




# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 02/14/2008 (Per: ARG)




 Appendix A ... Part 02 of 23




 The 2007 drafting file for LRB-1109/2

has been transferred to the drafting file for

**2007 LRB-3866** (SB 483)

 This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2007 drafting file.

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

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- 1 AN ACT ...; relating to: repealing and recreating the Wisconsin Uniform
- 2 Securities Law, granting rule-making authority, and providing penalties.

**Analysis by the Legislative Reference Bureau**

to In 1969, this state enacted the current Wisconsin Uniform Securities Law, effective January 1, 1970, based upon the Uniform Securities Act of 1956. The Wisconsin Uniform Securities Law has been repeatedly amended, in part to incorporate changes to federal law, including changes made by 1997 Act 316 to conform state law with the federal National Securities Markets Improvement Act of 1996 (NSMIA). In the NSMIA, Congress preempted certain elements of state authority to regulate securities so that, subject to certain exceptions, state laws and regulations requiring registration or qualification of a security or of a securities transaction cannot apply to federal covered securities. The NSMIA defined federal "covered security" to include: 1) securities that are listed or authorized to be listed or traded on the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers Automated Quotation (NASDAQ) system, or a national securities exchange that has substantially similar listing requirements (exchange-listed securities); 2) securities of investment companies registered with the federal Securities and Exchange Commission (SEC), which are typically mutual funds; 3) securities offered or sold only to qualified purchasers, as defined by the SEC by rule; and 4) securities in certain other specified transactions. Congress also limited, in certain respects, state regulation of broker-dealers. Under the NSMIA, a state may not prohibit an agent for a registered broker-dealer in another state from effecting transactions with certain preexisting clients in the state if certain criteria

are met. In the NSMIA, Congress made more significant changes with respect to investment advisers, preempting state registration, but not notice filing, of investment advisers that have assets under management in excess of \$25 million, that advise registered investment companies, that do not have a place of business in the state and have had fewer than six clients who are state residents in the preceding 12-month period, or that are otherwise registered with the SEC or exempt from the definition of investment adviser under federal law. After 1999, states cannot require registration of federal covered investment advisers that fail or refuse to pay state notice filing fees. The supervised persons of federal covered investment advisers are also to be regulated exclusively by the SEC, except that a state may register or qualify such an investment adviser representative who has a place of business within the state. The NSMIA also restricts, in part, the ability of a state to establish capital, custody, margin, financial responsibility, record keeping, bonding, or financial or operational requirements for broker-dealers and investment advisers. In the NSMIA, Congress further declared a policy of increasing federal and state cooperation in securities matters and instructed the SEC to cooperate, coordinate, and share information and to seek uniformity in federal and state regulatory standards, forms, and procedures.

This bill adopts the Uniform Securities Act (2002) (USA 2002), with certain modifications recommended by the Wisconsin Uniform Securities Act Study Group (WUSA Study Group). The USA 2002 primarily revises and updates the Uniform Securities Act of 1956, taking into consideration the little-adopted Revised Uniform Securities Act of 1985 and the fact that parts of the Uniform Securities Act of 1956 have been preempted by NSMIA. The stated purpose of the USA 2002 is to modernize the 1956 Uniform Securities Act as a consequence of a combination of new federal preemptive legislation, significant recent changes in the technology of securities trading and regulation, and the increasingly interstate and international aspects of securities transactions. The USA 2002 identifies, in its preface, three overarching themes: (1) the objectives of uniformity and coordination of federal and state securities law, cooperation among relevant state and federal governments and other regulatory organizations, and investor protection; (2) achieving consistency with NSMIA, particularly with respect to federal covered securities and federal covered investment advisers; and (3) facilitating electronic records, signatures, and filings, including filings through third-party central information depositories, such as the Central Registration Depository (Web-CRD) and the Investment Adviser Registration Depository (IARD). Eleven states have adopted the USA 2002.

In general, the form, structure, and mechanics of the USA 2002 are similar to current Wisconsin law and the changes the USA 2002 makes to current law are not dramatic. Also, this bill deviates in a number of ways from the USA 2002 to retain provisions of current law in Wisconsin.

### ***Securities registration***

Under current law, a person may not offer or sell any security in this state unless the security is registered with the Division of Securities in the Department of Financial Institutions (division), the security or transaction is exempt from registration, or the security is a federal covered security. In addition, a securities

issuer or registrant, and certain control persons of the issuer or registrant, may not offer or sell registered securities in this state if the issuer or registrant is in violation of the state's securities laws. A "security" is defined broadly and includes any stock, note, bond, share in a business trust, investment contract, commodity futures contract, or limited partnership interest, as well as many other financial interests. A "security" also presumptively includes an interest in a limited liability company (LLC) if certain conditions are met, but does not include a fixed or variable insurance policy or annuity contract.

Under current law, a security may be registered with the division by coordination or by qualification. Registration by coordination may be used for any security for which a federal registration statement has been filed with the SEC in connection with the same offering and has not yet become effective. For registration by coordination, a registration statement must contain specified information, be accompanied by certain documents, such as the corresponding federal filings, and include a consent to service of process. Registration by coordination generally becomes effective automatically at the moment the federal registration statement becomes effective. Any security may be registered by qualification. For registration by qualification, the registration statement must contain specified information, be accompanied by a consent to service of process, and contain further information and documents required by the division. In addition to securities registration, the division may impose notice filing requirements on the issuer of any federal covered security except an exchange-listed security. The division may require the filing with the division of certain documents filed with the SEC related to the same federal covered security and the payment of a notice filing fee. Where a notice filing requirement can be imposed and is imposed, if the issuer fails to comply with the requirement, the division can prohibit offers and sales of the federal covered security in this state, if certain conditions are met.

Under current law, certain securities are exempt from registration with the division, including: securities of the United States or a state or political subdivision of a state; securities of a bank or public utility; securities listed, or approved for listing, on a securities exchange designated by the division; securities of certain nonprofit organizations; certain commercial paper with a maturity of nine months or less; investment contracts related to certain employee benefit plans; common stock of a service corporation or cooperative; certain security options and commodity futures contracts; securities issued by a broker-dealer to its officers or employees; certain securities issued in connection with an insurance corporation conversion to a mutual insurance corporation; and any security for which the division finds registration unnecessary for the protection of investors. In addition, even when a security is not exempt, a transaction involving the security may be exempt. Exempt securities transactions include the following: isolated nonissuer transactions; unsolicited nonissuer transactions through a broker-dealer; transactions between issuers and underwriters; nonissuer sales at a price reasonably related to the market price if the issuer is registered with the SEC or exempt from federal registration or if securities of the same class have been registered with the division within the preceding two years or registered with the SEC and certain other conditions are met;

an offer or sale to the issuer, a bank or other financial institution, an insurer, a broker-dealer, an investment adviser or federal covered adviser, an investment company or pension or profit-sharing trust, state or federal or local government, or an accredited investor, as defined below (collectively “sophisticated investors”); certain transactions in debt secured by a mortgage and sold as a unit (mortgage-backed securities); an offer or sale of a preorganization subscription; an offer or sale of its securities by an issuer having its principal office in this state to not more than 25 persons, excluding sophisticated investors, if certain conditions are met; a transaction resulting from offers to not more than 25 persons in this state, excluding sophisticated investors, during a 12-month period, if certain conditions are met, regardless of the issuer’s presence in this state; a transaction resulting from an offer to the issuer’s existing security holders, if certain conditions are met; certain merger, reorganization, stock split, or stock dividend transactions; certain debt transactions of nonprofit organizations; certain offers, but not sales, of securities for which both federal and state registration statements have been filed; an offer or sale of securities made in reliance on the federal Regulation D, SEC Rule 505, exemption related to limited offerings not exceeding \$5,000,000, if certain conditions are met; and any other transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors. An “accredited investor,” which is a type of sophisticated investor, is defined by federal and state law to include financial institutions, individuals with a specified minimum net worth or income, business entities with certain minimum assets, and corporate executives of a security’s issuer.

Current law authorizes the division, by order after certain required proceedings, to deny or revoke any security exemption or security transaction exemption or to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement under specified circumstances.

STET This bill, in adopting the USA 2002 with some modification, retains the general structure and content of current law with respect to securities registration. The bill continues to generally require offerings of securities that are not federal covered securities to be registered unless exempt, provides for registration by coordination and registration by qualification, provides for notice filing as to some federal covered securities, recognizes securities exemptions and securities transactions exemptions, and authorizes the division to modify certain of these general requirements and to deny or revoke exemptions and issue stop orders. However, the bill also includes a number of changes to current law with respect to securities registration and exemptions, including the following:

1. The bill makes some modifications to the definition of “security.” The bill expressly provides that a security may be uncertificated, that is, paperless. The bill modifies the definition of “security” with respect to an interest in an LLC and adds specific language related to interests in limited liability partnerships. The bill expressly includes viatical settlements of insurance contracts in the definition of “security.” The bill expands the definition of “security” with respect to certain derivatives and includes language to clarify when an investment in a common enterprise is a security. The bill also excludes from the definition of “security”

interests in pension plans subject to the Employee Retirement Income Security Act of 1974. The bill authorizes the division to exclude certain investment contracts from the definition of “security.”

2. The bill makes certain modifications with respect to exempt securities. The bill modifies and broadens the exemption for federal covered securities and derivative securities, such as options. The bill exempts securities issued by insurance companies. The bill modifies the exemption for securities issued by nonprofit organizations, providing greater discretionary authority to the division with respect to such securities, and also exempts certain equipment trust certificates. The bill eliminates specific exemptions related to commercial paper, employee pension plans, common stock of service corporations, securities issued by broker-dealers, and commodity futures contracts.

3. The bill makes certain modifications with respect to exempt securities transactions. Instead of the sophisticated investors exemption under current law, the bill provides a transaction exemption for a sale or offer to an institutional investor, an accredited investor, a federal covered investment adviser, or any other person exempted by the division. The bill defines “institutional investor” to include, subject to certain limitations, all of the following: banks and other financial institutions; insurance companies; investment companies; registered broker-dealers; employee pension and profit-sharing plans, employee benefit plans of state and local governments, and trusts of financial institutions related to these plans; business and nonprofit entities, small business investment companies, and private business development companies, each with total assets in excess of \$10,000,000; federal covered investment advisers acting for their own accounts; qualified institutional buyers and major U.S. institutional investors, as defined by federal law, but generally including investment companies, financial institutions, insurance companies, investment advisers, and other entities that act for their own account and invest at least \$100,000,000 or have assets under management of at least \$100,000,000; any other entity of institutional character with total assets in excess of \$10,000,000; and any other person specified by the division. The bill includes various changes related to, and new exemptions for, nonissuer transactions, including those related to foreign issuers, SEC reporting companies, certain debt securities, and transactions by certain federal covered investment advisers. The bill includes new exemptions for certain security swaps, solicitations of interest prior to the effective date of a registration statement, and rescission offers and transactions. The bill modifies the exemption for certain mortgage-backed securities. The bill eliminates a transaction exemption related to nonprofit debt issues, so that nonprofit-related exemptions are entirely securities exemptions rather than transaction exemptions. The bill also eliminates the specific transaction exemption related to limited offerings under SEC Rule 505.

4. The bill modifies the definition of a securities “issuer.” The bill adds several new definitions, including definitions of “bank,” “depository institution,” “institutional investor,” and “international banking institution.” The bill also adds new definitions of “filing,” “record,” and “sign” to clearly recognize electronic information, documents, and filings.

The bill also varies from, or adopts optional language under, the USA 2002 in a number of respects. These variations, or the adoption of this optional language, are generally recommended by the WUSA Study Group in order to retain aspects of current law or current division rules with respect to certain matters, including: the definitions of "issuer," "security," and "viatical settlement investment;" the security exemption for government securities, relating to industrial revenue bonds; the security transaction exemption for unsolicited broker-dealer transactions, relating to documentation requirements; the security transaction exemption for sales to institutional investors, adding accredited investors; the security transaction exemptions for certain limited offerings and preorganization subscriptions; the security transaction exemption for offers to existing securityholders, to add a ten-day notice filing requirement; division authority to deny or revoke exemptions; filing and reporting procedures for open-end mutual funds, and extension procedures for unit investment trusts and closed-end mutual funds; division authority relating to registration requirement waivers, reports by certain professionals, and division comment letters; escrow of securities and impoundment of proceeds; trust indentures for registered debt securities; and security merit review.

### ***Registration of securities professionals***

Under current law, unless exempt from licensing, a person may not transact business in this state as a broker-dealer or an agent unless the person is licensed as a broker-dealer or an agent, even if the person is also federally registered as such with the SEC. A "broker-dealer" is any person, whether individual or entity, engaged in the business of effecting transactions in securities for the account of others or for the person's own account, but does not include any of the following: an agent; an issuer; a bank, savings institution, or trust company, when effecting transactions for its own account or executing orders as an agent for a purchaser or seller; a personal representative, guardian, conservator, or pledgee; a person whose dealings in securities are limited to transactions in mortgage-backed securities; a person licensed as a real estate broker who has only isolated and incidental transactions in securities; the State of Wisconsin Investment Board (SWIB); or any other person designated by the division. An "agent" is an individual other than a broker-dealer who represents a broker-dealer or a securities issuer in effecting or attempting to effect transactions in securities, but does not include an individual who represents an issuer in effecting transactions in an exempt security, in effecting most exempt transactions, or in effecting other transactions if no commission is paid for soliciting persons in this state. Current law provides a number of exemptions to the broker-dealer and agent licensing requirements, including exemptions for: persons who effect transactions exclusively for sophisticated investors; persons who represent broker-dealers in effecting certain de minimus transactions for preexisting clients who were residents in the state where the agent is registered for at least 30 days in the previous one-year period; an agent acting exclusively for a securities issuer with respect to certain exempt transactions involving accredited investors; and persons who give group presentations at broker-dealer meetings or

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seminars where no solicitation, offer, or sale is made. A broker-dealer or issuer may not employ as an agent an individual who is not licensed or exempt from licensing. An agent generally may not represent more than one broker-dealer or issuer and may not simultaneously represent both a broker-dealer and an issuer. However, dual representation by an agent of issuers that are limited partnerships or investment companies is permissible if certain conditions are met.

Under current law, unless exempt from licensing, a person may not transact business in this state as an investment adviser unless the person is licensed as an investment adviser. An "investment adviser" is a person, whether <sup>an</sup> individual or entity, <sup>that</sup> who, for compensation, engages in the business of advising others, directly or through publications or electronically, as to the value of securities or as to the advisability of purchasing or selling securities or <sup>that</sup> who, for compensation and as a part of a regular business, issues analyses or reports concerning securities, but does not include a bank, savings institution, or trust company; certain professionals such as lawyers and accountants; broker-dealers or agents whose performance of these services is solely incidental to the conduct of their own business and who receive no special compensation for these services; newspaper, magazine, and other publishers; SWIB; federal covered advisers, unless they fail to pay applicable fees to the division; persons whose advice, analyses, or reports relate only to certain exempt government securities or who are otherwise identified by SEC rule as excluded from the definition of investment adviser; an investment adviser representative; or other persons designated by the division. A "federal covered adviser" is a person, whether <sup>an</sup> individual or entity, that is registered with the SEC as an investment adviser. Investment advisers that have assets under management of at least \$25,000,000 or that are advisers to investment companies are federal covered advisers registered exclusively with the SEC. Current law provides a number of exemptions to the investment adviser licensing requirement, including exemptions for persons who are licensed as broker-dealers; persons whose only clients in this state are sophisticated investors; persons who do not have a place of business in this state and, during the preceding 12-month period, have had no more than five in-state clients who are not sophisticated investors.

Although federal covered advisers are excluded from the definition of "investment adviser" and state registration of federal covered advisers is preempted under the NSMIA, federal covered advisers are generally subject to notice filing requirements under current law. A federal covered adviser must comply with notice filing requirements <sup>in order</sup> to transact investment advisory business in this state unless the federal covered adviser's only clients who are residents of this state are sophisticated investors or the federal covered adviser does not have a place of business in this state and, during the preceding 12-month period, has advised no more than five in-state clients who are not sophisticated investors.

Under current law, unless exempt from licensing, a person may not transact business in this state as an investment adviser representative unless the person is licensed as an investment adviser representative. An "investment adviser representative" is, with certain exceptions, a "supervised person," as defined by the division by rule, of an investment adviser or federal covered adviser unless the



supervised person does not regularly solicit or communicate with clients or provides only impersonal investment advice or is a third-party solicitor, as defined by the division by rule. Current law provides a number of exemptions to the investment adviser representative licensing requirement, including exemptions for persons who are licensed as agents; persons whose only clients in this state are sophisticated investors; and persons who do not have a place of business in this state and, during the preceding 12-month period, have had no more than five in-state clients who are not sophisticated investors. \*

Under current law, a licensed investment adviser may not employ as an investment adviser representative a person who is neither licensed nor exempt from licensing. A person employed or supervised by, or associated with, a federal covered adviser may not act as an investment adviser representative in this state unless the person is licensed or exempt from licensing.

Under current law, a broker-dealer, agent, investment adviser, or investment adviser representative may obtain a license by filing with the division, or with an organization designated by the division such as Web-CRD or IARD, an application together with a consent to service of process. The application must contain all information required by the division by rule. Unless an exception applies, a federal covered adviser must file with the division a notice filing together with payment of a notice filing fee. The notice filing must consist either of a notice filing form prescribed by the division or a copy of documents filed with the SEC. The division may, upon appropriate proceedings, deny an application or suspend or revoke a license or censure a licensee under certain conditions, including if the applicant or licensee filed an application that is materially false or misleading with respect to any material fact; willfully violated state or federal securities laws; has been convicted of certain criminal offenses or has been enjoined by a court; has engaged in dishonest or unethical practices in the securities or investment advisory business or has taken unfair advantage of a customer; is insolvent; is unqualified; or has failed reasonably to supervise agents or employees.

Under current law, the division may prescribe standards of qualification with respect to training, experience, and knowledge, and provide for examinations of, broker-dealers, agents, investment advisers, and investment adviser representatives. The division may also, subject to federal law, establish minimum net capital requirements for licensed broker-dealers and investment advisers and require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds. The division must cooperate with other securities administrators and regulatory authorities to simplify and coordinate license application, notice filing, and renewal procedures. A licensed broker-dealer, agent, or investment adviser may not transact business in this state if it is in violation of the state's securities laws.

This bill, in adopting the USA 2002 with some modification, retains the general structure and content of current law with respect to securities professionals. Although the bill changes the terminology of regulation from "licensing" to "registration," the bill continues to require registration of entities and individuals in a similar manner, contains exemptions to registration, and retains similar

administrative and supervisory authority by the division over these entities and individuals. However, the bill also includes a number of changes to current law with respect to securities professionals, including the following:

1. The bill eliminates specific exclusions under current law from the definition of a broker-dealer for: a personal representative, guardian, conservator, or pledgee; a person whose dealings in securities are limited to transactions in mortgage-backed securities; a person licensed as a real estate broker who has only isolated and incidental transactions in securities; and SWIB. The bill also changes the specific exclusion for a bank, savings institution, or trust company, consistent with federal law under the Gramm-Leach-Bliley Act of 1999, so that the exclusion applies only to a bank or savings institution whose activities as a broker-dealer are limited to certain activities specified under federal law such as third-party brokerage services, trust activities, custodial services, and, if unsolicited, de minimus transactions; buying or selling securities for its own account, including in a fiduciary capacity, but not as a part of a regular business; or buying or selling certain securities, under certain conditions, as specified under federal law. The bill also excludes from the definition of broker-dealer an international banking institution and a bank or savings institution that, in 1999, was a member of a national securities exchange and was required by SEC rule to comply with federal broker-dealer regulations.

2. The bill also makes changes to the exemptions to broker-dealer registration. The bill eliminates the group presentation exemption under current law and changes the exemption for transactions exclusively for sophisticated investors. The bill creates several new exemptions to broker-dealer registration. Under the bill, a broker-dealer is exempt from registration if its only transactions effected in this state are with the following: the issuer of the securities involved in the transactions; a broker-dealer registered with the division or exempt from registration; institutional investors, as defined above; accredited investors, as defined above, but not including individuals; a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record; a bona fide preexisting customer whose principal place of residence is not in the state if the broker-dealer is registered with the SEC or with the state in which the customer maintains a principal place of residence; a bona fide preexisting customer whose principal place of residence is in this state if the broker-dealer was not present in this state when the customer relationship was established, if the broker-dealer is registered with the SEC or with the state in which the customer relationship was established and the customer maintained his or her residence, and if, with certain exceptions, the broker-dealer files an application for registration within 45 days after the customer's first transaction in this state and no further transaction is effected more than 75 days later; or any other person exempted by the division. In addition, the division may permit a broker-dealer registered in a foreign jurisdiction that does not have a place of business in this state to effect certain transactions, including with individuals from the same jurisdiction who are temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the

individual entered the United States, and may permit an agent to effect these transactions for the broker-dealer.

3. The bill eliminates all specific exclusions under current law from the definition of agent but provides the division with authority to exclude individuals from this definition. The bill also makes changes to the exemptions to agent registration. The bill changes the exemptions for transactions exclusively for sophisticated investors and transactions involving accredited investors. The bill makes a slight change in the wording related to the exemption for de minimus transactions for certain preexisting clients. The bill creates several new exemptions to agent registration, including exempting from agent registration an individual \* who represents an exempt broker-dealer; represents an issuer with respect to an offer or sale of the issuer's own securities and who receives no commission; represents an issuer in effecting most exempt transactions; with exceptions, represents an issuer that effects transactions solely in federal covered securities; represents a broker-dealer registered with the division or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record; represents an issuer in connection with the purchase of the issuer's own securities; represents an issuer or broker-dealer and who restricts participation to performing clerical or ministerial acts; and is otherwise exempted by the division.

4. The bill eliminates specific exclusions under current law from the definition of "investment adviser" for trust companies that are not banks and for SWIB. The bill also modifies the exclusion under current law related to federal covered advisers, so that a federal covered adviser is excluded regardless of whether it pays to the division notice filing fees. The bill specifically provides that "investment adviser" includes a financial planner that provides investment advice for compensation. The bill also makes changes to the exemptions to investment adviser registration. The bill eliminates the specific exemption for a licensed broker-dealer and changes the exemptions for persons whose only clients in this state are sophisticated investors and persons who do not have a place of business in this state and, during the preceding 12-month period, have had no more than five in-state clients who are not sophisticated investors. Under the bill, the following persons are exempt from investment adviser registration: persons whose only clients in this state are federal covered investment advisers, investment advisers registered with the division, broker-dealers registered with the division, institutional investors, or accredited investors other than individuals; persons whose only clients in this state are bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered or exempt from registration in the state in which the clients maintain principal places of residence; persons whose only clients in this state are clients exempted by the division; persons who do not have a place of business in this state and who have had, during the preceding 12 months, no more than five in-state clients in addition to the institutional investors, accredited investors, federal covered investment advisers, registered investment advisers or

broker-dealers, or bona fide preexisting clients to which another exemption applies; and any other person exempted by the division.

5. The bill completely eliminates the current law definition of "investment adviser representative" and creates a new definition. Under the bill, an "investment adviser representative" is an individual employed by or associated with an investment adviser or federal covered investment adviser who makes recommendations or gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice, receives compensation to solicit, offer, or sell investment advice, or supervises employees who perform any of these activities. However, "investment adviser representative" includes an individual employed by or associated with a federal covered investment adviser only if the individual has a place of business in this state and the individual is either an "investment adviser representative" as defined under a particular provision of federal law or is not a supervised person, as defined under a particular provision of federal law. "Investment adviser representative" also does not include an individual who: performs only clerical or ministerial acts; is an agent whose performance of investment advice is solely incidental to the conduct of his or her own business and who receive no special compensation for investment advisory services; or is excluded by the division. The bill also makes changes to the exemptions to investment adviser representative registration. The bill eliminates all specific exemptions to registration under current law and instead provides exemptions from investment adviser registration for an individual who is employed by or associated with an investment adviser that is exempt from registration or a federal covered investment adviser that is excluded from notice filing requirements and for any other individual exempted by the division.

6. Other than a change in terminology from "federal covered adviser" to "federal covered investment adviser," the bill makes no significant definitional change with respect to these advisers. The bill makes changes to the exemptions to notice filing for federal covered investment advisers. The bill changes the exemptions for federal covered investment advisers whose only clients in this state are sophisticated investors and for such advisers who do not have a place of business in this state and, during the preceding 12-month period, have had no more than five in-state clients who are not sophisticated investors. Under the bill, federal covered investment advisers that do not have a place of business in this state are exempt from notice filing if their only clients in this state are any of the following: federal covered investment advisers; investment advisers registered with the division; broker-dealers registered with the division; institutional investors; accredited investors other than individuals; bona fide preexisting clients whose principal places of residence are not in this state; or other clients specified by the division. Federal covered investment advisers that do not have a place of business in this state are also exempt from notice filing if they have had, during the preceding 12 months, no more than five in-state clients in addition to the institutional investors, accredited investors, federal covered investment advisers, registered investment advisers or broker-dealers, or bona fide preexisting clients to which another exemption applies.

The division may also exempt from notice filing any other federal covered investment adviser.

7. The bill provides for qualified immunity for broker-dealers, agents, investment advisers, federal covered investment advisers, and investment adviser representatives related to statements they make in records required by the division.

The bill also varies from, or adopts optional language under, the USA 2002 in a number of respects. These variations, or the adoption of this optional language, are generally recommended by the WUSA Study Group in order to retain aspects of current law or current division rules with respect to certain matters, including: broker-dealer registration exemptions relating to location of the broker-dealer's place of business, transactions with entity-type accredited investors, unsolicited liquidation transactions for bona fide preexisting customers, de minimis exemptions, and governmental securities dealers; commissions paid to broker-dealers; limited dual-agent registration for limited partnerships or investment companies; investment adviser registration exemptions with respect to entity-type accredited investors, bona fide clients residing out-of-state, and reliance; limits on employment by investment advisers; investment adviser referral fees; federal covered investment adviser notice filing exemptions related to entity-type accredited investors and notice filing expiration; filing of registration applications with third-party organizations designated by the division; the effective date of registration applications; and registration application requirements related to a change of control of a broker-dealer or investment adviser.

### ***Securities fraud, enforcement, and administration***

Current law includes numerous provisions prohibiting fraud, in various forms, in connection with securities transactions or the offering or sale of securities, including: making any untrue statement of a material fact or omitting a material fact necessary to make a statement not misleading in connection with the offer, sale, or purchase of a security; engaging in market manipulation; publishing, circulating, or using false advertising or, with exceptions, advertising not filed with the division; and making material false or misleading statements or misleading omissions in documents filed with the division. Broker-dealers and advisers also may not engage in fraud or employ manipulative, deceptive, or fraudulent devices.

Under current law, the division administers and enforces the state's securities laws, has investigative and subpoena powers, may conduct hearings and enter orders, may bring injunction actions, may summarily take action against a licensee or summarily take action to prohibit conduct, may impose administrative assessments for securities law violations, and may promulgate rules and prescribe forms. The division's orders are generally subject to judicial review. Administrative assessments imposed by the division are appropriated for the division's investor education program.

Under current law, a person who violates the state's securities laws may be subject to criminal or civil liability or both. A person who willfully violates the state's securities laws, with certain exceptions, is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both.

\* The division may refer violations for criminal prosecution to the attorney general or a district attorney. A person who violates the state's securities laws by offering or selling a security, by purchasing a security, or by willfully participating in market manipulation activity, may be civilly liable to, respectively, the purchaser or seller for specified damages, including interest and reasonable attorney fees, or equitable relief. Certain persons may also be held civilly liable for the violations of others. However, a civil action must be commenced within three years after the act or transaction constituting the violation, but this period of limitation may be extended under certain circumstances. A purchaser or seller also may not commence an action if, before suit is commenced, the purchaser or seller receives a written rescission offer providing specified information about the violation and offering to resolve liability for the violation.

This bill, in adopting the USA 2002 with some modification, retains the general structure and content of current law with respect to securities fraud, enforcement, and administration. However, the bill also includes a number of changes to current law, including the following:

1. The bill authorizes the division to use some new enforcement techniques, such as cease and desist orders, asset freezes, and rescission orders. The bill also expands the division's authority to assist securities regulators in other jurisdictions. The bill also authorizes the division to seek assistance from district attorneys, the attorney general, or appropriate federal authorities in judicially enforcing subpoenas and further authorizes courts to enforce the division's cease and desist orders.

2. The bill modifies the statute of limitations in actions to impose civil liability. Under the bill, a person must bring an action for relief based upon sale of an unregistered security or sale by an unregistered securities professional within one year after the violation. For other claims, a person must bring an action for relief within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

3. With regard to some securities professionals, such as agents, the bill turns definitional exclusions under current law into registration exemptions, which results in an expansion of the scope of antifraud provisions; while these individuals still would not be required to register with the division, they would be subject to the antifraud provisions of the bill.

4. The bill modifies current law relating to rescission offers arising from asserted liability for violations, and recognizes a transaction exemption for rescission offers made in compliance with this rescission offer provision.

5. The bill modifies current law relating to confidentiality of certain information and documents of the division.

6. The bill slightly changes the division's current investor education program to an investor education and training program.

The bill also varies from, or adopts optional language under, the USA 2002 in a number of respects. These variations, or the adoption of this optional language, are generally recommended by the WUSA Study Group in order to retain aspects of current law or current division rules with respect to certain matters, including: fee

provisions for division filings; the division's investigative authority related to acting on broker-dealer and investment adviser registration applications; division authority related to grounds for discipline, censure, penalties, and negotiated settlements in disciplinary actions; continuing education requirements for registered persons; penalty provisions for criminal securities law violations; certain aspects of civil liability; administrative assessments by the division and the investor education and training program; the division's injunctive authority; confidential information and records of the division; judicial review of summarily issued orders of the division; and the state's jurisdiction with regard to offers not directed to or received in this state. \*

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

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

1           **SECTION 1.** 19.42 (12) of the statutes is amended to read:

2           19.42 (12) "Security" has the meaning given under s. ~~551.02 (13)~~ 551.102 (28),  
3           except that the term does not include a certificate of deposit or a deposit in a savings  
4           and loan association, savings bank, credit union or similar association organized  
5           under the laws of any state.

**History:** 1973 c. 90; Stats. 1973 s. 11.02; 1973 c. 333; 1973 c. 334 ss. 33, 57; Stats. 1973 s. 19.42; 1977 c. 29, 223, 277; 1977 c. 447 ss. 35, 209; 1979 c. 34, 177, 221; 1981 c. 20, 269, 349, 391; 1983 a. 27; 1983 a. 81 s. 11; 1983 a. 83 s. 20; 1983 a. 166 ss. 1 to 4, 16; 1983 a. 484, 538; 1985 a. 26; 1985 a. 29 s. 3202 (46); 1985 a. 304; 1987 a. 72, 119; 1987 a. 312 s. 17; 1987 a. 340, 365, 399, 403; 1989 a. 31, 338; 1991 a. 39, 189, 221, 269; 1993 a. 16, 263, 399; 1995 a. 27, 56, 274; 1997 a. 27; 1997 a. 237 ss. 19m, 722q; 1997 a. 298; 1999 a. 42, 65; 2001 a. 16, 104, 109; 2003 a. 39; 2005 a. 335; 2007 a. 1.

6           **SECTION 2.** 20.144 (1) (i) of the statutes is amended to read:

7           20.144 (1) (i) *Investor education and training fund.* The amounts in the  
8           schedule for educating residents of this state about securities and franchise  
9           investments as provided in ss. ~~551.605 (2)~~ 551.601 (4) and 553.605 (2) and for any  
10          other purpose specified in s. 551.601 (4). All moneys received from administrative  
11          assessments under ss. ~~551.605 (1)~~ 551.604 (4) and 553.605 (1) shall be credited to this  
12          appropriation. If the unencumbered balance in this appropriation account exceeds  
13          \$100,000 immediately before the end of any fiscal year, the excess shall lapse to the  
14          general fund at the end of that fiscal year.

**History:** 1995 a. 27 ss. 492, 495, 498, 499, 501, 504, 518, 519, 520b, 536c; 1995 a. 216; 1999 a. 9; 2003 a. 33.

1           **SECTION 3.** 20.923 (8) of the statutes is amended to read:

2           20.923 (8) DEPUTIES. Salaries for deputies appointed pursuant to ss. 13.94 (3)  
3           (b), 15.04 (2) and 551.51 (1) <sup>plain</sup> 551.601 (1) shall be set by the appointing authority. The  
4           salary shall not exceed the maximum of the salary range one range below the salary  
5           range of the executive salary group to which the department or agency head is  
6           assigned. The positions of assistant secretary of state, assistant state treasurer and  
7           associate director of the historical society shall be treated as unclassified deputies  
8           for pay purposes under this subsection.

**History:** 1971 c. 18, 125, 164; 1971 c. 270 ss. 98, 104; 1971 c. 307, 321; 1973 c. 90, 156, 243, 333; 1975 c. 28; 1975 c. 39 ss. 236c to 247, 735 (5); 1975 Ex. Order No. 24; 1975 c. 189, 199, 224, 422; 1977 c. 29 ss. 399g to 406d, 1649, 1650m, 1654 (8) (e), 1656 (43); 1977 c. 44; 1977 c. 187 ss. 29, 30, 31, 135; 1977 c. 196 ss. 74 to 76m, 131; 1977 c. 203, 272, 277, 418, 447, 449; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 32 s. 92 (1); 1979 c. 34, 89, 189; 1979 c. 221 ss. 201m to 218, 2202 (13); 1979 c. 361; 1981 c. 20 ss. 587 to 592g, 2202 (33) (b), (c), (56) (a); 1981 c. 96 ss. 16, 67; 1981 c. 121, 127, 347, 353; 1981 c. 390 s. 252; 1983 a. 27, 46, 121, 192, 371, 378; 1985 a. 18, 23; 1985 a. 29 ss. 603 to 607, 3202 (22) (a); 1985 a. 34, 332; 1987 a. 6, 27, 82, 119, 306, 340, 354, 399, 403; 1989 a. 31, 56, 107, 208, 219, 336; 1991 a. 39, 269; 1993 a. 12, 16, 75, 123, 144, 184, 294, 349, 399, 490; 1995 a. 27 ss. 1193 to 1217m, 9130 (4), 9216 (19); 1995 a. 37, 216, 225; 1997 a. 2, 3, 27, 29, 41, 194, 237; 1999 a. 9, 42, 102, 186; 2001 a. 16, 19, 29, 109; 2003 a. 33 ss. 721 to 735m, 9160; 2003 a. 91, 320; 2005 a. 25; 2007 a. 1.

9           **SECTION 4.** 21.72 (1) (a) 12. of the statutes is amended to read:

10           21.72 (1) (a) 12. A license or certificate of registration issued by the department  
11           of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101  
12           to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. III IV of ch. 551.

**History:** 2001 a. 22; 2003 a. 69; 2005 a. 25.

13           **SECTION 5.** 25.186 (1) (a) of the statutes is amended to read:

14           25.186 (1) (a) “Broker-dealer” has the meaning given in s. 551.02 (3) 551.102  
15           (4).

**History:** 1999 a. 9.

16           **SECTION 6.** 25.186 (1) (c) of the statutes is amended to read:

17           25.186 (1) (c) “Security” has the meaning given in s. 551.02 (13) 551.102 (28).

**History:** 1999 a. 9.

18           **SECTION 7.** 25.186 (2) (a) of the statutes is amended to read:

19           25.186 (2) (a) Of the total funds that are expended by the board for securities  
20           trading brokerage commissions in any fiscal year, the board shall pay at least 5% of  
21           the total funds in securities trading brokerage commissions to broker-dealers that



1 are licensed registered under s. ~~551.31~~ 551.406, that are headquartered in this state  
2 and whose principal business operations are located in this state.

3 History: 1999 a. 9.

**SECTION 8.** 49.853 (1) (c) 6. of the statutes is amended to read:

4 49.853 (1) (c) 6. A broker-dealer, as defined in s. ~~551.02 (3)~~ 551.102 (4).

5 History: 1997 a. 191; 2001 a. 16.

**SECTION 9.** 49.857 (1) (d) 12. of the statutes is amended to read:

6 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,  
7 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or  
8 subch. ~~III~~ IV of ch. 551.

9 History: 1997 a. 191; 1999 a. 9, 31, 32, 186; 2001 a. 56, 61; 2005 a. 25.

**SECTION 10.** 73.0301 (1) (d) 6. of the statutes is amended to read:

10 73.0301 (1) (d) 6. A license or certificate of registration issued by the  
11 department of financial institutions, or a division of it, under ss. 138.09, 138.12,  
12 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or under subch.  
13 ~~III~~ IV of ch. 551.

14 History: 1997 a. 237 ss. 301, 307, 532; 1999 a. 9, 31, 32, 186; 2001 a. 56; 2005 a. 25; 2007 a. 1.

**SECTION 11.** 183.1303 of the statutes is amended to read:

15 **183.1303 Securities law application.** An interest in a limited liability  
16 company may be a security, as defined in ~~ss. 551.02 (13) (b) and (c)~~ specified in s.  
17 551.102 (28) (e).

18 History: 1993 a. 112.

**SECTION 12.** 226.14 (8) of the statutes is amended to read:

19 226.14 (8) Every such trust issuing or selling, or offering for sale, beneficial  
20 certificates in this state, shall be subject to ~~the~~ any applicable restrictions and  
21 limitations provided in ch. 551.

22 History: 1971 c. 84, 98; 1989 a. 303; 1991 a. 316; 1995 a. 27; 1997 a. 35, 254.

**SECTION 13.** 227.54 of the statutes is amended to read:

1           **227.54 Stay of proceedings.** The institution of the proceeding for review  
2 shall not stay enforcement of the agency decision. The reviewing court may order a  
3 stay upon such terms as it deems proper, except as otherwise provided in ss. 196.43,  
4 253.06 (7), and 448.02 (9) ~~and 551.62.~~

**History:** 1983 a. 27; 1985 a. 182 s. 39; Stats. 1985 s. 227.54; 1987 a. 5; 1997 a. 27, 311.

\*\*\*\*NOTE: The uniform act does not seem to include a provision parallel to s. 551.62 under current law, so I am eliminating, rather than changing, this cross-reference.

5           **SECTION 14.** 421.202 (8) of the statutes is amended to read:

6           **421.202 (8)** Transactions in securities accounts or securities transactions by or  
7 with a broker-dealer, as defined in s. 551.02 (3), licensed 551.102 (4), registered  
8 under ch. 551.

**History:** 1971 c. 239; 1973 c. 18; 1975 c. 207; 1979 c. 89; 1995 a. 329; 1997 a. 302; 2005 a. 215.

9           **SECTION 15.** 422.501 (2) (b) 7. of the statutes is amended to read:

10           **422.501 (2) (b) 7.** A broker-dealer or agent licensed registered under s. ~~551.31~~  
11 551.406 if the broker-dealer or agent is acting within the course and scope of that  
12 license.

**History:** 1991 a. 244; 1995 a. 27; 1997 a. 145, 302.

13           **SECTION 16.** Chapter 551 of the statutes is repealed and recreated to read:

14   **CHAPTER 551**

15   **WISCONSIN UNIFORM SECURITIES LAW**

16   **SUBCHAPTER I**

17   **GENERAL PROVISIONS**

18           **551.101 Short title.** This chapter shall be known and may be cited as the  
19 “Wisconsin Uniform Securities Law.”

20           **551.102 Definitions.** In this Chapter, unless the context otherwise requires:

21           **(1g)** “Accredited investor” has the meaning given in Rule 501 (a) adopted under  
22 the Securities Act of 1933 (17 CFR 230.501 (a)).

\*\*\*\*NOTE: I don't believe this definition of "accredited investor," which is not part of the uniform act, is necessary. Throughout ch. 551, when the term "accredited investor" is used, it is used in a more narrow sense, and this definition is not utilized. See, for example, ss. 551.401 (2) (cm), 551.403 (2) (a) 2m., and 551.405 (2) (a) 2m. The only place where the term as defined is used is in s. 551.202 (13) (am), and exceptions exist there too.

1           **(1m)** "Administrator" means the administrator of the division of securities in  
2 the department of financial institutions.

3           **(2)** "Agent" means an individual, other than a broker–dealer, who represents  
4 a broker–dealer in effecting or attempting to effect purchases or sales of securities  
5 or represents an issuer in effecting or attempting to effect purchases or sales of the  
6 issuer's securities. But a partner, officer, or director of a broker–dealer or issuer, or  
7 an individual having a similar status or performing similar functions, is an agent  
8 only if the individual otherwise comes within the term. The term does not include  
9 an individual excluded by rule adopted or order issued under this chapter.

\*\*\*\*NOTE: This definition seems to vary significantly from current law with respect to an issuer's exempt securities and exempt transactions, unless such exemptions will be provided for by rule.

10           **(3)** "Bank" means any of the following:

11           (a) A banking institution organized under the laws of the United States.

12           (b) A member bank of the Federal Reserve System.

13           (c) Any other banking institution, whether incorporated or not, doing business  
14 under the laws of a state or of the United States, a substantial portion of the business  
15 of which consists of receiving deposits or exercising fiduciary powers similar to those  
16 permitted to be exercised by national banks under the authority of the Comptroller  
17 of the Currency pursuant to section 1 of Public Law 87–722 (12 USC 92a), and which  
18 is supervised and examined by a state or federal agency having supervision over  
19 banks, and which is not operated for the purpose of evading this chapter.

1 (d) A receiver, conservator, or other liquidating agent of any institution or firm  
2 included in par. (a), (b), or (c).

3 (4) “Broker–dealer” means a person engaged in the business of effecting  
4 transactions in securities for the account of others or for the person’s own account.

5 The term does not include any of the following:

6 (a) An agent.

7 (b) An issuer.

8 (c) A bank or savings institution if its activities as a broker–dealer are limited  
9 to those specified in subsections 3 (a) (4) (B) (i) to (vi), (viii) to (x), and (xi) if limited  
10 to unsolicited transactions; 3 (a) (5) (B); and 3 (a) (5) (C) of the Securities Exchange  
11 Act of 1934 (15 USC 78c (a) (4) and (5)) or a bank that satisfies the conditions  
12 described in subsection 3 (a) (4) (E) of the Securities Exchange Act of 1934 (15 USC  
13 Section 78c (a) (4)).

14 (d) An international banking institution.

15 (e) A person excluded by rule adopted or order issued under this chapter.

\*\*\*NOTE: The definitional exclusions in this subsection omit several specific  
exclusions applicable under current law, including one pertaining to SWIB. I assume  
that, to the extent you intend these exclusions under current law to continue to apply, the  
exclusion will be recognized by rule, you believe it is adequately covered under other  
specific provisions of this act, or you believe specific language is unnecessary.

16 (5) “Depository institution” means any of the following:

17 (a) A bank.

18 (b) A savings institution, trust company, credit union, or similar institution  
19 that is organized or chartered under the laws of a state or of the United States,  
20 authorized to receive deposits, and supervised and examined by an official or agency  
21 of a state or the United States if its deposits or share accounts are insured to the  
22 maximum amount authorized by statute by the Federal Deposit Insurance

1 Corporation, the National Credit Union Share Insurance Fund, or a successor  
2 authorized by federal law. The term does not include any of the following:

3 1. An insurance company or other organization primarily engaged in the  
4 business of insurance.

5 2. A Morris Plan bank.

6 3. An industrial loan company.

7 **(5m)** “Division of securities” or “division” means the division of securities in the  
8 department of financial institutions.

\*\*\*\*NOTE: I added this subsection.

9 **(6)** “Federal covered investment adviser” means a person registered under the  
10 Investment Advisers Act of 1940.

11 **(7)** “Federal covered security” means a security that is, or upon completion of  
12 a transaction will be, a covered security under section 18 (b) of the Securities Act of  
13 1933 (15 USC 77r (b)) or rules or regulations adopted pursuant to that provision.

14 **(8)** “Filing” means the receipt under this chapter of a record by the  
15 administrator or a designee of the administrator.

16 **(9)** “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

17 **(10)** “Guaranteed” means guaranteed as to payment of all principal and all  
18 interest.

19 **(11)** “Institutional investor” means any of the following, whether acting for  
20 itself or for others in a fiduciary capacity:

21 (a) A depository institution or international banking institution.

22 (b) An insurance company.

23 (c) A separate account of an insurance company.

24 (d) An investment company as defined in the Investment Company Act of 1940.

1 (e) A broker-dealer registered under the Securities Exchange Act of 1934.

2 (f) An employee pension, profit-sharing, or benefit plan if the plan has total  
3 assets in excess of \$10,000,000 or its investment decisions are made by a named  
4 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that  
5 is a broker-dealer registered under the Securities Exchange Act of 1934, an  
6 investment adviser registered or exempt from registration under the Investment  
7 Advisers Act of 1940, an investment adviser registered under this chapter, a  
8 depository institution, or an insurance company.

9 (g) A plan established and maintained by a state, a political subdivision of a  
10 state, or an agency or instrumentality of a state or a political subdivision of a state  
11 for the benefit of its employees, if the plan has total assets in excess of \$10,000,000  
12 or its investment decisions are made by a duly designated public official or by a  
13 named fiduciary, as defined in the Employee Retirement Income Security Act of  
14 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934,  
15 an investment adviser registered or exempt from registration under the Investment  
16 Advisers Act of 1940, an investment adviser registered under this chapter, a  
17 depository institution, or an insurance company.

18 (h) A trust, if it has total assets in excess of \$10,000,000, its trustee is a  
19 depository institution, and its participants are exclusively plans of the types  
20 identified in par. (f) or (g), regardless of the size of their assets, except a trust that  
21 includes as participants self-directed individual retirement accounts or similar  
22 self-directed plans.

23 (i) An organization described in section 501 (c) (3) of the Internal Revenue Code  
24 (26 USC 501 (c) (3)), corporation, Massachusetts trust or similar business trust,

1 limited liability company, or partnership, not formed for the specific purpose of  
2 acquiring the securities offered, with total assets in excess of \$10,000,000.

3 (j) A small business investment company licensed by the Small Business  
4 Administration under section 301 (c) of the Small Business Investment Act of 1958  
5 (15 USC 681 (c)) with total assets in excess of \$10,000,000.

6 (k) A private business development company as defined in section 202 (a) (22)  
7 of the Investment Advisers Act of 1940 (15 USC 80b-2 (a) (22)) with total assets in  
8 excess of \$10,000,000.

9 (L) A federal covered investment adviser acting for its own account.

10 (m) A qualified institutional buyer, as defined in Rule 144A (a) (1), other than  
11 Rule 144A (a) (1) (i) (H), adopted under the Securities Act of 1933 (17 CFR 230.144A).

12 (n) A major U.S. institutional investor, as defined in Rule 15a-6 (b) (4) (i)  
13 adopted under the Securities Exchange Act of 1934 (17 CFR 240.15a-6).

14 (o) Any other person, other than an individual, of institutional character with  
15 total assets in excess of \$10,000,000 not organized for the specific purpose of evading  
16 this chapter.

17 (p) Any other person specified by rule adopted or order issued under this  
18 chapter.

\*\*\*\*NOTE: The introductory phrase “whether acting for itself or for others in a  
fiduciary capacity” doesn’t seem to exactly fit with par. (L).

19 (12) “Insurance company” means a company organized as an insurance  
20 company whose primary business is writing insurance or reinsuring risks  
21 underwritten by insurance companies and which is subject to supervision by the  
22 insurance commissioner or a similar official or agency of a state.

23 (13) “Insured” means insured as to payment of all principal and all interest.

1           (14) “International banking institution” means an international financial  
2 institution of which the United States is a member and whose securities are exempt  
3 from registration under the Securities Act of 1933.

4           (15) “Investment adviser” means a person that, for compensation, engages in  
5 the business of advising others, either directly or through publications, writings, or  
6 electronic means, as to the value of securities or the advisability of investing in,  
7 purchasing, or selling securities or that, for compensation and as a part of a regular  
8 business, issues or promulgates analyses or reports concerning securities. The term  
9 includes a financial planner or other person that, as an integral component of other  
10 financially related services, provides investment advice regarding securities to  
11 others for compensation as part of a business or that holds itself out as providing  
12 investment advice regarding securities to others for compensation. The term does  
13 not include any of the following:

14           (a) An investment adviser representative.

15           (b) A lawyer, accountant, engineer, or teacher whose performance of  
16 investment advice is solely incidental to the practice of the person’s profession.

17           (c) A broker–dealer or its agents whose performance of investment advice is  
18 solely incidental to the conduct of business as a broker–dealer and that does not  
19 receive special compensation for the investment advice.

20           (d) A publisher of a bona fide newspaper, news magazine, or business or  
21 financial publication of general and regular circulation.

22           (e) A federal covered investment adviser.

23           (f) A bank or savings institution.

24           (g) Any other person that is excluded by the Investment Advisers Act of 1940  
25 from the definition of investment adviser.



1 (h) Any other person excluded by rule adopted or order issued under this  
2 chapter.

\*\*\*NOTE: The definitional exclusions in this subsection omit SWIB. I assume that, to the extent you intend this exclusion under current law to continue to apply, the exclusion will be recognized by rule, you believe it is adequately covered under other specific provisions of this act, or you believe specific language is unnecessary.

3 (16) “Investment adviser representative” means an individual employed by or  
4 associated with an investment adviser or federal covered investment adviser and  
5 who makes any recommendations or otherwise gives investment advice regarding  
6 securities, manages accounts or portfolios of clients, determines which  
7 recommendation or advice regarding securities should be given, provides investment  
8 advice or holds herself or himself out as providing investment advice, receives  
9 compensation to solicit, offer, or negotiate for the sale of or for selling investment  
10 advice, or supervises employees who perform any of the foregoing. The term does not  
11 include any of the following:

12 (a) An individual who performs only clerical or ministerial acts.

13 (b) An individual who is an agent whose performance of investment advice is  
14 solely incidental to the individual acting as an agent and who does not receive special  
15 compensation for investment advisory services.

16 (c) An individual who is employed by or associated with a federal covered  
17 investment adviser, unless the individual has a “place of business” in this state, as  
18 that term, notwithstanding sub. (21), is defined by rule adopted under section 203A  
19 of the Investment Advisers Act of 1940 (15 USC 80b-3a), and, in addition to the place  
20 of business, any of the following apply to the individual:

21 1. The individual is an “investment adviser representative,” as that term,  
22 notwithstanding sub. (16) (intro.), is defined by rule adopted under section 203A of  
23 the Investment Advisers Act of 1940 (15 USC 80b-3a).

1           2. The individual is not a supervised person, as defined in section 202 (a) (25)  
2 of the Investment Advisers Act of 1940 (15 USC 80b-2 (a) (25)).

      \*\*\*NOTE: Because this subsection uses definitions that may be inconsistent with the general definitions elsewhere provided in this section, I have added “notwithstanding” language. Also, I believe par. (c) might be considered ambiguous in terms of whether subs. 1. and 2. are intended to join together with the introductory clause or the “unless” clause. Therefore, I have made minor modifications to clarify that these subdivisions are read with the “unless” clause.

3           (d) An individual who is excluded by rule adopted or order issued under this  
4 chapter.

      \*\*\*NOTE: I note that this is a very unusual definition. It defines an investment adviser as, in part, an individual employed by a federal covered investment adviser but then states that the definition does not include an individual employed by a federal covered investment adviser unless certain conditions are met.

5           (17) “Issuer” means a person that issues or proposes to issue a security, subject  
6 to the following:

7           (a) The issuer of a voting trust certificate, collateral trust certificate, certificate  
8 of deposit for a security, or share in an investment company without a board of  
9 directors or individuals performing similar functions is the person performing the  
10 acts and assuming the duties of depositor or manager pursuant to the trust or other  
11 agreement or instrument under which the security is issued.

12           (b) The issuer of an equipment trust certificate or similar security serving the  
13 same purpose is the person by which the property is or will be used or to which the  
14 property or equipment is or will be leased or conditionally sold or that is otherwise  
15 contractually responsible for assuring payment of the certificate.

16           (c) The issuer of a fractional undivided interest in an oil, gas, or other mineral  
17 lease or in payments out of production under a lease, right, or royalty is the owner  
18 of an interest in the lease or in payments out of production under a lease, right, or  
19 royalty, whether whole or fractional, that creates fractional interests for the purpose  
20 of sale.

1 (d) With respect to a fractional or pool interest in a viatical settlement  
2 investment, "issuer" means every person who creates the fractional or pool interest  
3 for the purpose of offering or selling the interest.

4 (e) With respect to a viatical settlement investment that is not a fractional or  
5 pool interest, "issuer" means the viatical settlement provider, as defined in s. 632.68  
6 (1) (e), or the person who purchases or otherwise acquires the viatical settlement  
7 from a viatical settlement provider and then offers or sells viatical settlement  
8 investments therein except that, under this paragraph, "issuer" does not include a  
9 broker-dealer or agent licensed under s. 551.406 and does not include the viator of  
10 the insurance policy, certificate of insurance, or death benefit underlying the viatical  
11 settlement investment.

\*\*\*\*NOTE: By "section 406," I assume you mean section 406 of the uniform act (s.  
551.406 of this chapter). Viator is not defined, or even used, in current law. Did you want  
to use another term, provide a definition, or leave as is?

12 (18) "Nonissuer transaction" or "nonissuer distribution" means a transaction  
13 or distribution not directly or indirectly for the benefit of the issuer.

14 (19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation  
15 of an offer to sell, a security or interest in a security for value. The term does not  
16 include a tender offer that is subject to section 14 (d) of the Securities Exchange Act  
17 of 1934 (15 USC 78n (d)).

18 (20) "Person" means an individual; corporation; business trust; estate; trust;  
19 partnership; limited liability company; association; joint venture; government;  
20 governmental subdivision, agency, or instrumentality; public corporation; or any  
21 other legal or commercial entity.

\*\*\*\*NOTE: Should this specifically include a limited partnership, or is "partnership"  
and the general language satisfactory? I note that "limited partnership" is not  
specifically listed in s. 551.02 (10) but clearly falls within the ambit of ch. 551. See, e.g.,  
s. 179.08, stats., and s. 551.102 (28) of this draft.

bill 20

1           **(21)** “Place of business” of a broker–dealer, an investment adviser, or a federal  
2 covered investment adviser means any of the following:

3           (a) An office at which the broker–dealer, investment adviser, or federal covered  
4 investment adviser regularly provides brokerage or investment advice or solicits,  
5 meets with, or otherwise communicates with customers or clients.

6           (b) Any other location that is held out to the general public as a location at  
7 which the broker–dealer, investment adviser, or federal covered investment adviser  
8 provides brokerage or investment advice or solicits, meets with, or otherwise  
9 communicates with customers or clients.

10          **(22)** “Predecessor act” means ch. 551, 2005 stats.

11          **(23)** “Price amendment” means the amendment to a registration statement  
12 filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus  
13 or prospectus supplement filed under the Securities Act of 1933 that includes a  
14 statement of the offering price, underwriting and selling discounts or commissions,  
15 amount of proceeds, conversion rates, call prices, and other matters dependent upon  
16 the offering price.

17          **(24)** “Principal place of business” of a broker–dealer or an investment adviser  
18 means the executive office of the broker–dealer or investment adviser from which the  
19 officers, partners, or managers of the broker–dealer or investment adviser direct,  
20 control, and coordinate the activities of the broker–dealer or investment adviser.

21          **(25)** “Record,” except in the phrases “of record,” “official record,” and “public  
22 record,” means information that is inscribed on a tangible medium or that is stored  
23 in an electronic or other medium and is retrievable in perceivable form.

24          **(26)** “Sale” includes every contract of sale, contract to sell, or disposition of a  
25 security or interest in a security for value, and “offer to sell” includes every attempt

1 or offer to dispose of, or solicitation of an offer to purchase, a security or interest in  
2 a security for value. Both terms include all of the following:

3 (a) A security given or delivered with, or as a bonus on account of, a purchase  
4 of securities or any other thing constituting part of the subject of the purchase and  
5 having been offered and sold for value.

6 (b) A gift of assessable stock involving an offer and sale.

7 (c) A sale or offer of a warrant or right to purchase or subscribe to another  
8 security of the same or another issuer and a sale or offer of a security that gives the  
9 holder a present or future right or privilege to convert the security into another  
10 security of the same or another issuer, including an offer of the other security.

11 (27) “Securities and Exchange Commission” means the United States  
12 Securities and Exchange Commission.

13 (28) “Security” means a note; stock; treasury stock; security future; bond;  
14 debenture; evidence of indebtedness; limited partnership interest; viatical  
15 settlement investment or similar agreement; certificate of interest or participation  
16 in a profit-sharing agreement; collateral trust certificate; preorganization  
17 certificate or subscription; transferable share; investment contract; voting trust  
18 certificate; certificate of deposit for a security; fractional undivided interest in oil,  
19 gas, or other mineral rights; put, call, straddle, option, or privilege on a security,  
20 certificate of deposit, or group or index of securities, including an interest therein or  
21 based on the value thereof; put, call, straddle, option, or privilege entered into on a  
22 national securities exchange relating to foreign currency; or, in general, an interest  
23 or instrument commonly known as a “security”; or a certificate of interest or  
24 participation in, temporary or interim certificate for, receipt for, guarantee of, or  
25 warrant or right to subscribe to or purchase, any of the foregoing. The term:

1 (a) Includes both a certificated and an uncertificated security.

2 (b) Does not include an insurance or endowment policy or annuity contract  
3 under which an insurance company promises to pay a fixed or variable sum of money  
4 either in a lump sum or periodically for life or other specified period.

5 (c) Does not include an interest in a contributory or noncontributory pension  
6 or welfare plan subject to the Employee Retirement Income Security Act of 1974.

7 (d) Subject to the exception in par. (e), includes all of the following:

8 1. An investment in a common enterprise with the expectation of profits to be  
9 derived through the essential managerial efforts of someone other than the investor.  
10 For purposes of this subdivision, a “common enterprise” is an enterprise in which the  
11 fortunes of the investor are tied to the efficacy of the efforts of those seeking the  
12 investment or a third party.

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

20 (e) Includes as an “investment contract,” among other contracts, an interest in  
21 a limited liability partnership and in a limited liability company; except an interest,  
22 or class or series thereof, in a limited liability partnership or limited liability  
23 company is not an “investment contract” if any of the following apply:

24 1. Each holder of an interest, or class or series thereof, is actively engaged in  
25 the management of the limited liability partnership or limited liability company.

1 However, evidence that partners or members vote or have the right to vote, or the  
2 right to information concerning the business and affairs of the limited liability  
3 partnership or limited liability company, or the right to participate in management,  
4 shall not establish, without more, that all partners or members are actively engaged  
5 in the management of the limited liability partnership or limited liability company.

6 2. Each holder of an interest, or class or series thereof, is authorized under  
7 applicable law or under the partnership, operating, or other governing agreement or  
8 document to act for and bind the limited liability partnership or limited liability  
9 company and the total number of holders of all interests in the limited liability  
10 partnership or limited liability company does not exceed 15.

11 (f) Does not include a time share created and marketed in accordance with ch.  
12 707 if the requirements under s. 707.11 are satisfied.

13 (g) Does not include a membership interest in a domestic mutual holding  
14 company, as provided under s. 644.22.

\*\*\*\*NOTE: The WI study group draft did not address ss. 644.22 or 707.11, stats. I  
assume the intent is that these provisions will continue to apply, so I have added pars.  
(f) and (g) here. Please advise if you want par. (f) or (g) deleted ~~and/or~~ s. 644.22 or 707.11  
amended, or if you believe no treatment is necessary because they would not otherwise  
be considered a security. \*

15 (h) Does not include as an "investment contract" any contract excluded by rule  
16 adopted or order issued under this chapter.

\*\*\*\*NOTE: I have revised this provision that is now par. (h), which was created in  
section 102 (28) (E) by the WI study group and is not part of the uniform act, so that it  
is more consistent with other provisions of this section (see for example s. 551.102 (15)  
(h)).

17 (29) "Self-regulatory organization" means a national securities exchange  
18 registered under the Securities Exchange Act of 1934, a national securities  
19 association of broker-dealers registered under the Securities Exchange Act of 1934,  
20 a clearing agency registered under the Securities Exchange Act of 1934, or the

1 Municipal Securities Rulemaking Board established under the Securities Exchange  
2 Act of 1934.

3 (30) “Sign” means to do any of the following, with present intent to  
4 authenticate or adopt a record:

5 (a) To execute or adopt a tangible symbol.

6 (b) To attach or logically associate with the record an electronic symbol, sound,  
7 or process.

8 (31) “State” means a state of the United States, the District of Columbia,  
9 Puerto Rico, the United States Virgin Islands, or any territory or insular possession  
10 subject to the jurisdiction of the United States.

11 (32) “Viatical settlement investment” means an interest in any of the following:

12 (a) A viatical settlement contract, as defined in s. 632.68 (1) (d).

13 (b) A life insurance policy or group life insurance certificate that is subject to  
14 a viatical settlement contract.

15 (c) The death benefit under a life insurance policy or group life insurance  
16 certificate that is subject to a viatical settlement contract.

\*\*\*\*NOTE: The WI study group comments state that a definition for viatical settlement investment is added as sub. (32), but the draft that I received contained no such definition. I have taken a shot at creating such a definition, as it is necessary given other provisions of the draft. Please advise of changes you would like to this definition.

17

18 **551.103 References to federal statutes.** “Securities Act of 1933” (15 USC  
19 77a et seq.), “Securities Exchange Act of 1934” (15 USC 78a et seq.), “Public Utility  
20 Holding Company Act of 1935” (15 USC 79 et seq.), “Investment Company Act of  
21 1940” (15 USC 80a–1 et seq.), “Investment Advisers Act of 1940” (15 USC 80b–1 et  
22 seq.), “Employee Retirement Income Security Act of 1974” (29 USC 1001 et seq.),  
23 “National Housing Act” (12 USC 1701 et seq.), “Commodity Exchange Act” (7 USC



1 1 et seq.), “Internal Revenue Code” (26 USC 1 et seq.), “Securities Investor Protection  
2 Act of 1970” (15 USC 78aaa et seq.), “Securities Litigation Uniform Standards Act  
3 of 1998” (112 Stat. 3227), “Small Business Investment Act of 1958” (15 USC 661 et  
4 seq.), and “Electronic Signatures in Global and National Commerce Act” (15 USC  
5 7001 et seq.) mean those statutes and the rules and regulations adopted under those  
6 statutes, as in effect on the date of enactment of this chapter.

\*\*\*\*NOTE: Wisconsin law generally presumes that references to federal laws in the Wisconsin statutes capture subsequent amendments to these federal laws. This section suggests that any subsequent change to federal law may require state legislation to carry out these changes or maintain consistency between state and federal law. The WI study group’s decision not to include the bracketed language here from the uniform act ( “or as later amended”) is not consistent with current Wisconsin practice and may pose significant problems in the future. It is impractical to expect the legislature to change state statutes to update them each time applicable federal law changes. It is much more efficient to incorporate automatically changes in federal law. LRB Drafting Manual 9.03 (3) (b). Cf. 990.001 (5) (b). I highly recommend revising this provision to include the bracketed language from the uniform act.

7 **551.104 References to federal agencies.** A reference in this chapter to an  
8 agency or department of the United States is also a reference to a successor agency  
9 or department.

10 **551.105 Electronic records and signatures.** This chapter modifies, limits,  
11 and supersedes the federal Electronic Signatures in Global and National Commerce  
12 Act, but does not modify, limit, or supersede section 101 (c) of that act (15 USC 7001  
13 (c)) or authorize electronic delivery of any of the notices described in section 103 (b)  
14 of that act (15 USC 7003 (b)). This chapter authorizes the filing of records and  
15 signatures, when specified by provisions of this chapter or by a rule adopted or order  
16 issued under this chapter, in a manner consistent with section 104 (a) of that act (15  
17 USC 7004 (a)).

\*\*\*\*NOTE: 2003 Wisconsin Act 294 enacted the Uniform Electronic Transactions Act (UETA), with some modifications, creating ss. 137.11 to 137.24, stats. UETA is not referenced in this uniform act provision. Do you want UETA to be referenced here? Also, I note that the ESGNCA seems to authorize this provision, as 15 USC 7002 specifically allows states to overcome federal supremacy of the ESGNCA.