as amended effective July 8, 1997] under the Investment Advisers Act of 1940.

SECTION 7. DFI-Sec 1.02(16) and (17) are created to read:

DFI-Sec 1.02(16) "Principal office" means the office from which the officers, partners, or managers of a broker-dealer or an investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

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

ANALYSIS: These new definitional rules do the following: (1) define "principal office" for purposes of the securities licensing statutes and related rules, using identical language from rule 203A-3(c) [as amended effective July 8, 1997] under the Investment Advisers Act of 1940; and (2) define "custody" for purposes of the Wisconsin securities licensing statutes and related rules using language derived from the U.S. Securities and Exchange Commission's staff interpretations of what activities or practices constitute "custody" under rule 206(4)-2 of the Investment Advisers Act of 1940.

SECTION 8. DFI-Sec 1.02(18) is created to read:

DFI-Sec 1.02(18) "Investment adviser representative" as defined in s. 551.02(7m)(a), Stats., does not include a supervised person of an investment adviser or federal covered adviser that does not have more than 5 natural persons as clients in the United States who are not excepted persons.

ANALYSIS: This new rule creates an exclusion from the definition of "investment adviser representative" using the rule-making authority in sec. 551.02(7m)(b), Wis. Stats. The new rule is a companion to rule DFI-Sec 1.02(16) and is necessary to reflect the recent rule change by the U.S. Securities and Exchange Commission (effective August 31, 1998) which adopted a "five natural person" alternative to the "10% test" established in DFI-Sec 1.02(16) for purposes of sec. 551.02(7m)(a)1.a., Wis. Stats.

SECTION 9. Chapter DFI-Sec 2 (Title) is amended to read:

Chapter DFI-Sec 2

REGISTRATION EXEMPTIONS AND FEDERAL

COVERED SECURITY NOTICE FILINGS

ANALYSIS: This SECTION amends the Title to Chapter 2 of the Division's rules to reflect that the administrative rules relating to making notice filings for various categories of federal covered securities provided for in s. 551.29(1) to (3), Stats., (as created in 1997 Wisconsin Act 316) are being placed in Chapter 2.

SECTION 10. DFI-Sec 2.01(1)(a)2 is amended to read:

DFI-Sec 2.01(1)(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 1993 or are exempt under s. 551.22(7), Stats.

ANALYSIS: This amendment adds a cross-reference to the section of NSMIA that now designates as "covered securities" securities listed on various securities exchanges that (pre-NSMIA) had been designated for purposes of the "exchange listing" registration exemption in s. 551.22(7), Wis. Stats. Because NSMIA's designation of qualifying exchanges in Section 18(b)(1) preempts s. 551.22(7), Wis. Stats., a cross-reference to that NSMIA section is necessary to give effect to the rule.

SECTION 11. DFI-Sec 2.01(3)(a) to (d) are repealed.

ANALYSIS: This SECTION deletes the rule subsections in 2.01(3)(a) to (d) which designate for purposes of the "exchange-listing" registration exemption in s. 551.22(7), Stats., the following exchanges: (1) the National Market System of NASDAQ [in sub (a)]; (2) the Chicago Board Options Exchange [in sub (b)]; (3) Tier 1 of the Pacific Stock Exchange [in sub (c)]; and (4) Tier 1 of the Philadelphia Stock Exchange [in sub (d)]. The deletions are warranted because those Wisconsin registration exemption designations are preempted and superseded by the designation in Section 18 (b)(1) of NSMIA of the National Market System of NASDAQ as a "covered security," and by adoption on January 14, 1998, of Rule 146(b) under the Securities Act of 1993 by the U.S. Securities and Exchange Commission designating securities listed on the Chicago Board Options Exchange, Tier 1 of the Pacific Stock Exchange, and Tier 1 of the Philadelphia Stock

Exchange as "covered securities" for purposes of Section 18 of the Securities Act of 1933.

SECTION 12. DFI-Sec 2.01(9) and (10)(a) are amended to read:

DFI-Sec 2.01(9) Any ~~government~~ security, other than a revenue obligation ~~and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States~~, 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 irrepealable 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 ~~government~~ security, other than a revenue obligation ~~and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States~~, 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.

ANALYSIS: The amendments to each of these registration exemption rules under 551.22(17), Stats., do the following: (1) delete the rule language referring to U.S. government securities because such securities are designated in NSMIA as "covered securities" under Section 18(b)(4)(C) of the Securities Act of 1933, thus preempting all

state securities registration and exemption requirements; and (2) substitute language making each exemption rule applicable only to the securities (other than revenue obligations) issued by the State of Wisconsin or its political subdivisions, agencies or instrumentalities, because NSMIA does permit a state's securities registration exemption provisions to apply when the governmental issuer of the securities is located in such (home) state. Accordingly, applicability of these exemption rules are limited to Wisconsin governmental issuers making filings for offerings of securities that, for various reasons, would not qualify for use of the self-executing registration in sec. 551.22(1)(a), Wis. Stats. (for instance, if the Wisconsin governmental issuer's financial statements were not prepared according to generally accepted accounting principles, or if the auditor's opinion is qualified).

SECTION 13. DFI-Sec 2.02(9)(a) is amended to read:

DFI-Sec 2.02(9)(a) ~~Any~~ An exemption under this subsection is available until October 11, 1999 for any isolated issuer transaction relating to redeemable securities of an investment company registered under the investment company act of 1940, effected through a licensed broker-dealer pursuant to an unsolicited order or offer to purchase, provided that the broker-dealer obtains 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 confirms that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. A transaction is presumed to be "isolated" if it is one of not more than 3 such transactions during the prior 12 months.

ANALYSIS: As a result of the public hearing and comment process, the proposed repeal (in the Public Comment Draft of this SECTION) of this registration exemption rule under s. 551.23(18), Wis. Stats., (that applies to certain isolated sales of the securities of an investment company) is withdrawn and the rule is restored, but with the addition of an amendment that provides an October 11, 1999 "sunset" date for effectiveness of the rule. Because NSMIA, which designated investment company securities as "federal covered securities," specifically allowed states only a three-year period after enactment of NSMIA (ending October 11, 1999) to require registration for investment company securities for an issuer refusing to pay applicable notice filing fees, the effectiveness of this registration exemption is tied to that date. Following such October 11, 1999 date, the "federal covered security" treatment of investment company securities under NSMIA controls in all respects allowing only a notice filing procedure, and precluding applicability of state securities law registration and exemption provisions.

SECTION 14. DFI-Sec 2.02(9)(L) is amended to read:

DFI-Sec 2.02(9)(L) ~~Any~~ An exemption under this subsection is available until October 11, 1999 for any transaction by the sponsor of a unit investment trust involving the resale of a share of beneficial interest in the trust that meets all of the following conditions:

1. The sponsor acquired the share of beneficial interest in the secondary market.

2. The share of beneficial interest had been sold in the secondary market by a public holder of the share after the initial public offering of shares by the trust had been completed.

ANALYSIS: As a result of the public hearing and comment process, the proposed repeal (in the Public Comment Draft of this SECTION) of this registration exemption rule under s. 551.23(18), Wis. Stats., (that applies to securities of a unit investment trust, a type of investment company) is withdrawn and the rule is restored, but with the addition of an amendment that provides an October 11, 1999 "sunset" date for effectiveness of the rule. The "sunset" provision is added to this rule for the same reason as set forth in the ANALYSIS to DFI-Sec 2.02(9)(a).

SECTION 15. DFI-Sec 2.04 is created 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., unless the security is registered or exempt from registration under ss. 551.22 or 551.23, Stats., until October 11, 1999, 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. If a completed Form NF as prescribed in 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., if the issuer files an amendment to its registration statement with the

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 securities and exchange commission unless the issuer files with the division a completed Form NF as prescribed in 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.

(2) With respect to a federal covered security referred to in s. 551.29(2), Stats., unless the security is registered or exempt from registration under ss. 551.22 or 551.23, 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.

(3) With respect to a federal covered security referred to in s. 551.29(3), Stats., that is a revenue obligation issued by a non-Wisconsin governmental issuer which, prior to the National Securities Market Improvement Act of 1996 would have required a filing with the division under s. 551.22(1)(b), Stats., unless the security is registered or exempt from registration under ss. 551.22 or 551.23, Stats., the issuer or a person acting on behalf of the issuer shall file with the division not later than the earlier of the first offer or sale in this state, a notice consisting of a $200 fee and which, in order to provide information about the offering for the division's database, may at the option of the issuer include a letter identifying the securities being offered, the aggregate dollar amount of the offering, the name of the governmental issuer, and the name

and address of the non-governmental industrial or commercial enterprise providing payment of the principal and interest on the security.

(4) With respect to a federal covered security referred to in s. 551.29(3), Stats., that is being exchanged by the issuer with its existing securityholders and which, prior to the National Securities Market Improvement Act of 1996 would have required a filing with the division under s. 551.23(12), Stats., unless the security is registered or exempt from registration under ss. 551.22 or 551.23, Stats., the issuer or a person acting on behalf of the issuer shall file with the division not later than the earlier of the first offer or sale in this state, a notice consisting of a $200 fee and a copy of each document relating to the offering filed under the securities act of 1933. If the issuer is not required to file documents relating to the offering under the securities act of 1933, in order to provide information about the offering and the issuer for inclusion in the division's database, the issuer at its option may include with the notice a letter identifying the issuer and its address, the securities being offered and the aggregate dollar amount of the offering.

ANALYSIS: This SECTION creates a new section of the securities rules (DFI-Sec 2.04) dealing specifically with the categories of "federal covered securities" created federally in NSMIA that are also dealt with for state securities law purposes in s. 551.29, Stats., in 1997 Wisconsin Act 316. Each subsection of 551.29, Stats., grants rulemaking authority to the Division to adopt rules regarding filing requirements relating to the categories of federal covered securities dealt with in the particular subsection.

The rules in DFI-Sec 2.04(1)(a) and (b) parallel the statutory notice filing provisions for investment company federal covered securities contained in ss. 551.29(1)(a), Stats., (for initial offerings) and (1)(b) (for amendment filings) which set forth the prescribed

materials to be filed and fees. Each of the rule subsections particularizes an option available to the issuer (referred to in each statutory section) which provides that copies of federally-filed documents need not be included with the filing with the Division if a completed Form NF [as prescribed in DFI-Sec 9.01(1)(d)] accompanies the filing with the Division. The rule also provides, however, that the Division may at a later time following such filing, require that copies of federally-filed documents be provided to the Division.

The rule in DFI-Sec 2.04(2) parallels the statutory notice filing provisions for Regulation D-Rule 506 federal covered security offerings contained in s. 551.29(2), Stats., with respect to the materials required to be filed, the fee, and the prescribed filing deadline.

The rule in DFI-Sec 2.04(3) is adopted under the rule-making authority granted to the Division under s. 551.29(3), Stats., to establish notice filing requirements – including a fee and any federally-filed documents – for categories of federal covered securities created under NSMIA as specified in section 18(b)(3) or (4) of the federal Securities Act of 1933. This rule applies solely to certain types of state/municipal governmental securities [which are included under Section 18(b)(4) as an exempt security in Section 3(a)(2) of the Securities Act of 1933]; namely, revenue obligations issued by a non-Wisconsin governmental issuer which, prior to NSMIA would have required a filing with the Division under s. 551.22(1)(b), Stats. The rule prescribes a required $200 notice filing fee and, because such governmental securities offerings do not have to file any documents federally, the rule also states that in order to provide basic information about the offering and the issuer for inclusion in the Division's database, the issuer has the

option of including with the notice a letter identifying the securities offered, the aggregate dollar amount of the offering, the name of the governmental issuer, and the name and address of the non-governmental industrial or commercial enterprise providing payment of the principal and interest on the security.

The rule in DFI-Sec 2.04(4) is adopted under the rule-making authority granted to the Division under s. 551.29(3), Stats., to establish notice filing requirements – including a fee and any federally-filed documents – for categories of federal covered securities created under NSMIA as specified in section 18(b)(3) or (4) of the federal Securities Act of 1933. This rule applies solely to exchange offers by securities issuers with their existing securityholders (which are included under Section 18(b)(4) as an exempt security in Section 3(a)(12) of the Securities Act of 1933). The rule prescribes a required $200 notice filing fee and a copy of each document relating to the offering filed under the Securities Act of 1933. Also, similar to rule DFI-Sec 2.04(3) above, the rule states that if the issuer does not have to file any documents relating to the offering under the Securities Act of 1933, in order to provide the Division with basic information about the offering and the issuer for inclusion in the Division's database, the issuer has the option of including with the notice a letter identifying the issuer and its address, the securities being offered and the aggregate dollar amount of the offering.

As a result of the public hearing and comment process, amendments were made to the rules in 2.04(1)(a),(2), (3) and (4) adding the phrase "unless the security is registered or exempt from registration under ss. 551.22 or 551.23, Stats." The added language

clarifies that, consistent with the amendment to sec. 551.21, Wis. Stats., under 1997 Wisconsin Act 316 [which provided that it is unlawful to offer or sell any security in Wisconsin unless either (i) the security is registered, or (ii) the security is exempt from registration under ss. 551.22 or 551.23, Stats., or (iii) the security is a federal covered security], the fact that a security is a type of "federal covered security" described in DFI-Sec 2.04(1),(2),(3) or (4) does not preclude the issuer from seeking registration or relying on an applicable registration exemption under the Wisconsin Uniform Securities Law. However, with reference to DFI-Sec 2.04(1)(a), a "sunset" date of October 11, 1999 is added for the same reason that an identical "sunset" was added to rules DFI-Sec 2.02(9)(a) and (9)(L), as described in the ANALYSIS to those rules.

SECTION 16. DFI-Sec 3.01(1)(a) is amended to read:

DFI-Sec 3.01(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 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 security is a face amount certificate registered under the investment company act of 1940 or~~ unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown; and

ANALYSIS: The amendment to this rule (which lists certain information to be included with a filing for registration by coordination under s. 551.25, Stats.) repeals the reference

to securities of a face amount certificate company (a type of investment company under the Investment Company Act of 1940) because under NSMIA, all investment company securities are designated as "covered securities" under Section 18(b)(2) of the Securities Act of 1933, thus preempting state securities statute and rule registration provisions.

SECTION 17. DFI-Sec 3.01(2) is repealed.

ANALYSIS: The repeal of this procedural rule under the securities registration by coordination section (which rule relates to registration of an indefinite amount of securities for certain categories of investment companies) is warranted for the following reasons: (1) Under NSMIA, all investment company securities are designated as "covered securities," thus preempting state securities statute and rule registration provisions (although registration or exemption can be required for non-payment of notice filing fees); (2) If the securities of an investment company are subject to registration in Wisconsin by application of s. 551.29(4), Stats., (in 1997 Wisconsin Act 316), as a result of non-payment of fees, the existing statutory provisions of s. 552.52(1)(b)1, Stats., (as amended by 1997 Wisconsin Act 316) serve to provide for an indefinite amount of securities to be registered.

SECTION 18. DFI-Sec 3.02(1)(h) is amended to read:

DFI-Sec 3.02(1)(h) The kind of securities and the amount to be offered ~~(which, in the case of redeemable securities of an open-end management company, unit investment trust and face amount certificate company, as defined in the investment company act of 1940, shall be indefinite)~~; the proposed offering price or the method by which it is to be computed; and

variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

ANALYSIS: This amendment deletes the references in the rule to several categories of investment companies because under NSMIA, all investment company securities are designated as "covered securities" under Section 18(b)(2) of the Securities Act of 1933, thus preempting state securities statute and rule regulation provisions.

SECTION 19. DFI-Sec 3.02(1)(m) is amended to read:

DFI-Sec 3.02(1)(m) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or equivalents, as currently in effect; 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 security is a face amount~~

~~certificate registered under the investment company act of 1940 or unless~~ the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown;

ANALYSIS: See ANALYSIS to DFI-Sec 3.01(1)(a).

SECTION 20. DFI-Sec 3.03(3) is amended to read:

DFI-Sec 3.03(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements under the securities act of 1933 that receives full review by the U.S. securities and exchange commission, shall not be subject to disclosure adequacy review or comment by the division. ~~A prospectus meeting the requirements of form N-1A or form S-6 and subsequent post effective amendments as filed under the securities act of 1933, or the investment company act of 1940, or both, by a registration applicant or an existing registrant shall not be subject to disclosure adequacy review or comment by the division.~~ If the offering is being made pursuant to use of either Rule 504 of Regulation D under the securities act of 1933 or rule 147 under section 3(a)(11) of the securities act of 1933, the form U-7 disclosure document as adopted by the North American Securities Administrators Association, Inc. may be used.

ANALYSIS: The amendment to this rule (relating to staff review of the disclosure adequacy of prospectuses contained in registration filings) deletes reference to prospectuses for investment company securities because under NSMIA, state securities administrators may not impose merit requirements or conduct a disclosure adequacy review of prospectuses for investment company securities.

SECTION 21. DFI-Sec 3.07(1) and (2) are amended to read:

DFI-Sec 3.07 EXTENSION OF REGISTRATION STATEMENTS. (1) Application for an extension of the offering period of a registration statement, except one relating to ~~redeemable securities issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or~~ securities of a finance company licensed under s. 138.09, Stats., shall be filed in the form prescribed by the division not less than 30 days prior to the end of one year from the effective date of the registration statement or an extended period of effectiveness for the registration statement, whichever is most recent. The application shall be accompanied by a prospectus updated in accordance with s. DFI-Sec 3.03(6), a balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of s. DFI-Sec 7.06, provided that if the date of any of the above financial statements is more than 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes) prior to the date of the extension of the registration statement, the statements shall be updated (which may be done without audit) to within the 120-day or 180-day requirement above. If no order specifying a different effectiveness period is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the division determines.

(2) A registration statement relating to ~~redeemable securities issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or~~ 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., if the issuer ~~complies with s. 551.52(1)(b), Stats., which may involve the filing of form RS-IC as referred to in s. DFI-Sec 9.01, and 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.

ANALYSIS: The amendments to these registration exemption rules (relating to extensions) do the following: (1) Delete the references at the beginning of subs. (1) and (2) to certain categories of investment companies because under NSMIA, all investment company securities are designated as "covered securities" under Section 18(b)(2) of the Securities Act of 1933, thus preempting state securities statute and rule registration provisions. (2) The second deletion in sub. (2) is necessary because as a result of the deletion in the first part of the subsection, the subsection relates only to the securities of finance company issuers.

SECTION 22. In the following rules, each reference therein to "qualified" is amended to read "licensed": DFI-Sec 5.01(4)(b), 5.01(5) and (7), 5.05(7) and (10).

ANALYSIS: The legislation in 1997 Wisconsin Act 316 contained a specific licensing requirement (in s. 551.31(3), Stats.) for representatives of investment advisers, replacing a "qualification" provision that had previously existed. This SECTION makes the appropriate amendment (changing the terminology from "qualified" to "licensed") in

those rule provisions specified in Chapter DFI-Sec 5 where that is the only amendment necessary.

SECTION 23. Chapter DFI-Sec 5 (title) is repealed and recreated to read:

CHAPTER DFI-SEC 5

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

ANALYSIS: This SECTION amends the Title of Chapter DFI-Sec 5 of the rules to reflect that its scope has been expanded as a result of enactment of 1997 Wisconsin Act 316 which provides authority to now regulate investment adviser representatives as licensees and establish notice filing and related procedures for certain federal covered advisers.

SECTION 24. DFI-Sec 5.01(1) is amended to read:

DFI-Sec 5.01 LICENSING PROCEDURE. (1) Applications for initial and renewal licenses ~~and qualifications~~ of investment advisers and ~~their~~ investment adviser representatives shall be filed on forms prescribed by the division in s. DFI-Sec 9.01 (1).

ANALYSIS: These technical amendments delete the reference in the rule to "qualification," and add language to have the rule apply to "investment adviser representatives" which is now a defined term as created in 1997 Wisconsin Act 316.

SECTION 25. DFI-Sec 5.01(3) is amended to read:

DFI-Sec 5.01(3) Unless waived under sub. (4), each applicant for an initial license as an investment adviser or ~~for qualification~~ as an investment adviser representative after ~~January 1, 1996~~ July 9, 1998, and each applicant whose application has not become effective by ~~January 1, 1996~~ July 9, 1998, is required to pass either of the following examinations with a grade of at least 70%:

ANALYSIS: These technical amendments delete the reference in the rule to "qualification" and substitute for the January 1, 1996 date therein, the effective date of 1997 Wisconsin Act 316 that contains amendments to the investment adviser and investment adviser representative licensing requirement.

SECTION 26. DFI-Sec 5.02(1) is amended to read:

DFI-Sec 5.02 NET CAPITAL REQUIREMENT. (1) ~~Every~~ Except as required under sub. (2), every investment adviser whose principal office is in this state that collects advisory fees 6 months or more in advance or collects more than $2,000 in advance fees for preparing a financial plan shall maintain net capital of not less than $5,000, which shall be in the form of cash or securities or other liquid assets as determined by the division.

ANALYSIS: Under NSMIA, no state can impose regulations establishing net capital, bonding, or books and records requirements on an investment adviser beyond those required under the laws of the state in which the investment adviser maintains its principal place of business. Accordingly, this existing net capital rule subsection is amended to provide that it is applicable only to investment advisers having a principal office in Wisconsin. The new, separate, net capital rule created below in DFI-Sec 5.02(2) for investment advisers having custody of client funds or securities similarly is made

applicable only to investment advisers having a principal office in Wisconsin. The net capital requirement of $35,000 or 1% of assets under management is taken from a proposed Model Rule on this subject [§ 202(d)-1(a)(1)] developed by a North American Securities Administrators Association Working Group on investment adviser capital and bonding requirements..

SECTION 27. DFI-Sec 5.02(2) is renumbered DFI-Sec 5.02(3).

ANALYSIS: This SECTION moves existing rule 5.02(2) to become sub. (3) to make room for a newly-created separate net capital rule that needs to follow existing sub. (1) in sequence.

SECTION 28. DFI-Sec 5.02(2) is created to read:

DFI-Sec 5.02(2) Every investment adviser whose principal office is in this state that has custody of client funds or securities shall maintain a minimum net capital of $35,000 or 1% of the adviser's assets under management, whichever is greater.

ANALYSIS: See the ANALYSIS to SECTION 26.

SECTION 29. DFI-Sec 5.02(3) is renumbered DFI-Sec 5.02(6) and as renumbered is amended to read:

DFI-Sec 5.02(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.

ANALYSIS: Another amendment adding NSMIA-required language to provide that the substantive regulatory provisions in this existing rule relating to investment adviser net capital requirements (this rule grants exemption/waiver authority to the Division) can only be imposed by a state on those investment advisers whose principal office is in that particular state.

SECTION 30. DFI-Sec 5.02(4) and (5) are created to read:

DFI-Sec 5.02(4) The requirements of DFI-Sec 5.02(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 licensed 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 capital" 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, if the investment adviser is a partnership.

ANALYSIS: These two new rules relating to investment adviser net capital requirements do the following: (1) in sub. (4), as revised as a result of public comments, adopt language contained in NSMIA which provides that for investment advisers having a principal office in a state other than Wisconsin, the net capital requirements in DFI-Sec 5.02(1) and (2) do not apply, provided that the adviser is licensed in such state and is in compliance with that state's minimum net capital requirements, if any. Thus for non-Wisconsin based advisers, if an adviser is neither licensed in, nor in compliance with, its home-state net capital requirement, the Wisconsin net capital requirement is applicable; (2) in sub. (5), adopt a definition of "net capital" taken from a proposed NASAA Model Rule [§202(d) - 1(c)] developed by a North American Securities Administrators Association Working Group on investment adviser capital and bonding requirements.

SECTION 31. DFI-Sec 5.03(1) is amended to read:

DFI-Sec 5.03(1) Every licensed investment adviser whose principal office is in this state shall prepare and keep current at ~~its principal~~ that office, or at a designated office located in ~~the United States~~ 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:

ANALYSIS: This SECTION adds NSMIA-required language to provide that substantive state regulatory provisions relating to investment adviser books and records requirements can only be imposed by a state on those investment advisers whose principal office is in that particular state.

SECTION 32. DFI-Sec 5.03(2), (3), (4), (5) and (7) are renumbered DFI-Sec 5.03(3), (4), (5), (6) and (8), respectively, and DFI-Sec 5.03(5) and (6) as renumbered, are amended to read:

DFI-Sec 5.03(5) Every branch office as defined in s. DFI-Sec 1.02 (7) (b), of a licensed 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) and (b).

(6) The records required in sub. ~~(4)~~ (5) 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.

ANALYSIS: This SECTION does the following: (1) amends sub. (5) by adding NSMIA-required language to provide that substantive regulatory provisions in the existing rule relating to investment adviser books and records requirements (this rule requires branch offices of licensed broker-dealers to prepare and keep current certain records) can only be imposed by a state on those investment advisers whose principal office is in that particular state; (2) amends sub. (6) by renumbering the rule cross-referenced in line 1 to reflect its renumbering [from sub. (4) to sub. (5)] in the title of this SECTION.

SECTION 33. DFI-Sec 5.03(2) is created to read:

DFI-Sec 5.03(2) Each licensed 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):

(a) 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.

(b) A separate ledger 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.

(c) Copies of confirmations of all transactions effected by or for the account of any client.

(d) 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.

ANALYSIS: This new rule establishes an additional books and records requirement for those investment advisers whose principal office is in Wisconsin and who also have custody or possession of securities or funds of any client. Prior to enactment of 1997 Wisconsin Act 316, Wisconsin had prohibited (under sec. 551.44, Wis. Stats.) investment advisers from having custody of any client funds or securities. However, because the federal securities laws do not prohibit investment advisers from having custody of clients funds or securities, and Section 222(a) of NSMIA provides that state's investment adviser requirements cannot conflict with federal provisions, the prohibition formerly in sec. 551.44, Wis. Stats., was repealed in 1997 Wisconsin Act 316. The new rule specifies the

kinds of records that licensed investment advisers having custody of customer funds and securities must maintain – which listing of records corresponds to the records specified in a proposed Model Rule on this subject [§ 202(d)-1(b)] developed by a North American Securities Administrators Association Working Group on investment adviser capital and bonding requirements.

SECTION 34. DFI-Sec 5.03(6) is renumbered DFI-Sec 5.03(7), and as renumbered, is repealed and recreated to read:

DFI-Sec 5.03(7) The requirements of DFI-Sec 5.03(1) to (6) 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 licensed in that state and is in compliance with that state's books and records requirements, if any.

ANALYSIS: This SECTION, which is revised as a result of public comment, adds NSMIA-required language [similar to that contained in the net capital rule in DFI-Sec 5.02(4) above] to provide that for investment advisers having a principal office in a state other than Wisconsin, the books and recordkeeping requirements in DFI-Sec 5.03(1) to (6) do not apply, provided that the adviser is licensed in such state and is in compliance with that state's books and records requirements, if any. Thus for non-Wisconsin based advisers, if the adviser is neither licensed in, nor in compliance with, its home-state books and recordkeeping requirement, the Wisconsin requirements are applicable.

SECTION 35. 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 whenever the net capital of the investment adviser is less than is required under s. DFI-Sec 5.02(1) or (2), specifying the amount of net capital on the date of the notice and the steps the investment adviser has taken or will take to come into compliance.

ANALYSIS: The amendment to this reporting rule (regarding net capital deficiencies) adds a cross-reference to new rule DFI-Sec 5.02(2) created above which adds an alternative net capital requirement for any investment adviser with its principal office in Wisconsin that has custody of client funds or securities.

SECTION 36. DFI-Sec 5.04(7) and (8) are created to read:

DFI-Sec 5.04(7) Each investment adviser shall file annually with the division as part of its license renewal application, a copy of Schedule I to Form ADV confirming its regulatory status with the U.S. securities and exchange commission and the dollar amount, if any, of assets under management.

(8) Each federal covered adviser that has filed a notice with the division under s. 551.32(1m)(a), Stats., shall file a copy of its Schedule I to Form ADV with the division at the same time it makes its filing of that schedule with the U.S. securities & exchange commission.

ANALYSIS: This SECTION creates two reporting rules relating to the following: (1) a requirement in sub. (7) that each investment adviser file annually with the Division incident to its license renewal application, a copy of Schedule I to Form ADV confirming its regulatory status with the U.S. Securities and Exchange Commission and the dollar

amount, if any, of assets under management. Such annual information is necessary because, under NSMIA, if an investment adviser has more than $25 million of assets under management (unless it utilizes the "$5 million window" between $25 million and $30 million allowed by federal rules), it becomes subject to federal regulation and triggers the definition of "federal covered adviser" in s. 551.02(4)(g), Stats., in 1997 Wisconsin Act 316 with the result that the investment adviser no longer would be subject to the Wisconsin investment adviser licensing requirements. (2) a requirement in sub. (8) that each "federal covered adviser" (as defined in s. 551.02(4)(g), Stats., in 1997 Wisconsin Act 316) required to file a notice under s. 551.32(1m)(a), Stats., must file with the Division a copy of the Schedule I to Form ADV contemporaneously with the adviser's filing of that schedule with the U.S. Securities and Exchange Commission. Such annual information is necessary to enable the Division to verify that the federal covered adviser continues to be subject to federal regulation and not subject to state licensure under the Wisconsin Uniform Securities Law. The time for making the filing is contemporaneous with the adviser's filing the Schedule I with the U.S. Securities and Exchange Commission (rather than incident to the adviser making its annual renewal notice filing under s. 551.32(1m)(b), Stats., which is on a different annual date than its federal filing) so that the adviser will not have to keep track of a separate reporting date for the Wisconsin filing.

SECTION 37. DFI-Sec 5.05(11)(d)3. is amended to read:

DFI-Sec 5.05(11)(d)3. Establishment of a system that ensures that all books and records required by rule or order under ch. 551, Stats., are properly maintained.~~, and that precludes the~~

~~investment adviser from taking or having custody of customer funds or securities as prohibited under s. 551.44, Stats.~~

ANALYSIS: The amendment to this Rule of Conduct provision deletes language relating to the statutory prohibition formerly contained in s. 551.44, Stats., (precluding investment advisers from having custody of client funds or securities) because that statutory prohibition was repealed in 1997 Wisconsin Act 316.

SECTION 38. DFI-Sec 5.05(12)(intro.) is amended to read:

DFI-Sec 5.05(12)(intro.) No investment adviser or its investment adviser representative, in connection with a telephone or electronic solicitation, shall:

ANALYSIS: The amendment to this Rule of Conduct provision (relating to telephone or electronic solicitation of persons to become clients) adds language making the rule applicable to investment adviser representatives (as well as investment advisers) because 1997 Wisconsin Act 316 makes investment adviser representatives "licensees" that are subject to applicable licensing provisions of Chapter DFI-Sec 5. As a result of comments received, the word "its" was added before "investment adviser representative" to limit applicability of the rule to representatives of state-licensed investment advisers in order to be consistent with NSMIA.

SECTION 39. DFI-Sec 5.06 (intro.) is amended to read:

DFI-Sec 5.06 **PROHIBITED BUSINESS PRACTICES.** ~~The~~ Except as otherwise provided in sub. (13), the following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an investment adviser or an investment adviser

representative under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified in this section:

ANALYSIS: In similar fashion to the previous SECTION, the amendment to the introductory portion of the Prohibited Business Practices section of rules adds language making the section applicable to investment adviser representatives (as well as investment advisers) because 1997 Wisconsin Act 316 makes investment adviser representatives "licensees" that are subject to applicable licensing provisions of Chapter DFI-Sec 5. In a revision made to the rule as a result of the public hearing and comment process, because of the limitations on state regulatory authority imposed by NSMIA, language was added to make applicability of the various subsections of the Prohibited Business Practices section subject to the limitations in a new rule added as DFI-Sec 5.06(13).

SECTION 40. DFI-Sec 5.06(12) is created to read:

DFI-Sec 5.06(12) Taking or having custody of client funds or securities without being in compliance with rule 206(4)-2 of the investment advisers act of 1940 and the net capital requirement in s. DFI-Sec 5.02(2).

ANALYSIS: As a result of the amendment to s. 551.44, Stats., in 1997 Wisconsin Act 316 (which removed language that previously had prohibited investment advisers from having custody of client funds or securities), this rule creates as a Prohibited Business Practice, the failure by an investment adviser having custody of client funds or securities to comply with either the federal rule requirements regarding such activity or with the Wisconsin net capital rule relating to such activity.

SECTION 41. DFI-Sec 5.06(13) is created to read:

DFI-Sec 5.06(13) The subsections of DFI-Sec 5.06 shall apply to an investment adviser representative of a federal covered 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.

ANALYSIS: This new rule is added as a result of the public hearing and comment process involving the proposed amendments to the Prohibited Business Practices provision of DFI-Sec 5.06(intro.) treated and discussed above. This rule reflects limitations imposed by NSMIA on state regulatory authority over federal covered advisers and their representatives – namely, limiting state investigation and enforcement authority to matters involving "fraud" or "deceit."

SECTION 42. DFI-Sec 5.07 (title), (1) and (2) are amended to read:

DFI-Sec 5.07 LICENSE AND NOTICE FILING PERIOD. (1) The license of an investment adviser expires April 30 of each year. Each licensed investment adviser seeking renewal of its license shall file with the division an application for renewal not later than March 31 prior to the expiration of its license. ~~The qualification of an investment adviser representative expires on the same day as that of the investment adviser which the person represents. The division may by order limit the period of, or specify an earlier expiration date for, any license.~~

(2) The ~~qualification~~ license of an investment adviser representative expires on the same day as the license of the investment adviser or the notice filing of the federal covered adviser

which the person represents. The license of an investment adviser representative is not effective during any period when the investment adviser which that person represents is not licensed, or when the federal covered 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 under ch. 551, Stats., or a federal covered adviser that has filed a notice with the division under s. 551.32(1m)(a), Stats.

ANALYSIS: These amendments do the following: (1) add "notice filing" to the title of the section to reflect the creation in 1997 Wisconsin Act 316 of notice filing procedures for certain federal covered advisers; (2) delete the last sentence in sub. (1) relating to the expiration date for the "qualification" of an investment adviser representative because 1997 Wisconsin Act 316 provides for licensure of investment adviser representatives such that the subject matter of that last sentence in (1) can be transferred to sub. (2); and (3) add language in sub. (2) that (i) reflects the "licensure" of investment adviser representatives, (ii) transfers the "expiration date" provision from the last sentence of sub. (1) to sub. (2), (iii) adds a reference at the end of the subsection to federal covered advisers that have filed a notice with the Division under s. 551.32(1m)(a), Stats., because investment adviser representatives can be licensed in Wisconsin to represent such federal covered advisers, and (iv) as a result of the public comment process, adds appropriate language to cover expirations for representatives of a federal covered adviser.

SECTION 43. DFI-Sec 5.07(3) and (4) are created to read:

DFI-Sec 5.07(3) The division may by order limit the period of, or specify an earlier expiration date for, any license.

(4) The notice filing of a federal covered adviser that has filed a notice with the division under s. 551.32(1m)(a), Stats., expires April 30 of each year. Each federal covered adviser seeking renewal of its notice filing shall file with the division the form prescribed in s. DFI-Sec 9.01(1)(b)12. not later than March 31 prior to the expiration of its notice filing.

ANALYSIS: This SECTION does the following: (1) creates in sub. (3) a separate rule taken from the last sentence of current rule DFI-Sec 5.07(1) providing authority for the Division to limit the period of, or specify an earlier expiration date for, any license; (2) creates in sub. (4) a rule prescribing a uniform expiration date for notices filed with the Division by federal covered advisers, as well as a uniform renewal filing deadline date.

SECTION 44. DFI-Sec 5.08(2) is amended to read:

DFI-Sec 5.08(2) An application for withdrawal from the status of a ~~qualified~~ licensed investment adviser representative shall be filed ~~by the investment adviser which the person represents~~ pursuant to s. 551.31(4)(c), Stats., within 15 days of the termination of the representative's employment on Form U-5 prescribed by the division.

ANALYSIS: This SECTION does the following: (1) substitutes "licensed" for "qualified" in line (1); and (2) substitutes a cross-reference to s. 551.31(4)(c), Stats., created in 1997 Wisconsin Act 316, because the two subsections in (4)(c) differ in prescribing who is responsible for filing termination/withdrawal notices for investment adviser representatives with the Division.

SECTION 45. DFI-Sec 5.09 is amended to read:

DFI-Sec 5.09 DENIAL, SUSPENSION, REVOCATION AND CENSURE. Any order denying, suspending or revoking the license of an investment adviser or an investment adviser representative or censuring a licensee may include such other sanctions as the division finds appropriate.

ANALYSIS: In similar fashion to amendments in SECTION 39 to DFI-Sec 5.06 Prohibited Business Practices, this amendment adds language making the Denial, Suspension and Revocation section (DFI-Sec 5.09) applicable to investment adviser representatives (as well as investment advisers) because 1997 Wisconsin Act 316 makes investment adviser representatives "licensees" that are subject to applicable licensing provisions of Chapter DFI-Sec 5.

SECTION 46. DFI-Sec 7.01(7)(a) is amended to read:

DFI-Sec 7.01(7)(a) Delinquent filing of broker-dealer or investment adviser license renewal application or federal covered adviser renewal notice filing.....$100.

ANALYSIS: The amendment extends applicability of this rule (prescribing a $100 delinquency fee for broker-dealers or investment advisers that are not timely in filing license renewals with the Division) to federal covered advisers that are not timely in filing their renewal notice required under s. 551.32(1m)(b), Stats., as created in 1997 Wisconsin Act 316. Under Section 307(b) of NSMIA, state filing-related fees applicable to investment advisers that were in effect prior to enactment of NSMIA are preserved.

SECTION 47. DFI-Sec 7.01(7)(d) is amended to read:

DFI-Sec 7.01(7)(d) Delinquent filing of notice of broker-dealer, ~~or~~ investment adviser or federal covered adviser branch office ~~registration~~ opening, renewal, relocation or closing.....$100.

ANALYSIS: The amendment extends applicability of this rule (prescribing a $100 delinquency fee for broker-dealers and investment advisers that are not timely in providing notice of branch office openings, closings or relocations) to federal covered advisers. Under Section 307(b) of NSMIA, state filing-related fees applicable to investment advisers that were in effect prior to enactment of NSMIA are preserved. In a revision to the rule as a result of the public comment process, the term "registration" is changed to "opening" because under NSMIA, federal covered advisers are not subject to state "registration" authority.

SECTION 48. DFI-Sec 7.01(7)(f) is amended to read:

DFI-Sec 7.01(7)(f) Delinquent filing of broker-dealer agent, ~~or~~ agent for issuer ~~license renewal,~~ or ~~of~~ investment adviser representative license renewal.....$100.

ANALYSIS: The amendment to this delinquent filing fee rule (which includes applicability to investment adviser representatives) adds language to reflect that as a result of 1997 Wisconsin Act 316, investment adviser representatives are now "licensed."

SECTION 49. DFI-Sec 9.01(1)(b)(intro.) is amended to read:

DFI-Sec 9.01(1)(b) Licensing application, notice filing, and reporting forms:

ANALYSIS: This new SECTION is added as a technical change to the licensing Forms rule subsection in DFI-Sec 9.01(1)(b) as a result of the public hearing and comment

process which resulted in the amendment made in Forms rule DFI-Sec 9.01(1)(b)(12). This amendment reflects that as a result of NSMIA, federal covered advisers are subject to a notice filing procedure (under s. 551.32(1m)(a) or (b), Wis. Stats.), not a license application process.

SECTION 50. DFI-Sec 9.01(1)(b)12. and 13. are amended to read:

DFI-Sec 9.01(1)(b)12. ADV. Uniform application for investment adviser ~~registration~~ license, and the form that shall be used by a federal covered adviser making an initial or renewal filing under s. 551.32(1m)(a) or (b), Stats.

13. IAR(WI). Application for renewal of investment adviser ~~license and qualification of~~ and investment adviser ~~representatives~~ representative license.

ANALYSIS: The amendments to these two licensing-related Forms rules do the following: (1) correct the terminology used in subd. (1)(b) 12 by changing the current language investment adviser "registration" (federal terminology) to read investment adviser "license" and thereby reflect the Wisconsin state licensing status for investment advisers; (2) Add language to subd. (1)(b)12. as a result of the public comment process to provide that federal Form ADV shall be the form used by a federal covered adviser making an initial or renewal filing under s. 551.32(1m)(a) or (b), Wis. Stats., because under NSMIA, states may not require federal covered advisers to utilize state-created forms. Consequently, proposed Form IAN(WI) in DFI-Sec 9.01(1)(b)20 of the Public Comment Draft form of the rules –which was proposed as a new, state-created form required to be used by federal covered advisers--was withdrawn. As a result, all notice filings in Wisconsin by federal covered advisers will be made using federal Form ADV

which will enable the Division to have complete Form ADV information for each filer (rather than providing for use of the state form as an alternative which would result in the Division receiving filings with differing informational content); and (3) substitute in subd. (1)(b) 13 the terminology "licensed" for "qualified" reflecting the licensing requirement for investment adviser representatives created under 1997 Wisconsin Act 316.

SECTION 51. DFI-Sec 9.01(1)(b)20. is created to read:

DFI-Sec 9.01(1)(b)20. ADV-W. Application for withdrawal of investment adviser license.

ANALYSIS: This new licensing-related Form rule designates Form ADV-W as the form to be used by investment advisers when withdrawing their license in Wisconsin. As a result of the public hearing and comment process, the proposed Form IAN(WI) that had been contained as proposed subd. 20 in this Section of the Public Comment Draft of these rules was withdrawn for the reasons discussed in the ANALYSIS to DFI-Sec 9.01(1)(b)12.

SECTION 52. DFI-Sec 9.01(1)(d) is created to read:

DFI-Sec 9.01(1)(d). NF. Uniform investment company notice filing.

ANALYSIS: This SECTION lists newly-created Form NF as the designated form for use by an investment company when making a notice filing as provided for in s. 551.29(1)(a), Stats. (created in 1997 Wisconsin Act 316) and rule DFI-Sec 2.04(1)(a) to offer its

securities in Wisconsin, or to make a filing relating to an amendment under s. 551.29(1)(b), Stats., and rule DFI-Sec 2.04(1)(b).

* * * *

The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2)(intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED this _____ day of _____, 1998.

(SEAL)

_____
PATRICIA D. STRUCK
Administrator
Division of Securities

OMB APPROVAL	
OMB Number:	3235-0313
Expires:	October 31, 1997
Estimated average burden hours per response	1.00

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM ADV-W

NOTICE OF WITHDRAWAL FROM REGISTRATION AS INVESTMENT ADVISER
Pursuant To Rule 17 CFR 275.203-2

SEC USE ONLY

Read instruction sheet at end of Form before preparing form. ***Please print or type***

1. Full name of registrant: *(If individual, state last, first, middle name)* Soc. Sec./IRS Tax No.

2. Name under which business is conducted, if different from above:

3. Address of actual location of principal place of business:
   No. and street *City* *State* *Zip Code*

4. State the reasons in full for withdrawal from registration:

SEC USE ONLY

5. Does registrant have custody or possession of any funds or securities of clients? Yes ☐ No ☐
   If answer is "yes," furnish all of the following information on funds or securities of clients in custody or possession of registrant:
   (a) Amount of funds $ _____
   (b) Market value of securities $ _____
   (c) Arrangement made for return of funds and securities.

6. Does registrant owe any money to any client for the unexpired portion of prepaid subscription or other fees for investment advisory services or publications, or owe money to any client for any reason other than as stated in answer to question 5? Yes ☐ No ☐
   If answer is "yes," furnish all of the following information:
   (a) Amount of money owed $ _____
   (b) Arrangements made for the payment of the money owed.

DO NOT WRITE BELOW THIS LINE ..... FOR SEC USE ONLY

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

7. Has registrant assigned any of its investment advisory contracts to another person? Yes ☐ No ☐

If answer is "yes," furnish all of the following information:

(a) Name and business address of the person to whom the contracts were assigned

(b) Did registrant obtain the consent of each client prior to the assignment of his contracts? Yes ☐ No ☐
If answer is "yes," attach a copy of communication sent to clients to obtain their consent.

(c) What alternative was provided with respect to those clients who do not consent to the assignment of their contract?

8. Is registrant involved in any legal action or proceeding? Yes ☐ No ☐
If so, furnish complete information with respect to each.

9. Are there any unsatisfied judgments or liens against registrant? Yes ☐ No ☐
If so, furnish complete information with respect to each.

10. If the answer was "yes" to any questions in paragraphs 5, 6, 7, 8 or 9 above, attach a statement of financial condition in such detail as will disclose the nature and amount of assets and liabilities and the net worth of registrant as of a date within 10 days of filing (securities of registrant or in which registrant has an interest must be listed in a separate schedule at market price, if any; and if no current independent market exists the basis upon which value has been assigned should be stated).

11. (a) Furnish the name and address of the person who has or will have custody or possession of registrant's books and records which are required to be preserved pursuant to Rule 204-2 under the Investment Advisers Act of 1940 (17 CFR 275.204-2):

(b) Furnish the address of the place where these books and records will be located:

12. EXECUTION: The registrant submitting this Form and its attachments and the person executing it represent hereby that it, and all materials filed in connection with it are true, correct and complete, and contain all required information.

Registrant also consents hereby to make the books and records required to be preserved by Rule 204-2 under the Investment Advisers Act of 1940 (17 CFR 275.204-2) available for examination by authorized representatives of the Securities and Exchange Commission during the period the rule requires these books and records to be preserved; and hereby authorizes any person having custody or possession of these books and records to make them available.

Dated this _____ day of _____, 19_____

_____
(Name of sole proprietorship, partnership, corporation, or other form of business organization)

_____
(Manual signature of sole proprietor, general partner, principal officer or managing agent)

_____
(Title)

— ATTENTION —

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS CONSTITUTE FEDERAL CRIMINAL VIOLATIONS
(See 18 U.S.C. 1001 and 15 U.S.C. 80b-7, 80b-17)

INSTRUCTIONS TO FORM NF

Form NF should be used for investment company initial filings, renewals, amendments and sales reports. This form should be used for all filing options, including definite and indefinite filings.

ITEM 1. Name of Issuer: State the name of the investment company for which the notice filing is being made. Do not use the name of the broker-dealer or distributor.

ITEM 3. Amendment Filings: Provide the applicable information. However, it may not be necessary to complete the entire form. Amendments include changes in the correspondent or fund name or a new fiscal year end. Changes such as reorganizations should be reported under "Other", with a written explanation. If in doubt about the proper category, use "Other" and provide an explanation.

ITEM 4. Description of Securities: This information should be provided at the level necessary in the given state. For example, if the state is a "trust level" state, portfolio and class information may not be required. A separate Form NF should be filed for each portfolio or class, to the extent required by the given state. Attach a list of all portfolios or classes for "trust level" states. For states whose fees are based on the prospectus, a separate Form NF should be filed for each prospectus and should include a list of all securities listed in the prospectus.

ITEM 6

CIK number (EDGAR): Please provide the Central Index Key Number that will cross-reference the SEC filing.

Federal ID Numbers and SEC Registration Numbers: Federal identification numbers are only available for the fund or trust. Provide the Federal ID No. and SEC Registration No. if filing in a jurisdiction that requires these numbers.

Fiscal Year: Fiscal year information is not required for unit investment trusts, since the filing period runs concurrently with SEC effectiveness.

ITEM 7. Notice Period: The notice period is established by law, administrative regulation or policy in some jurisdictions. As a result, one or more of the three options provided on the form may not be available in each jurisdiction. In addition, if the issuer elects to begin the notice filing period on the date of SEC effectiveness, the notice period will end on the date that a renewal filing is required.

ITEM 12. Uniform Consent to Service of Process: The uniform consent to service of process form is separate from the Notice Filing Form (Form NF). Issuers shall use the Uniform Consent to Service of Process Form (Form U-2).

PROSPECTUS AND STATEMENT OF ADDITIONAL INFORMATION. In some jurisdictions, you may be required by law, administrative regulation or policy to file the Form NF with a prospectus and/or statement of additional information.

UNIFORM INVESTMENT COMPANY NOTICE FILING

Please Read Instructions Prior To Filling Out Form **State File No.** _____

Notice to the State/Commonwealth of _____

1. Name of Issuer _____

_____

2. Address _____

_____

3. Type of Filing: (check all that apply)

[ ] Open-end Mutual Fund [ ] Unit Investment Trust [ ] Closed-end Mutual Fund
[ ] Initial Filing [ ] Renewal Filing [ ] Amendments [ ] Exemption Filing
[ ] Termination [ ] Withdrawal [ ] Sales Report [ ] Increase Dollar Amount
[ ] Other (specify) _____
For name changes, provide former name: _____
_____
For amendments, specify nature of the change(s): _____

4. Description of Securities: _____
Name of Fund _____
_____
_____
Portfolio(s) _____
_____
_____
Class(es) _____
_____
_____
Fiscal Year End of the issuer (if applicable) _____
Are all of the securities described on this form offered in one prospectus? Yes [ ] No [ ]

5. Contact Person:

Name _____ Firm _____
Address _____
_____
City _____ State _____
ZIP _____ Telephone _____
FAX _____ E-Mail _____

6. CIK# (EDGAR) _____ **Federal ID# (if applicable)** _____

Broker-Dealer _____ **SEC Registration No. (if applicable)** _____
Broker Dealer's CRD No. _____ **State of Incorporation/Charter** _____

7. [ ] **Notice Period: Beginning Date:**___/___/___ **Ending Date:** ___/___/___
   [ ] **The issuer elects to have its notice filing made effective upon filing.**
   [ ] **The issuer elects to have its notice filing period begin with SEC effectiveness and thereby agrees to provide the above state prompt notice of such effectiveness.**

8. **Notice Fee: $** _____ [ ] **No Filing Fee Required**
   Sales Report Fee (if applicable) $ _____
   Other Fee $ _____ **Explain** _____

9. **To determine the basis used for calculating the filing fee, provide the following:**
   [ ] **Indefinite Amount** [ ] **Definite Amount $**_____
   [ ] **Exemption Filing** [ ] **Net Assets: $**_____

10. **For filings to increase the dollar amount of securities reported during the notice period, provide the following:**
    (1) **Previous Amount of Securities** _____
    (2) **Amount of Increase** _____
    (3) **Cumulative Amount of Securities**_____

11. **SALES REPORT [To the extent not applicable, place N/A in the blank(s)]**

    Period Covered: Beginning date: ___/___/___ **Ending:** ___/___/___
    Balance at beginning of period $ _____
    Increases during period $ _____
    Amount available for sale $ _____
    Sales during the period $ _____
    Unsold balance at end of period $ _____

12. **UNIFORM CONSENT TO SERVICE OF PROCESS (select one)**
    1. [ ] **Was previously filed with this state with respect to the issuer of the securities covered by this notice and is incorporated by reference**
    2. [ ] **Is attached.**
    3. [ ] **Not Applicable (explain):** _____

13. SIGNATURES

The undersigned under penalties of perjury certifies that s/he has executed this Uniform Investment Company notice on behalf of, and with the authority of the issuer. The undersigned and the issuer represent that the information and statements contained in the notice filed, are current, true and complete to the best of his or her knowledge, information and belief and that any documents submitted with the notice are true copies of the originals, and that the securities covered by this Notice are Covered Securities as defined by Section 18(b)(2) of the Securities Act of 1933.

Dated this ____ day of _____, _____
Month Year

For: _____ By: _____

Name of Issuer Signature of Authorized Agent of Issuer

_____ _____

Print Name Title of Agent for Issuer

The filing of this notice constitutes a binding agreement by the above-named issuer and under the laws of the jurisdiction in which this Form is filed, that upon receipt of a request from such jurisdiction, the issuer will promptly provide a copy of its current prospectus, and/or statement of additional information, and/or any other document, if any, as filed with the Securities and Exchange Commission.

REPORT PREPARED BY THE
DIVISION OF SECURITIES, DEPARTMENT OF FINANCIAL INSTITUTIONS
RELATING TO PROPOSED FINAL FORM OF AMENDMENTS TO
THE RULES OF THE DIVISION OF SECURITIES

(a) Statement Explaining Need for Proposed Rules

These proposed permanent rules are being promulgated to be in place upon the expiration of identical emergency rules that were issued by the Division of Securities and became effective July 9, 1998 for the purpose of implementing statutory changes to the Wisconsin Uniform Securities Law contained in recently-enacted legislation. The legislation, 1997 Wisconsin Act 316 which became effective July 9, 1998, made a number of changes to the Wisconsin Securities Law, principally to conform to changes required under federal legislation in the National Securities Markets Improvement Act of 1996 ("NSMIA").

NSMIA preempted state securities law regulation in two principal areas: (1) prohibiting state securities registration and exemption requirements from being applicable to categories of so-called "federal covered securities," but permitting states to establish certain notice filing requirements (including fees) for such "federal covered securities;" and (2) prohibiting state securities licensing requirements from being applicable to certain investment advisers meeting criteria to qualify as a "federal covered adviser;" but permitting states to establish certain notice filing requirements (including fees) for those federal covered advisers that have a place of business in Wisconsin and more than 5 Wisconsin clients.

The legislation in 1997 Wisconsin Act 316 established notice filing requirements for the various categories of "federal covered securities" as well as for "federal covered advisers," and in addition, established statutory requirements for the licensing of "investment adviser representatives" (who previously were subject only to a qualification" process in Wisconsin).

The proposed permanent rules will replace the emergency rules that, in the following respects, implemented the statutory changes contained in 1997 Wisconsin Act 316:

(1) Defined all substantive terms contained in the definition of "investment adviser representative."

(2) Set forth the Wisconsin filing requirements for the various categories of "federal covered securities" in sec. 551.29, Wis. Stats., including for investment company securities offerings, offerings under Rule 506 of Regulation D of the Securities Act of 1933, and certain types of securities offerings by non-Wisconsin state or municipal governmental issuers.

(3) Repealed several rules that either prescribed securities registration procedures or provided registration exemptions for investment company securities because they are a category of "federal covered securities" under NSMIA, thus preempting state securities registration and

exemption requirements.

(4) Amended various licensing procedural rules to have them apply to license applications filed on behalf of investment adviser representatives as a new category of licensee in Wisconsin.

(5) Amended various prohibited business practice rules to have them apply to investment adviser representatives as a new category of licensee in Wisconsin.

(6) Created rules particularizing the Wisconsin notice filing procedure for "federal covered advisers" whose primary regulator is the U.S. Securities and Exchange Commission.

(7) Created and amended certain licensing procedural and operational rules applicable to Wisconsin state-only licensed investment advisers whose principal office is in Wisconsin.

(8) Amended several broker-dealer licensing and operational requirements – relating to such areas as net capital, bonding and certain record-keeping provisions – to make them subject to the preemptive limitations imposed under NSMIA on state regulation in those areas.

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

****

(b) Explanation of Modifications Made as a Result of the Public Hearing and Comment Letter Process

- As a result of the public hearing and comment process, modification language was added to the proposed rule in DFI-Sec 1.02(7)(b) defining "branch office" to provide that the rule is applicable to federal covered advisers only to the extent that the federal covered adviser is required to make a filing under s. 551.32(1m)(a), Wis. Stats. Section 307(b) of NSMIA allows states to continue receiving filing and licensing fees in effect at the time NSMIA was enacted (notwithstanding the other amendments made by NSMIA). The revision is necessary to eliminate an anomalous situation that otherwise would occur under the rule where a federal covered adviser that would not be subject to the basic filing requirement (with a prescribed $200 fee) under sec. 551.32(1m)(a) [because it qualified for the filing exclusion under sec. 551.31(4m)(a)] would be subject to the $30 branch office filing fee under sec. 551.52(2), Wis. Stats.

- As a result of the public hearing and comment process, several modifications were made to DFI-Sec 1.02(14) that contains several defined terms for purposes of the definition of "investment adviser representative" in 551.02(7m)(a), Wis. Stats.: (i) the language in para. (b) (defining "excepted person") was changed from a recitation of the text of federal rule 203A-3(a)3(i) under the Investment Advisers Act of 1940 to instead be a cross-reference to that federal rule (which was recently amended effective August 31, 1998); (ii) "percentage specified" became a new par. (d) as a result of being moved from its Public Comment Draft form [as DFI-Sec 1.02(16)] following the recommendation of the Legislative Council Rules Clearinghouse. The rule establishes 10% as the percentage of clients of a supervised person "who are natural persons that are not excepted persons", which is the same percentage used in federal rule 203A-3(a)(1) [as amended effective July 8, 1997] under the Investment Advisers Act of 1940.

- As a result of the public hearing and comment process, rule DFI-Sec 1.02(18) was created that provides an exclusion from the definition of "investment adviser representative" using the rule-making authority in sec. 551.02(7m)(b), Wis. Stats. The new rule is a companion to the rule in DFI-Sec 1.02(14)(d) and is necessary to reflect the recent rule change by the U.S. Securities and Exchange Commission (effective August 31, 1998) which adopted a "five natural person" alternative to its "10% test" exclusion [established for Wisconsin purposes in DFI-Sec 1.02(14)(d)] for purposes of sec. 551.02(7m)(a)1.a., Wis. Stats.

- As a result of the public hearing and comment process, the proposed repeals of the registration exemption rules in DFI-Sec 2.02(9)(a) and (9)(L) under s. 551.23(18), Wis. Stats., (that in (9)(a)applies to certain isolated sales of the securities of an investment company, and in (9)(L) applies to unit investment trust investment companies) were withdrawn and both rules are restored, but with the addition of an amendment that provides an October 11, 1999 "sunset" date for effectiveness of the rules. Because NSMIA, which designated investment company securities as "federal covered securities," specifically allowed states only a three-year period after enactment of NSMIA (ending October 11, 1999) to require registration for investment company securities for an issuer

refusing to pay applicable notice filing fees, the effectiveness of this registration exemption is tied to that date. Following such October 11, 1999 date, the "federal covered security" treatment of investment company securities under NSMIA controls in all respects allowing only a notice filing procedure, and precluding applicability of state securities law registration and exemption provisions.

- As a result of the public hearing and comment process, modifications were made to the rules setting forth the notice filing requirements for the categories of "federal covered securities" in DFI-Sec 2.04(1)(a),(2), (3) and (4) adding the phrase "unless the security is registered or exempt from registration under ss. 551.22 or 551.23, Stats." The added language clarifies that, consistent with the amendment to sec. 551.21, Wis. Stats., under 1997 Wisconsin Act 316 [which provided that it is unlawful to offer or sell any security in Wisconsin unless either (i) the security is registered, or (ii) the security is exempt from registration under ss. 551.22 or 551.23, Stats., or (iii) the security is a federal covered security], the fact that a security is a type of "federal covered security" described in DFI-Sec 2.04(1),(2),(3) or (4) does not preclude the issuer from seeking registration or relying on an applicable registration exemption under the Wisconsin Uniform Securities Law. However, with reference to DFI-Sec 2.04(1)(a), a "sunset" date of October 11, 1999 is added for the same reasons that an identical "sunset" was added to rules DFI-Sec 2.02(9)(a) and (9)(L), discussed above.

- As a result of the public hearing and comment process, modifications were made to the investment adviser net capital rule in DFI-Sec 5.02(4) to add language required under NSMIA to provide that for investment advisers having a principal office in a state other than Wisconsin, the net capital requirements in DFI-Sec 5.02(1) and (2) do not apply, provided that the adviser is licensed in such state and is in compliance with that state's minimum net capital requirements, if any. Thus for non-Wisconsin based advisers, if an adviser is neither licensed nor in compliance with its home-state net capital requirement, the Wisconsin net capital requirement is applicable.

- As a result of the public hearing and comment process, modifications were made to the investment adviser books and recordkeeping requirements in DFI-Sec 5.03(7) to add language [similar to that contained in the net capital rule in DFI-Sec 5.02(4) above] required under NSMIA to provide that for investment advisers having a principal office in a state other than Wisconsin, the books and recordkeeping requirements in DFI-Sec 5.03(1) to (6) do not apply, provided that the adviser is licensed in such state and is in compliance with that state's books and records requirements, if any. Thus for non-Wisconsin based advisers, if the adviser is neither licensed nor in compliance with its home-state books and recordkeeping requirement, the Wisconsin requirements are applicable.

- As a result of the public hearing and comment process, a modification was made to the Rule of Conduct rule in DFI-Sec 5.05(12)(intro.) to add the word "its" before "investment adviser representative" to thereby limit applicability of the rule to representatives of state-licensed investment advisers (and not to representatives of federal covered advisers) in order to be consistent with NSMIA.

- As a result of the public hearing and comment process, the proposed amendment to the Prohibited Business Practices rule in DFI-Sec 5.06(7) in the Public Comment Draft of the rules (relating to use of the title financial or investment planner) was withdrawn because of the interpretive complications regarding applicability of the rule that would occur with persons who have Certified Financial Planner credentials but may not provide investment advice or financial planning services.

- As a result of the public hearing and comment process, modification language was added to the Prohibited Business Practices rule DFI-Sec 5.06(intro.) to make applicability of all of the subsections of the Prohibited Business Practices section subject to the limitations in a new rule added as DFI-Sec 5.06(13). Such modification is necessary because of the limitations imposed by NSMIA on state regulatory authority over federal covered advisers and their representatives—namely, limiting state investigation and enforcement authority to matters involving "fraud" or "deceit".

- As a result of the public hearing and comment process resulting in the modifications to the Prohibited Business Practices provision of DFI-Sec 5.06(intro.) discussed above and to effectuate that modification, a related new rule is created as DFI-Sec 5.06(13) that reflects the limitations imposed by NSMIA on state regulatory authority over federal covered advisers and their representatives – namely, limiting state investigation and enforcement authority to matters involving "fraud" or "deceit."

- As a result of the public hearing and comment process, a modification was made to the rule in DFI-Sec 5.07(2) (relating to the expiration of licenses for investment adviser representatives) to add appropriate language to cover expirations for representatives of a federal covered adviser.

- As a result of the public comment process, a modification was made to the rule in DFI-Sec 7.01(7)(d) (relating to delinquent filing fees) to change the term "registration" to "opening" because under NSMIA, federal covered advisers are not subject to state "registration" authority.

- As a result of the public hearing and comment process, proposed Form IAN(WI) in DFI-Sec 9.01(1)(b)20 of the Public Comment Draft form of the rules –which had been proposed as a new, state-created form required to be used by federal covered advisers making an initial or renewal filing under s. 551.32(1m)(a) or (b), Wis. Stats.--was withdrawn because under NSMIA, states may not require federal covered advisers to utilize state-created forms. In a related modification, language was added to DFI-Sec 9.01(1)(b) 12 to provide that the federal Form ADV (referred to in the rule) shall be the form used by federal covered advisers making an initial or renewal filing under s. 551.32(1m)(a) or (b). As a result, all notice filings in Wisconsin by federal covered advisers will be made using federal Form ADV which will enable the Division to have complete Form ADV information for each filer (rather than providing for use of the state

form as an alternative which would result in the Division receiving filings with differing informational content.

- As a result of the public hearing and comment process which resulted in the modification made in Forms rule DFI-Sec 9.01(1)(b)12, a related rule is added making a technical change to the licensing Forms rule in DFI-Sec 9.01(1)(b)(intro.). The amendment reflects that as a result of NSMIA, federal covered advisers are subject to a notice filing procedure (under s. 551.32(1m)(a) or (b), Wis. Stats.), not a license application process.

****

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received.

- Randall E. Schumann, Legal Counsel for the Division of Securities, Department of Financial Institutions, made an appearance on behalf of the Division's staff to submit documents and information for the record and to be available both to ask questions and to respond to questions regarding hearing testimony.

Comment Letters Received

- Comment letter dated September 15, 1998 from the International Association For Financial Planning, Atlanta, Georgia, received September 18, 1998.

- Comment letter dated September 17, 1998 from the Investment Company Institute, Washington, DC, received September 18, 1998.

- Comment letter dated September 23, 1998 from the Institute of Certified Financial Planners, Denver, Colorado, received September 23, 1998.

- Memorandum from Division staff dated September 13, 1998.

- Comment letter dated September 29, 1998 from the Investment Counsel Association of America, Inc., Washington, DC, received September 29, 1998.

****

(d) Response to Legislative Council/Rules Clearinghouse Report Recommendations

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

- Consistent with the Rules Clearinghouse comment in paragraph a. regarding DFI-Sec 1.02(5)(c)2.(intro.), the added language was replaced by "subd. 1."

- Consistent with the Rules Clearinghouse comment in paragraph b. regarding DFI-Sec 1.02(14), a colon was inserted after "Stats." in the (intro.), and the definitions following the (intro.) were put in alphabetical order with the "A" and "An" deleted. In par. (a)2., "employee" was changed to "employe" and "employees" was changed to "employes," with a similar change from "employee" to "employe" made in par. (f). In par. (b) the "except that" clause was redrafted to clarify its meaning. In par. (c)2., the changes suggested were not needed because both subdivisions were deleted incident to a revision to par. (c) as a result of the public hearing and comment process.

- Consistent with the Rules Clearinghouse comment paragraph c. regarding DFI-Sec 1.02(15), a comma was inserted after "1 to 9."

- Consistent with the Rules Clearinghouse comment in paragraph e. regarding DFI-Sec 1.02(17) and (18)[now renumbered sub. (16) and (17)], the clause in each rule referencing Chapter 551 rules thereunder is deleted.

- Consistent with the Rules Clearinghouse comment in paragraph f. regarding DFI-Sec 1.02(18)[now renumbered (17)], the language "such assets" was replaced by customer funds or securities.

- Consistent with the Rules Clearinghouse comment in paragraph g. regarding DFI-Sec 2.04, the treatment clause is revised to read "DFI-Sec 2.04 is created to read:" In DFI-Sec 2.04(1)(a) and (b), and pursuant to discussions with the Rules Clearinghouse, the language "there shall be filed" is replaced by "the issuer or a person acting on behalf of the issuer shall file." In the second sentence of par. (1)(a), "Additionally" is deleted.

- Consistent with the Rules Clearinghouse comment in paragraph h. relating to the Title of Chapter DFI-Sec 5, the underlining of the Title is deleted.

- Consistent with the Rules Clearinghouse comment in paragraph i. relating to DFI-Sec 5.02(1) which illustrated that a word had been omitted, the term "every" is inserted after "sub.(2),".

- Consistent with the Rules Clearinghouse comment in paragraph j., the prefix "DFI-Sec" was inserted in the treatment clauses that involved renumbering rules in

SECTIONS 27, 29, 32 and 34 of the public comment draft form of the rules. Also, a period was added at the end of the treatment clause for SECTION 27 of the public comment draft of the rules.

- Consistent with the Rules Clearinghouse comment in paragraph k., the term "such" is replaced by "that" in two places in both DFI-Sec 5.02(4) and DFI-Sec 5.03(7).

- Consistent with the Rules Clearinghouse comment in paragraph l. regarding DFI-Sec 5.04(7), the language "incident to" is replaced with the language "as part of". Also, in sub. (8) the language "contemporaneously with its filing" is replaced with the language "with the division at the same time it makes."

Under 4. Adequacy of References to Related Statutes, Rules and Forms

- Consistent with the Rules Clearinghouse comment in paragraph b. regarding DFI-Sec 5.07(2) and (4), the period after "551.32" and before "(1m)(a)" is deleted. Also, in DFI-Sec 5.07(4), a period is inserted after the subdivision number "20."

- Consistent with the Rules Clearinghouse comment in paragraph c. regarding DFI-Sec 9.01(1)(intro.), a "Note" will be added when the rule is adopted in final form that will direct the Revisor of Statutes Bureau to include in the (intro.) the Division's address, telephone number and Internet Website url.

(2) Rejection of recommendations and reasons therefor:

Under 2. Form, Style and Placement in Administrative Code

- Following discussion with, and approval by, the Rules Clearinghouse staff regarding the Rules Clearinghouse comment in paragraph d. concerning DFI-Sec 1.02(16) in the public comment draft of the rules, the rule was moved and reworded as a defined term "Percentage specified" as par. (d) under DFI-Sec 1.02(14). Rule section DFI-Sec 1.02(14) contains several defined terms for purposes of the definition of "investment adviser representative" in s. 551.02(7m)(a), Wis. Stats.

- Following discussion with, and approval by, the Rules Clearinghouse staff regarding the Rule Clearinghouse comment in paragraph g., the term "notice" in retained in DFI-Sec 2.04(2), (3) and (4) because: (i) it is the same term that is used in the statute sections the rule provisions relate to; (ii) the term "notice" is similarly used in numerous other securities statute and rule provisions; and (iii) it is a securities industry "term of art" that is known and understood by securities industry members, licensees, and securities law practitioners.

Under 4. Adequacy of References to Related Statutes, Rules and Forms

- Following discussion with, and approval by, the Rules Clearinghouse staff regarding the Rules Clearinghouse comment in paragraph a. concerning citations to the U.S. Code, the citations contained in the proposed rules referring to the federal securities law statutes – such as the Investment Company Act of 1940 – are retained rather than replaced by U.S. Code cites for the following reasons: (1) the federal securities statutes, including the federal Securities Act of 1933, the Securities and Exchange Act of 1934 and the Investment Advisers Act of 1940 are all defined terms under s. 551.02(12) of the Wisconsin Uniform Securities Law that use citations to the statutes rather than U.S. Code citations; (2) currently, throughout the Rules of the Division of Securities, all of the citations used to date are, and always have been, to the federal statutes, not the U.S. Code cites; (3) the national publication services (such as Commerce Clearing House) used for reference purposes by the securities industry, broker-dealer and investment adviser licensees and securities law legal practitioners are based on citations to the federal statutes, not U.S. Code cites.

****

(e) No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

* * * *

1997 Session

LRB or Bill No./Adm. Rule No.

Amendment No. if Applicable

☒ ORIGINAL ☐ UPDATED

☐ CORRECTED ☐ SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 N(R10/96)

Subject Rules in DFI-Sec Chapters 1, 2, 3, 4, 5, 7 and 9 to implement 1997 Wisconsin Act 316 relating to federal covered securities, federal covered advisers and investment adviser representatives.

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others _____ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

These proposed permanent rules implement statutory changes contained in recently-enacted 1997 Wisconsin Act 316 which became effective July 9, 1998. That Act made a number of changes to the Wisconsin Uniform Securities Law to conform to changes required under the federal National Securities Markets Improvement Act of 1996 (NSMIA) which preempted state securities laws and regulations in several areas – principally with regard to securities offerings by investment companies (mutual funds) and the regulation of investment advisers and investment adviser representatives. Emergency rules were adopted effective July 9, 1998 on these subjects and currently are in force and effect.

The proposed permanent rules do not have any fiscal effect in that there is no increase or decrease in state revenues or costs, and no local government costs. That is because the legislation in 1997 Wisconsin Act 316 (which these proposed permanent rules implement) did not have any fiscal effect inasmuch as the legislation made conforming amendments to various provisions of the Wisconsin Securities Law to reflect preemptive changes to the Law that already were in force and effect as a result of the federal NSMIA.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Dept. of Financial Institutions Division of Securities Randall E. Schumann 266-3414	Patricia D. Struck Division Administrator 266-3432	8-13-98

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/96)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.	Amendment No.

Subject: Rules in DFI-Sec Chapters 1, 2, 3, 4, 5, 7 and 9 to implement 1997 Wisconsin Act 316 relating to federal covered securities, federal covered advisers and investment adviser representatives

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from: Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	$ 0	$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
State Revenues Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
TOTAL State Revenues	$ 0	$ - 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 0	$ 0
NET CHANGE IN REVENUES	$ 0	$ 0

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Dept. of Financial Institutions Division of Securities Randall E. Schumann 266-3414	Patricia D. Struck Division Administrator 266-3432	8-13-98

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266–1946

Richard Sweet
Assistant Director
(608) 266–2982

David J. Stute, Director
Legislative Council Staff
(608) 266–1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701–2536
FAX: (608) 266–3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **98–114**

AN ORDER to repeal DFI–Sec 2.01 (3) (a) to (d), 2.02 (9) (a) and (L) and 3.01 (2); to renumber DFI–Sec 5.02 (2) and (3) and 5.03 (2) to (7); to amend DFI–Sec 1.02 (2) (b), (5) (c) 2. (intro.) and 2a. and (7) (b), chapter DFI–Sec 2 (title), 2.01 (1) (a) 2., 2.01 (9) and (10) (a), 3.01 (1) (a), 3.02 (1) (h) and (m), 3.03 (3), 3.07 (1) and (2), 5.01 (1) and (3), 5.02 (1), 5.03 (1), (5) and (6), 5.04 (1), 5.05 (11) (d) 3. and (12), 5.06 (intro.) and (7), 5.07 (title), (1) and (2), 5.08 (2), 5.09, 7.07 (1) (a), (d) and (f) and 9.01 (1) (b) 12. and 13.; to repeal and recreate chapter DFI–Sec 5 (title) and 5.03 (7); and to create DFI–Sec 1.02 (5) (c) 2d. and (14) to (18), 2.04 (1) to (4), 5.02 (2), (4) and (5), 5.03 (2), 5.04 (7) and (8), 5.06 (12), 5.07 (3) and (4) and 9.01 (1) (b) 20. and 21. and (d), relating to federal covered securities, federal covered advisers and investment adviser representatives.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

08–13–98 RECEIVED BY LEGISLATIVE COUNCIL.

09–11–98 REPORT SENT TO AGENCY.

RNS:DLS:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment Attached YES ☐ NO ☑

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment Attached YES ☑ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment Attached YES ☐ NO ☑

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment Attached YES ☑ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment Attached YES ☐ NO ☑

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment Attached YES ☐ NO ☑

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment Attached YES ☐ NO ☑

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266–1946

Richard Sweet
Assistant Director
(608) 266–2982

David J. Stute, Director
Legislative Council Staff
(608) 266–1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701–2536
FAX: (608) 266–3830

CLEARINGHOUSE RULE 98–114

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. DFI-Sec 1.02 (5) (c) 2. (intro.), the added language should be replaced by "subd. 1.".

b. In s. DFI-Sec 1.02 (14) (intro.), a colon should be inserted after "Stats." The definitions following the (intro.) should be put in alphabetical order, beginning with ""Client" has the meaning given in . . ."; that is, the "A" or "An" at the beginning of defined terms should be deleted. In addition, all of the definitions in s. DFI-Sec 1.02, including the new definitions, should be alphabetized.

In par. (a) 2., "employee" should be "employe" and "employees" should be "employes." The entire rule should be reviewed for this change.

In par. (b), the "except that" clause needs to be redrafted to fit more clearly into the definition. It appears to say "except that "client" does not include a person who is not a resident of the United States if the supervised person decides not to count that client as a client." This is not suggested language, just a reiteration of what the language appears to say. The clause should be redrafted beginning with "except that "client" . . .".

In par. (c) 2., the parentheses should be replaced by commas.

c. In s. DFI-Sec 1.02 (15), a comma should be inserted after "1 to 9".

d. The material in s. DFI-Sec 1.02 (16) is not a definition and should therefore be placed in a different section.

e. In s. DFI-Sec 1.02 (17) and (18), "for purposes of the licensing provisions of ch. 551, Stats., and related rules in chs. DFI-Sec 1 to 9," is not needed and should be deleted. Current s. DFI-Sec 1.02 (intro.) states the applicability of all terms that are defined in that section.

f. In s. DFI-Sec.1.02 (18), "such assets" should be replaced by "customer funds or securities."

g. The treatment clause for SECTION 15 should state: "SECTION 15. DFI-Sec 2.04 is created to read:". Also, in s. DFI-Sec 2.04 (1) (a) and (2), "there shall be filed" should be replaced by "the issuer shall file." In the second sentence of par. (1) (a), "Additionally" should be deleted.

Subsections (2), (3) and (4) specify that a "notice" has to be filed but does not specify what it is notice of (i.e., "notice of . . ."); these provisions should be clarified.

h. In SECTION 23, the title does not have to be underlined since it is being repealed and recreated. [See s. 1.06 (5), Manual.]

i. In SECTION 26, "an" should be inserted after "sub (2),".

j. In several treatment clauses that involve renumbering a rule, the prefix "DFI-Sec" should be inserted before the number of the renumbered rule. For example, in the treatment clause for SECTION 27, "DFI-Sec" should be inserted before "5.02 (3)." Also, a period is needed at the end of SECTION 27.

k. In s. DFI-Sec 5.02 (4), "such" should be replaced by "that" in two places. The same comment applies to s. DFI-Sec 5.03 (7).

l. In s. DFI-Sec 5.04 (7), "at the same time it files" should replace "incident to." In sub. (8), "with the division at the same time it files" should replace "contemporaneously with its filing."

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section DFI-Sec 1.02 (5) (c) 2. refers to "Rule 206 (4)-3. of the investment advisers act of 1940." The U.S. Code cite to this provision should be included. [See s. 1.07 (3), Manual.]

b. In s. DFI-Sec 5.07 (2), "s. 551.32. (1m) (a)" should be "s. 551.32 (1m) (a)" (i.e., delete the period after "551.32"). The same comment applies to the reference to that provision in sub. (4) of that section. Also in sub. (4), second sentence, the citation should read "9.01 (1) (b) 20." (i.e., insert a period after the subdivision number).

c. Although s. DFI-Sec 9.01 (1) (intro.) states that the forms listed in that subsection may be obtained from the division of securities in Madison, the division should consider listing

its address and telephone number in a note. Since some of these forms are available on the Internet, the division should consider listing its web site in the note. [See s. 1.09 (2), Manual.]