



State of Wisconsin
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

Date: September 25, 2001

To: Robert Marchant, LRB Drafting Section Attorney

From: Randall E. Schumann, Legal Counsel for the Division of Securities, DFI

Subject: Revisions to LRB-2505/2, Licensing Exemption for Canadian B-Ds and Agents

The attached hand-edited changes to Bill Draft LRB-2505/2 are made for the following reasons:

- (1) In s. 551.31(1)(d)1.a., the terminology "A person" is substituted for "An individual" in line 9. The broader terminology "person" is necessary to cover brokerage accounts for entities and for individual professional corporations, and to be consistent with the North American Securities Administrators Association ("NASAA") model language which uses the terminology "person" throughout.
- (2) In s. 551.31(1)(d) 1.b., line 12, as set forth in the Division's prior May 18 Memorandum, the residency concept and language should be deleted because this subparagraph is intended to cover persons formerly living in Canada when the person set up his or her Canadian retirement account, but who now are permanently relocated in Wisconsin (and thus are Wisconsin residents) and need to do transactions in their retirement account with the Canadian broker-dealer who still holds and administers the customer's retirement plan. Consequently, the initial language in line 12 should read: "A person who is present in this state...." Additionally, in line 14, the terminology "person" is substituted for "individual" the same reason discussed in Item (1) above.
- (3) In two related revisions involving s. 551.31(1)(d)4., line 22, and s. 551.31(1)(e)3., the separate agent disclosure requirement in s. 551.31(1)(e)3. is deleted, and language is added to s. 551.31(1)(d)4. to thereby have the broker-dealer's disclosure-to-customer requirement apply to cover its agents as well (rather than also separately requiring [in s. 551.31(1)(e)3.] each agent of the broker-dealer to provide disclosure as well).
- (4) In 551.31(1)(e)1, line 2, as set forth in the Division's prior May 18 Memorandum, the terminology "customers" is changed to "persons" to have the language be consistent throughout per Item (1) above. Also in line 2, as set forth in the Division's prior May 18 Memorandum, the reference to "a. or b. or both" is deleted so that agents can use the exemption from licensure for transactions with the institutional investors specified in the language of (1)(d) 1.(intro.) as well. [Without such deletion, agents would have the exemption available for use only for transactions under (d)1. a or b., or both, but not for transactions covered in the (1)(d)1. preamble/(intro.)]



Division of Securities

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Internet: www.wdfi.org

- (5) In the LRB Analysis, we believe that it would be useful and appropriate to add language that this Bill is based both upon: (i) NASAA resolutions and model language adopted by the NASAA membership (including Wisconsin) in 1995 and 1996 to provide licensing relief specifically for Canadian broker-dealers, which resolutions have been adopted in statute or rule form by approximately 30 states to date; and upon (ii) action taken by the U.S. Securities and Exchange Commission in June 2000 providing an exemption from broker-dealer licensure for Canadian broker-dealers dealing with persons in the U.S. having Canadian retirement accounts.
- (6) Additionally, regarding the Equal Protection Clause point reflected in your Drafters Note, we continue to strongly believe that there is no Equal Protection Clause infirmity with using language specifying Canadian broker-dealers on the basis that: (i) over 30 states have taken statute or rulemaking action specifying Canadian broker-dealers (action that has been in effect on the books of those states for up to five years), with no equal protection challenges having been raised in any state to date; and (ii) when the U.S. Securities and Exchange Commission took rule-making action on this subject in June of 2000 granting exemption from federal broker-dealer licensure status (the same approach our legislation takes), its language specifically limited such exemption treatment to Canadian broker-dealers.

As a separate consideration, from the standpoint of uniformity with other states, Wisconsin would be the only state taking legislative action whose statute would not specifically refer and apply exclusively to Canadian broker-dealers—the sole basis for initiating the legislation.

* * * * *

2001 BILL

- 1 AN ACT *to create* 551.23 (20) and 551.31 (1) (d) and (e) of the statutes; **relating**
 2 **to:** creating an exemption from securities broker-dealer and securities agent
 3 licensing requirements.

Analysis by the Legislative Reference Bureau

With certain exceptions, current law requires securities broker-dealers and their agents who transact securities business in this state to be licensed with the division of securities in the department of financial institutions. This bill exempts certain Canadian broker-dealers and their agents from this licensing requirement. The bill specifies certain conditions that broker-dealers and their agents must satisfy to qualify for the licensing exemption. For example, in addition to other requirements, broker-dealers must be located in Canada and have no office or other physical presence in this state and must effect or attempt to effect only transactions with specified financial entities or certain current or former residents of Canada. To qualify for the licensing exemption, securities agents, in addition to other requirements, must act on behalf of broker-dealers that qualify for the licensing exemption. *[Insert language re NBSAA and U.S. SEC action on this subject.]*

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 SECTION 1. 551.23 (20) of the statutes is created to read:

2 551.23 (20) Any offer or sale of a security effected by a broker-dealer that is
3 exempt from licensing under s. 551.31 (1) (d).

4 SECTION 2. 551.31 (1) (d) and (e) of the statutes are created to read:

5 551.31 (1) (d) A broker-dealer located in Canada that has no office or other
6 physical presence in this state and that satisfies all of the following conditions:

7 1. The broker-dealer effects or attempts to effect only transactions in securities
8 only with a person specified in s. 551.23 (8) (a) to (f) or with or for any of the following:

A person

9 a. An individual who is in this state temporarily and who, while a resident of
10 Canada and before entering this state, established a bona fide business relationship
11 with the broker-dealer.

12 b. An individual who is a resident of Canada) who is } present in this state, whose
13 transactions are in a self-directed, tax-advantaged retirement plan in Canada of
14 which the individual is the holder or contributor, and who established the retirement
15 plan while a resident of Canada. } person

16 2. The broker-dealer is registered with or a member of a self-regulatory
17 organization, a stock exchange in Canada, or the bureau des services financiers.

18 3. The broker-dealer maintains in good standing its provincial or territorial
19 registration in Canada and its registration with or membership in a self-regulatory
20 organization, a stock exchange, or the bureau des services financiers.

21 4. The broker-dealer discloses to each customer in this state that the
22 broker-dealer is not licensed under the Wisconsin Uniform Securities Law.

23 (e) A securities agent who represents a broker-dealer that is exempt from
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2505/3dn

RJM: /:...

WLJ

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With regard to the potential Equal Protection violation, I understand your position but ~~by~~ do not think it negates the issue.

If you have any questions or desire any further changes, please feel free to call.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2505/3dn
RJM:wlj:jf

October 4, 2001

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2505/3

RJM:wlj:jf

2001 BILL

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State of Wisconsin
2001 - 2002 LEGISLATURE

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RJM:wlj:jf

TODAY

2001 BILL

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NOTE

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2505/3dn 4 dn
RJM.wlj:jf

October 4, 2001

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If you have any questions or desire any further changes, please feel free to call.

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E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2505/4dn
RJM:wlj:kjf

October 4, 2001

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Barman, Mike

From: Barman, Mike
Sent: Thursday, October 04, 2001 3:20 PM
To: Anderson, David; Lisa Roys
Subject: LRB-2505/4 (attached) (RJM draft)



01-2505/4



01-2505/4dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Marchant, Robert

From: Schumann, Randall
Sent: Monday, October 22, 2001 11:30 AM
To: Marchant, Robert
Cc: Roys, Lisa; Struck, Patricia
Subject: FW: Drafting requests

Robert: Per your e-mail message forwarded from Lisa Roys, I am re-sending the attached 10/10 Memo (setting forth a couple of final revisions to the Slash/4 Draft of LRB 2505/4 that provides a licensing exemption for Canadian broker-dealers) that had been e-mailed to you on 10/10. Feel free to call with any questions.



10-10-2001 Memo
to LRB re Revi...

-----Original Message-----

From: Roys, Lisa
Sent: Monday, October 22, 2001 10:49 AM
To: Schumann, Randall
Cc: Struck, Patricia
Subject: FW: Drafting requests

Did you send any drafting changes to Rob Marchant recently? He's having problems with his e-mail and will need a "re-send" of anything recent.

Thank you!

-----Original Message-----

From: Marchant, Robert
Sent: Monday, October 22, 2001 10:39 AM
To: Roys, Lisa
Cc: Anderson, David
Subject: Drafting requests

Lisa--

I have returned from my leave and have experienced a massive problem with my MS Office application. If DFI has sent any drafting requests to me directly during the last two weeks, would you please forward them to me again? Thanks. I apologize for the inconvenience.

Dave, please disregard the previous message I just sent you. I received notification from out of office assistant of your absence and have sent this message to Lisa in stead.

Robert J. Marchant
Legislative Attorney
State of Wisconsin Legislative Reference Bureau
608-261-4454



State of Wisconsin
Department of Financial Institutions

Scott McCallum, **Governor**

John F. Kundert, **Secretary**

Date: October 10, 2001

To: Robert Marchant, LRB Drafting Section Attorney

From: Randall E. Schumann, Legal Counsel for the Division of Securities, DFI

Subject: Revisions to LRB-2505/4, Licensing Exemption for Canadian B-Ds and Agents

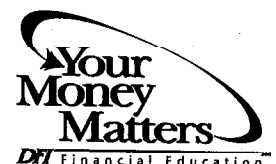
Thank you for forwarding LRB 2505/4 reflecting the revisions requested in my September 25, 2001 Memorandum.

One additional revision that should have been included in my 9/25 Memo is to delete the phrase "and who established the retirement plan while a resident of Canada" contained in sec. 551.31(1)(d)1.b. in lines 14 and 15 on page 2. The reasons for the deletion are that: (1) such language is not a requirement in either the NASAA 1995 or 1996 Model Acts, nor is it contained in the CBT Authorization in any of the 34 states that have taken action to date, or in the SEC's federal licensing exemption treatment; and (2) it is possible for a person entitled to establish a Canadian retirement plan to not physically be in Canada, or even be a resident of Canada, at the moment in time that the retirement plan is established (for instance, where the person spent part of a year in Canada and the remainder of the year in the U.S., at which time the person formally established the plan).

Also, a separate minor language change is requested that would add the term "client" (preceded by a hyphen) after the term "business" in sec. 551.31(1)(d)1.a. in line 10 on page 2. The resulting "business-client relationship" terminology is contained in the most recent NASAA Model Act language.

If you have any questions, please call me at 6-3414.

* * * * *



Division of Securities

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Pin NR

2001 BILL

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or persons with certain retirement plans in Canada

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Date: November 2, 2001

To: Robert Marchant, LRB Drafting Section Attorney

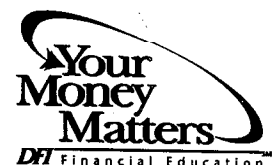
From: Randall E. Schumann, Legal Counsel for the Division of Securities, DFI

Subject: Revisions to LRB-2505/5, Licensing Exemption for Canadian Broker-Dealers and Agents

In reviewing the above Draft, the following minor language edits are necessary as reflected in the attached PDF of the Bill Draft (I apologize for not catching them previously):

1. In section 551.31(1)(d)1., a duplicative "only" contained in that sentence at the beginning of line 8 should be deleted.
2. In sections 551.31(1)(d)4 as well as (1)(e)(intro.), and (1)(c)1. and 2., because "agent" is the defined term in section 551.02(2) that is used throughout Chapter 551 (not "securities agent"), the term "securities" that precedes the term "agent" in five locations is deleted.

If you have any questions, please call me at 6-3414.



Division of Securities

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5 551.31 (1) (d) A broker-dealer located in Canada that has no office or other
6 physical presence in this state and that satisfies all of the following conditions:

7 1. The broker-dealer effects or attempts to effect only transactions in securities
8 only with a person specified in s. 551.23 (8) (a) to (f) or with or for any of the following:

9 a. A person who is in this state temporarily and who, while a resident of Canada
10 and before entering this state, established a bona fide business-client relationship
11 with the broker-dealer.

12 b. A person who is present in this state, whose transactions are in a
13 self-directed, tax-advantaged retirement plan in Canada of which the person is the
14 holder or contributor.

15 2. The broker-dealer is registered with or a member of a self-regulatory
16 organization, a stock exchange in Canada, or the bureau des services financiers.

17 3. The broker-dealer maintains in good standing its provincial or territorial
18 registration in Canada and its registration with or membership in a self-regulatory
19 organization, a stock exchange, or the bureau des services financiers.

20 4. The broker-dealer discloses to each customer in this state that the
21 broker-dealer and its securities agents are not licensed under the Wisconsin
22 Uniform Securities Law.

23 An (e) (A securities) agent who represents a broker-dealer that is exempt from
24 licensing under par. (d), if the securities agent satisfies all of the following conditions:

BILL

1 1. The transactions effected by the ²securities agent for persons in this state are
2 limited to transactions for or with persons described in par. (d) 1.

3 2. The ³securities agent maintains in good standing his or her provincial or
4 territorial registration in Canada.

5

(END)

R. M. R.

2001 BILL

1 AN ACT to create 551.23 (20) and 551.31 (1) (d) and (e) of the statutes; relating
2 to: creating an exemption from securities broker-dealer and securities agent
3 licensing requirements.

Analysis by the Legislative Reference Bureau

With certain exceptions, current law requires securities broker-dealers and their agents who transact securities business in this state to be licensed with the division of securities in the department of financial institutions. This bill exempts certain Canadian broker-dealers and their agents from this licensing requirement. The bill specifies conditions that broker-dealers and their agents must satisfy to qualify for the licensing exemption. For example, in addition to other requirements, broker-dealers must be located in Canada and have no office or other physical presence in this state and must effect or attempt to effect only transactions with specified financial entities or with certain current or former residents of Canada or persons with certain retirement plans in Canada. To qualify for the licensing exemption, securities agents, in addition to other requirements, must act on behalf of broker-dealers that qualify for the licensing exemption.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 SECTION 1. 551.23 (20) of the statutes is created to read:

2 551.23 (20) Any offer or sale of a security effected by a broker-dealer that is
3 exempt from licensing under s. 551.31 (1) (d).

4 SECTION 2. 551.31 (1) (d) and (e) of the statutes are created to read:

5 551.31 (1) (d) A broker-dealer located in Canada that has no office or other
6 physical presence in this state and that satisfies all of the following conditions:

7 1. The broker-dealer effects or attempts to effect only transactions in securities
8 only with a person specified in s. 551.23 (8) (a) to (f) or with or for any of the following:

9 a. A person who is in this state temporarily and who, while a resident of Canada
10 and before entering this state, established a bona fide business-client relationship
11 with the broker-dealer.

12 b. A person who is present in this state, whose transactions are in a
13 self-directed, tax-advantaged retirement plan in Canada of which the person is the
14 holder or contributor.

15 2. The broker-dealer is registered with or a member of a self-regulatory
16 organization, a stock exchange in Canada, or the bureau des services financiers.

17 3. The broker-dealer maintains in good standing its provincial or territorial
18 registration in Canada and its registration with or membership in a self-regulatory
19 organization, a stock exchange, or the bureau des services financiers.

20 4. The broker-dealer discloses to each customer in this state that the
21 broker-dealer and its securities agents are not licensed under the Wisconsin
22 Uniform Securities Law.

23 (e) A securities agent who represents a broker-dealer that is exempt from
24 licensing under par. (d), if the securities agent satisfies all of the following conditions:

Emery, Lynn

From: Emery, Lynn
Sent: Monday, December 17, 2001 1:18 PM
To: Lisa Roys
Subject: LRB-2505/6 (attached)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

12/17/2001

Emery, Lynn

From: Marchant, Robert
Sent: Thursday, December 20, 2001 8:59 AM
To: Emery, Lynn
Cc: Anderson, David; Roys, Lisa
Subject: RE: LRB-2505/6 (attached)

Lynn--

Please jacket LRB-2505 for introduction in the assembly. I will prepare a new draft today for you to jacket for introduction in the Senate.

Rob

-----Original Message-----

From: Roys, Lisa
Sent: Wednesday, December 19, 2001 5:04 PM
To: Emery, Lynn
Cc: Anderson, David; Marchant, Robert
Subject: RE: LRB-2505/6 (attached)

Could we please have this jacketed for introduction? We would like to have companion bills for both houses.

Thank you.

Lisa Roys, Policy Advisor
WI Department of Financial Institutions
(608) 266-0450

-----Original Message-----

From: Emery, Lynn
Sent: Monday, December 17, 2001 1:18 PM
To: Lisa Roys
Subject: LRB-2505/6 (attached)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

<< File: 01-2505/6 >>

Emery, Lynn

From: Roys, Lisa
Sent: Monday, February 18, 2002 10:38 AM
To: Emery, Lynn
Cc: Anderson, David; Bilot, Erin
Subject: FW: Canadian LRB

Could you please release LRB 2505/6 to Erin in Rep. Jeskewitz's office?

Thank you!

Lisa Roys, Policy Advisor
WI Department of Financial Institutions
(608) 266-0450

-----Original Message-----

From: Bilot, Erin
Sent: Monday, February 18, 2002 10:25 AM
To: Anderson, David; Roys, Lisa
Subject: Canadian LRB

Dave and Lisa,

I'm planning on sending out the cosponsorship for the Canadian brokers today. I would like to attach the LRB, however, I can not get it e-mailed to me because I didn't request the draft. Could one of you please send an e-mail to Lynn Emery requesting that I be sent a draft of LRB 2505/6?

Thanks!

Erin Bilot
Office of Suzanne Jeskewitz
State Representative
24th Assembly District

Emery, Lynn

From: Emery, Lynn
Sent: Monday, February 18, 2002 10:55 AM
To: Rep.Jeskewitz
Subject: LRB-2505/6 (attached as requested)

Lynn Emery

Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

2/18/2002

Memo

To: DFI & Rep. Jeskowitz (The Draft's Requestor)

Per your request ... the attached is a fiscal estimate was prepared for your un-introduced 2001 draft.

LRB Number: LRB - 2505

Version: "1/6"

Entered In Computer And Copy Sent To Requestor Via E-Mail: 02 / 27 / 2002

Fiscal Estimate Prepared By: (agency abbr.) DFI

If you have questions about the attached fiscal estimate, you may contact the agency/ individual who prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

* * * * *

To: LRB – Legal Section PA's

Subject: Fiscal Estimate Received For A Un-Introduced Draft

- If this draft is **re-drafted** ... please insert this early fiscal estimate into the drafting file ... after the draft's old version (the version this fiscal estimate was based on), and before mark-up of the draft on the updated version.
- If this draft is **introduced** ... and the version of the attached fiscal estimate is for a **previous version** ... please insert this early fiscal estimate into the drafting file ... after the draft's old version (the version this fiscal estimate was based on), and before mark-up of the draft on the updated version.
Have Mike (or Lynn) get the ball rolling on getting a fiscal estimate prepared for the introduced version.
- If this draft is **introduced** ... and the version of the attached fiscal estimate is for the **current version** ... please write the drafts intro. number below and give this fiscal estimate to Mike (or Lynn) to process.

THIS DRAFT WAS INTRODUCED AS: 2001 _____

AB875

Barman, Mike

From: Barman, Mike
Sent: Wednesday, February 27, 2002 11:07 AM
To: Anderson, David; Rep.Jeskewitz
Subject: LRB-2505/6 (FE by DFI (attached - for your review)



FE_DFI.pdf

FE_DFI.pdf