



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 04 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.

1 **551.408 Termination of employment or association of agent and**
2 **investment adviser representative and transfer of employment or**
3 **association. (1) NOTICE OF TERMINATION.** If an agent registered under this chapter
4 terminates employment by or association with a broker-dealer or issuer, or if an
5 investment adviser representative registered under this chapter terminates
6 employment by or association with an investment adviser or federal covered
7 investment adviser, or if either registrant terminates activities that require
8 registration as an agent or investment adviser representative, the broker-dealer,
9 issuer, investment adviser, or federal covered investment adviser shall promptly file
10 a notice of termination. If the registrant learns that the broker-dealer, issuer,
11 investment adviser, or federal covered investment adviser has not filed the notice,
12 the registrant may do so.

13 **(2) TRANSFER OF EMPLOYMENT OR ASSOCIATION.** If an agent registered under this
14 chapter terminates employment by or association with a broker-dealer registered
15 under this chapter and begins employment by or association with another
16 broker-dealer registered under this chapter; or if an investment adviser
17 representative registered under this chapter terminates employment by or
18 association with an investment adviser registered under this chapter or a federal
19 covered investment adviser that has filed a notice under s. 551.405 and begins
20 employment by or association with another investment adviser registered under this
21 chapter or a federal covered investment adviser that has filed a notice under s.
22 551.405; then upon the filing by or on behalf of the registrant, within 30 days after
23 the termination, of an application for registration that complies with the
24 requirement of s. 551.406 (1) and payment of the filing fee required under s. 551.614,
25 the registration of the agent or investment adviser representative is:

****NOTE: This provision corrects a mistaken cross-reference in the study group draft.

1 (a) Immediately effective as of the date of the completed filing, if the agent's
2 Central Registration Depository record or successor record or the investment adviser
3 representative's Investment Adviser Registration Depository record or successor
4 record does not contain a new or amended disciplinary disclosure within the previous
5 12 months.

6 (b) Temporarily effective as of the date of the completed filing, if the agent's
7 Central Registration Depository record or successor record or the investment adviser
8 representative's Investment Adviser Registration Depository record or successor
9 record contains a new or amended disciplinary disclosure within the preceding 12
10 months.

11 (3) WITHDRAWAL OF TEMPORARY REGISTRATION. The administrator may withdraw
12 a temporary registration if there are or were grounds for discipline as specified in s.
13 551.412 and the administrator does so within 30 days after the filing of the
14 application. If the administrator does not withdraw the temporary registration
15 within the 30-day period, registration becomes automatically effective on the 31st
16 day after filing.

17 (4) POWER TO PREVENT REGISTRATION. The administrator may prevent the
18 effectiveness of a transfer of an agent or investment adviser representative under
19 sub. (2) (a) or (b) based on the public interest and the protection of investors.

20 (5) TERMINATION OF REGISTRATION OR APPLICATION FOR REGISTRATION. If the
21 administrator determines that a registrant or applicant for registration is no longer
22 in existence or has ceased to act as a broker-dealer, agent, investment adviser, or
23 investment adviser representative, or is the subject of an adjudication of incapacity

1 or is subject to the control of a committee, conservator, or guardian, or cannot
2 reasonably be located, a rule adopted or order issued under this chapter may require
3 the registration be canceled or terminated or the application denied. The
4 administrator may reinstate a canceled or terminated registration, with or without
5 hearing, and may make the registration retroactive.

6 **551.409 Withdrawal of registration of broker-dealer, agent,**
7 **investment adviser, and investment adviser representative.** Withdrawal of
8 registration by a broker-dealer, agent, investment adviser, or investment adviser
9 representative becomes effective 60 days after the filing of the application to
10 withdraw or within any shorter period as provided by rule adopted or order issued
11 under this chapter unless a revocation or suspension proceeding is pending when the
12 application is filed. If a proceeding is pending, withdrawal becomes effective when
13 and upon such conditions as required by rule adopted or order issued under this
14 chapter. The administrator may institute a revocation or suspension proceeding
15 under s. 551.412 within one year after the withdrawal became effective
16 automatically and issue a revocation or suspension order as of the last date on which
17 registration was effective if a proceeding is not pending.

18 **551.411 Postregistration requirements. (1) FINANCIAL REQUIREMENTS.**
19 Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or
20 section 222 of the Investment Advisers Act of 1940 (15 USC 80b-18a), a rule adopted
21 or order issued under this chapter may establish minimum financial requirements
22 for broker-dealers registered or required to be registered under this chapter and
23 investment advisers registered or required to be registered under this chapter.

***NOTE: I have corrected what I believe to be an incorrect cite to federal law in
the uniform act. I believe the uniform act intended to cite to 15 USC 80b-18a (c).

1 (2) FINANCIAL REPORTS. Subject to section 15 (h) of the Securities Exchange Act
2 of 1934 (15 USC 78o (h)) or section 222 (b) of the Investment Advisers Act of 1940
3 (15 USC 80b-18a), a broker-dealer registered or required to be registered under this
4 chapter and an investment adviser registered or required to be registered under this
5 chapter shall file such financial reports as are required by a rule adopted or order
6 issued under this chapter. If the information contained in a record filed under this
7 subsection is or becomes inaccurate or incomplete in a material respect, the
8 registrant shall promptly file a correcting amendment.

****NOTE: I have changed, in this subsection and subs. (3), (5), and (6), what I believe to be an incorrect cross-reference in the uniform act, regarding the Investment Advisers Act of 1940.

9 (3) RECORDKEEPING. Subject to section 15 (h) of the Securities Exchange Act of
10 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act of 1940 (15 USC
11 80b-18a):

12 (a) A broker-dealer registered or required to be registered under this chapter
13 and an investment adviser registered or required to be registered under this chapter
14 shall make and maintain the accounts, correspondence, memoranda, papers, books,
15 and other records required by rule adopted or order issued under this chapter.

16 (b) Broker-dealer records required to be maintained under par. (a) may be
17 maintained in any form of data storage acceptable under section 17 (a) of the
18 Securities Exchange Act of 1934 (15 USC 78q (a)) if they are readily accessible to the
19 administrator.

20 (c) Investment adviser records required to be maintained under par. (a) may
21 be maintained in any form of data storage required by rule adopted or order issued
22 under this chapter.

1 (4) AUDITS OR INSPECTIONS. The records of a broker-dealer registered or
2 required to be registered under this chapter and of an investment adviser registered
3 or required to be registered under this chapter are subject to such reasonable
4 periodic, special, or other audits or inspections by a representative of the
5 administrator, within or without this state, as the administrator considers necessary
6 or appropriate in the public interest and for the protection of investors. The
7 administrator may also conduct an examination of the books, records, and affairs of
8 an applicant for registration as a broker-dealer or investment adviser. An audit or
9 inspection may be made at any time and without prior notice. The administrator
10 may copy, and remove for audit or inspection copies of, all records the administrator
11 reasonably considers necessary or appropriate to conduct the audit or inspection.
12 The administrator may assess a reasonable charge for conducting an audit or
13 inspection under this subsection.

14 (5) CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE. Subject to
15 section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222
16 of the Investment Advisers Act of 1940 (15 USC 80b-18a), a rule adopted or order
17 issued under this chapter may require a broker-dealer or investment adviser that
18 has custody of or discretionary authority over funds or securities of a customer or
19 client to obtain insurance or post a bond or other satisfactory form of security in an
20 amount prescribed by the administrator by rule. The administrator may determine
21 the requirements of the insurance, bond, or other satisfactory form of security.
22 Insurance or a bond or other satisfactory form of security may not be required of a
23 broker-dealer registered under this chapter whose net capital exceeds, or of an
24 investment adviser registered under this chapter whose minimum financial
25 requirements exceed, the amounts required by rule or order under this chapter. The

1 insurance, bond, or other satisfactory form of security must permit an action by a
2 person to enforce any liability on the insurance, bond, or other satisfactory form of
3 security if instituted within the time limitations in s. 551.509 (10) (b).

4 (6) REQUIREMENTS FOR CUSTODY. Subject to section 15 (h) of the Securities
5 Exchange Act of 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act
6 of 1940 (15 USC 80b-18a), an agent may not have custody of funds or securities of
7 a customer except under the supervision of a broker-dealer and an investment
8 adviser representative may not have custody of funds or securities of a client except
9 under the supervision of an investment adviser or a federal covered investment
10 adviser. A rule adopted or order issued under this chapter may prohibit, limit, or
11 impose conditions on a broker-dealer regarding custody of funds or securities of a
12 customer and on an investment adviser regarding custody of securities or funds of
13 a client.

14 (7) INVESTMENT ADVISER BROCHURE RULE. With respect to an investment adviser
15 registered or required to be registered under this chapter, a rule adopted or order
16 issued under this chapter may require that information or other record be furnished
17 or disseminated to clients or prospective clients in this state as necessary or
18 appropriate in the public interest and for the protection of investors and advisory
19 clients.

20 (8) CONTINUING EDUCATION. A rule adopted or order issued under this chapter
21 may require an individual registered under s. 551.402 or 551.404 to participate in
22 a continuing education program approved by the administrator and administered by
23 a self-regulatory organization or, in the absence of such a program, a rule adopted
24 or order issued under this chapter may require continuing education for an
25 individual registered under s. 551.404.

1 **(9) INTEREST RATE ON CUSTOMER ACCOUNTS.** No registered broker-dealer shall
 2 be subject to s. 138.05 (1) (a) with respect to any debit balance in a customer account
 3 if the debit balance is payable on demand and the only collateral for the balance is
 4 securities.

5 **551.412 Denial, revocation, suspension, censure, withdrawal,**
 6 **restriction, condition, or limitation of registration. (1) DISCIPLINARY**
 7 **CONDITIONS - APPLICANTS.** If the administrator finds that the order is in the public
 8 interest and sub. (4) authorizes the action, an order issued under this chapter may
 9 deny an application, or may condition or limit registration of an applicant, to be a
 10 broker-dealer, agent, investment adviser, or investment adviser representative and,
 11 if the applicant is a broker-dealer or investment adviser, of a partner, officer,
 12 director, person having a similar status or performing similar functions, or person
 13 directly or indirectly in control of the broker-dealer or investment adviser.

14 **(2) DISCIPLINARY CONDITIONS - REGISTRANTS.** If the administrator finds that the
 15 order is in the public interest and sub. (4) authorizes the action, an order issued
 16 under this chapter may revoke, suspend, censure, condition, or limit the registration
 17 of a registrant and, if the registrant is a broker-dealer or investment adviser, of a
 18 partner, officer, director, person having a similar status or performing similar
 19 functions, or person directly or indirectly in control of the broker-dealer or
 20 investment adviser. However, the administrator may not do any of the following:

21 (a) Institute a revocation or suspension proceeding under this subsection based
 22 on an order issued under a law of another state that is reported to the administrator
 23 or a designee of the administrator more than one year after the date of the order on
 24 which it is based.

1 (b) Under sub. (4) (e) 1. or 2., issue an order on the basis of an order issued under
2 the securities act of another state unless the other order was based on conduct for
3 which sub. (4) would authorize the action had the conduct occurred in this state.

4 (3) DISCIPLINARY PENALTIES - REGISTRANTS. If the administrator finds that the
5 order is in the public interest and sub. (4) (a) to (f), (h), (i), (j), or (L) and (m) authorizes
6 the action, an order under this chapter may censure, impose a bar, or impose a civil
7 penalty in an amount not to exceed a maximum of \$10,000 for a single violation or
8 \$100,000 for more than one violation, or in such amount as agreed to by the parties,
9 on a registrant and, if the registrant is a broker-dealer or investment adviser, a
10 partner, officer, director, person having a similar status or performing similar
11 functions, or person directly or indirectly in control of the broker-dealer or
12 investment adviser.

* ***NOTE: Should this provision of the uniform act be modified to also
cross-reference any of the non-uniform provisions created in sub. (4) (o) to (r) and (4g)?

13 (4) GROUNDS FOR DISCIPLINE. A person may be disciplined under subs. (1) to (3)
14 if the person:

15 (a) Has filed an application for registration in this state under this chapter or
16 the predecessor act within the previous 10 years, which, as of the effective date of
17 registration or as of any date after filing in the case of an order denying effectiveness,
18 was incomplete in any material respect or contained a statement that, in light of the
19 circumstances under which it was made, was false or misleading with respect to a
20 material fact.

21 (b) Willfully violated or willfully failed to comply with this chapter or the
22 predecessor act or a rule adopted or order issued under this chapter or the
23 predecessor act within the previous 10 years.

1 (c) Has been convicted of a felony or within the previous 10 years has been
2 convicted of a misdemeanor involving a security, a commodity future or option
3 contract, or an aspect of a business involving securities, commodities, investments,
4 franchises, insurance, banking, or finance.

5 (d) Is enjoined or restrained by a court of competent jurisdiction in an action
6 instituted by the administrator under this chapter or the predecessor act, a state, the
7 Securities and Exchange Commission, or the United States from engaging in or
8 continuing an act, practice, or course of business involving an aspect of a business
9 involving securities, commodities, investments, franchises, insurance, banking, or
10 finance.

11 (e) Is the subject of an order, issued after notice and opportunity for hearing,
12 by any of the following:

13 1. The securities or other financial services regulator of a state or the Securities
14 and Exchange Commission or other federal agency denying, revoking, barring, or
15 suspending registration as a broker-dealer, agent, investment adviser, federal
16 covered investment adviser, or investment adviser representative.

17 2. The securities regulator of a state or the Securities and Exchange
18 Commission against a broker-dealer, agent, investment adviser, investment adviser
19 representative, or federal covered investment adviser.

20 3. The Securities and Exchange Commission or a self-regulatory organization
21 suspending or expelling the registrant from membership in the self-regulatory
22 organization.

23 4. A court adjudicating a United States Postal Service fraud order.

24 5. The insurance regulator of a state denying, suspending, or revoking
25 registration as an insurance agent.

1 6. A depository institution or financial services regulator suspending or barring
2 the person from the depository institution or other financial services business.

3 (f) Is the subject of an adjudication or determination, after notice and
4 opportunity for hearing, by the Securities and Exchange Commission; the
5 Commodity Futures Trading Commission; the Federal Trade Commission; a federal
6 depository institution regulator, or a depository institution, insurance, or other
7 financial services regulator of a state that the person willfully violated the Securities
8 Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of
9 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the
10 securities or commodities law of a state, or a federal or state law under which a
11 business involving investments, franchises, insurance, banking, or finance is
12 regulated.

13 (g) Is insolvent, either because the person's liabilities exceed the person's assets
14 or because the person cannot meet the person's obligations as they mature, but the
15 administrator may not enter an order against an applicant or registrant under this
16 paragraph without a finding of insolvency as to the applicant or registrant.

17 (h) Refuses to allow or otherwise impedes the administrator from conducting
18 an audit or inspection under s. 551.411 (4) or refuses access to a registrant's office to
19 conduct an audit or inspection under s. 551.411 (4).

20 (i) Has failed to reasonably supervise an agent, investment adviser
21 representative, or other individual, if the agent, investment adviser representative,
22 or other individual was subject to the person's supervision and committed a violation
23 of this chapter or the predecessor act or a rule adopted or order issued under this
24 chapter or the predecessor act within the previous 10 years.

1 (j) Has not paid the proper filing fee within 30 days after having been notified
2 by the administrator of a deficiency, but the administrator shall vacate an order
3 under this paragraph when the deficiency is corrected.

4 (k) After notice and opportunity for a hearing, has been found within the
5 previous 10 years:

6 1. By a court of competent jurisdiction to have willfully violated the laws of a
7 foreign jurisdiction under which the business of securities, commodities, investment,
8 franchises, insurance, banking, or finance is regulated.

9 2. To have been the subject of an order of a securities regulator of a foreign
10 jurisdiction denying, revoking, or suspending the right to engage in the business of
11 securities as a broker-dealer, agent, investment adviser, investment adviser
12 representative, or similar person.

13 3. To have been suspended or expelled from membership by or participation in
14 a securities exchange or securities association operating under the securities laws
15 of a foreign jurisdiction.

16 (L) Is the subject of a cease and desist order issued by the Securities and
17 Exchange Commission or issued under the securities, commodities, investment,
18 franchise, banking, finance, or insurance laws of a state.

19 (m) Has engaged in dishonest or unethical practices in the securities,
20 commodities, investment, franchise, banking, finance, or insurance business within
21 the previous 10 years.

22 (n) Is not qualified on the basis of factors such as training, experience, and
23 knowledge of the securities business. However, in the case of an application by an
24 agent for a broker-dealer that is a member of a self-regulatory organization or by
25 an individual for registration as an investment adviser representative, a denial

1 order may not be based on this paragraph if the individual has successfully
2 completed all examinations required by sub. (5). The administrator may require an
3 applicant for registration under s. 551.402 or 551.404 who has not been registered
4 in a state within the 2 years preceding the filing of an application in this state to
5 successfully complete an examination.

6 (o) Is the subject of an order of the administrator denying an application or
7 suspending or revoking a registration as a broker-dealer, agent, or investment
8 adviser.

9 (p) Is selling or has sold, or is offering or has offered for sale, in the state
10 securities through any unlicensed agent or for any broker-dealer or issuer with
11 knowledge that the broker-dealer or issuer has not complied with this chapter.

12 (q) Has made any material misrepresentation to or withheld or concealed any
13 material fact from the administrator, or has refused to furnish information
14 reasonably requested by the administrator.

15 (r) Has not complied with the conditions or limitations of a registration issued
16 under this chapter.

17 **(4g)** ADDITIONAL GROUNDS FOR DENIAL OF APPLICATION. (a) The administrator
18 shall deny an application for the issuance or renewal of a registration if any of the
19 following applies:

20 1. The applicant fails to provide any information required under s. 551.406 (6)

21 (a) 1. or 2.

22 2. The department of revenue certifies under s. 73.0301 that the applicant is
23 liable for delinquent taxes. An applicant whose application for the issuance or
24 renewal of a registration is denied under this subdivision for delinquent taxes is

1 entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a),
2 but is not entitled to any other notice, hearing, or review under this subchapter.

****NOTE: This provision corrects a mistaken cross-reference in the study group draft.

3 3. The applicant is an individual who fails to comply, after appropriate notice,
4 with a subpoena or warrant issued by the department of workforce development or
5 a county child support agency under s. 59.53 (5) and related to paternity or child
6 support proceedings or who is delinquent in making court-ordered payments of child
7 or family support, maintenance, birth expenses, medical expenses or other expenses
8 related to the support of a child or former spouse, as provided in a memorandum of
9 understanding entered under s. 49.857. An applicant whose application is denied
10 under this subdivision for delinquent payments is entitled to a notice and hearing
11 under s. 49.857 but is not entitled to any other notice or hearing under this section.

****NOTE: In the WI study group draft, hearing in subd. 2. and par. (c) is “under this subchapter” but hearing under subd. 3. and par. (b) is “under this section”? Did the WI study group intend there to be a substantive difference in hearing availability?

12 (b) Unless s. 551.406 (6) (c) applies to the registrant, the administrator shall
13 restrict or suspend a registration under this subchapter if the registrant is an
14 individual who fails to provide his or her social security number. The administrator
15 shall restrict or suspend a registration under this subchapter if the registrant is an
16 individual who fails to comply, after appropriate notice, with a subpoena or warrant
17 issued by the department of workforce development or a county child support agency
18 under s. 59.53 (5) and related to paternity or child support proceedings or who is
19 delinquent in making court-ordered payments of child or family support,
20 maintenance, birth expenses, medical expenses or other expenses related to the
21 support of a child or former spouse, as provided in a memorandum of understanding
22 entered into under s. 49.857. A registrant whose registration is restricted or

1 suspended under this paragraph is entitled to a notice and hearing under s. 49.857
2 but is not entitled to any other notice or hearing under this section.

***NOTE: It is unclear to me why the “unless s. 551.406 (6) (c) applies” was included
in this provision. Is this the intended cross-reference?

3 (c) The administrator shall revoke a registration if the department of revenue
4 certifies under s. 73.0301 that the registrant is liable for delinquent taxes. A
5 registrant whose registration is revoked under this paragraph for delinquent taxes
6 is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5)
7 (a) but is not entitled to any other notice, hearing, or review under this subchapter.

8 (4r) ENUMERATION OF CLAUSES NOT EXCLUSIVE. The enumeration of the causes
9 stated in sub. (4) shall not be exclusive and the administrator may deny an
10 application or suspend or revoke any registrant or censure any registrant for any
11 cause whether similar to or different from these causes when necessary or
12 appropriate in public interest or for the protection of investors.

13 (5) EXAMINATIONS. A rule adopted or order issued under this chapter may
14 require that an examination, including an examination developed or approved by an
15 organization of securities regulators, be successfully completed by a class of
16 individuals or all individuals. An order issued under this chapter may waive, in
17 whole or in part, an examination as to an individual and a rule adopted under this
18 chapter may waive, in whole or in part, an examination as to a class of individuals
19 if the administrator determines that the examination is not necessary or appropriate
20 in the public interest and for the protection of investors.

21 (6) SUMMARY PROCESS. The administrator may suspend or deny an application
22 summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or
23 impose a civil penalty on a registrant before final determination of an administrative

1 proceeding. Upon the issuance of an order, the administrator shall promptly notify
2 each person subject to the order that the order has been issued, the reasons for the
3 action, and that within 15 days after the receipt of a request in a record from the
4 person the matter will be scheduled for a hearing. If a hearing is not requested and
5 none is ordered by the administrator within 30 days after the date of service of the
6 order, the order becomes final by operation of law. If a hearing is requested or
7 ordered, the administrator, after notice of and opportunity for hearing to each person
8 subject to the order, may modify or vacate the order or extend the order until final
9 determination.

10 (7) PROCEDURAL REQUIREMENTS. An order issued may not be issued under this
11 section, except under sub. (6), without all of the following:

12 (a) Appropriate notice to the applicant or registrant.

13 (b) Opportunity for hearing.

14 (c) Findings of fact and conclusions of law in a record in accordance with ch. 227.

15 (8) CONTROL PERSON LIABILITY. A person that controls, directly or indirectly, a
16 person not in compliance with this section may be disciplined by order of the
17 administrator under subs. (1) to (3) to the same extent as the noncomplying person,
18 unless the controlling person did not know, and in the exercise of reasonable care
19 could not have known, of the existence of conduct that is a ground for discipline under
20 this section.

21 (9) LIMIT ON INVESTIGATION OR PROCEEDING. The administrator may not institute
22 a proceeding under sub. (1), (2), or (3) based solely on material facts actually known
23 by the administrator unless an investigation or the proceeding is instituted within
24 one year after the administrator actually acquires knowledge of the material facts.

SUBCHAPTER V

FRAUD AND LIABILITIES

1
2
3 **551.501 General fraud.** It is unlawful for a person, in connection with the
4 offer, sale, or purchase of a security, directly or indirectly, to do any of the following:

- 5 (1) To employ a device, scheme, or artifice to defraud.
6 (2) To make an untrue statement of a material fact or to omit to state a material
7 fact necessary in order to make the statements made, in light of the circumstances
8 under which they were made, not misleading.
9 (3) To engage in an act, practice, or course of business that operates or would
10 operate as a fraud or deceit upon another person.

11 **551.502 Prohibited conduct in providing investment advice.** (1) FRAUD
12 IN PROVIDING INVESTMENT ADVICE. It is unlawful for a person that advises others for
13 compensation, either directly or indirectly or through publications or writings, as to
14 the value of securities or the advisability of investing in, purchasing, or selling
15 securities or that, for compensation and as part of a regular business, issues or
16 promulgates analyses or reports relating to securities, to do any of the following:

- 17 (a) To employ a device, scheme, or artifice to defraud another person.
18 (b) To engage in an act, practice, or course of business that operates or would
19 operate as a fraud or deceit upon another person.

20 **(2) RULES DEFINING FRAUD.** A rule adopted under this chapter may define an
21 act, practice, or course of business of an investment adviser or an investment adviser
22 representative, other than a supervised person of a federal covered investment
23 adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably
24 designed to prevent investment advisers and investment adviser representatives,
25 other than supervised persons of a federal covered investment adviser, from

1 engaging in acts, practices, and courses of business defined as fraudulent, deceptive,
2 or manipulative.

***NOTE: This provision follows the uniform act but I wonder about use of the erm
"supervised person of a federal covered investment adviser." Under current law, the
division may define such a "supervised person" by rule under s. 551.02 (7m) (a) 1., but this
provision of current law is repealed by the act. This provision of the uniform act also does
not cross-reference the analogous federal law, as does s. 551.102 (16) (c) 2., and such a
"supervised person" is not defined within the act. Do you want to make any changes to
this provision?

3 (3) RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule adopted under
4 this chapter may specify the contents of an investment advisory contract entered
5 into, extended, or renewed by an investment adviser.

6 551.503 Evidentiary burden. (1) CIVIL. In a civil action or administrative
7 proceeding under this chapter, a person claiming an exemption, exception,
8 preemption, or exclusion has the burden to prove the applicability of the claim.

9 (2) CRIMINAL. In a criminal proceeding under this chapter, a person claiming
10 an exemption, exception, preemption, or exclusion has the burden of going forward
11 with evidence of the claim.

12 551.504 Filing of sales and advertising literature. (1) FILING
13 REQUIREMENT. Except as otherwise provided in sub. (2), a rule adopted or order issued
14 under this chapter may require the filing of a prospectus, pamphlet, circular, form
15 letter, advertisement, sales literature, or other advertising record relating to a
16 security or investment advice, addressed or intended for distribution to prospective
17 investors, including clients or prospective clients of a person registered or required
18 to be registered as an investment adviser under this chapter.

19 (2) EXCLUDED COMMUNICATIONS. This section does not apply to sales and
20 advertising literature specified in sub. (1) which relates to a federal covered security,

1 a federal covered investment adviser, or a security or transaction exempted by s.
2 551.201, 551.202, or 551.203 except as required pursuant to s. 551.201 (7).

3 **551.505 Misleading filings.** It is unlawful for a person to make or cause to
4 be made, in a record that is used in an action or proceeding or filed under this chapter,
5 a statement that, at the time and in the light of the circumstances under which it is
6 made, is false or misleading in a material respect, or, in connection with the
7 statement, to omit to state a material fact necessary to make the statement made,
8 in the light of the circumstances under which it was made, not false or misleading.

9 **551.506 Misrepresentations concerning registration or exemption.**
10 The filing of an application for registration, a registration statement, a notice filing
11 under this chapter, the registration of a person, the notice filing by a person, or the
12 registration of a security under this chapter does not constitute a finding by the
13 administrator that a record filed under this chapter is true, complete, and not
14 misleading. The filing or registration or the availability of an exemption, exception,
15 preemption, or exclusion for a security or a transaction does not mean that the
16 administrator has passed upon the merits or qualifications of, or recommended or
17 given approval to, a person, security, or transaction. It is unlawful to make, or cause
18 to be made, to a purchaser, customer, client, or prospective customer or client a
19 representation inconsistent with this section.

20 **551.507 Qualified immunity.** A broker-dealer, agent, investment adviser,
21 federal covered investment adviser, or investment adviser representative is not
22 liable to another broker-dealer, agent, investment adviser, federal covered
23 investment adviser, or investment adviser representative for defamation relating to
24 a statement that is contained in a record required by the administrator, or designee
25 of the administrator, the Securities and Exchange Commission, or a self-regulatory

1 organization, unless the person knew, or should have known at the time that the
2 statement was made, that it was false in a material respect or the person acted in
3 reckless disregard of the statement's truth or falsity.

4 **551.508 Criminal penalties. (1) CRIMINAL PENALTIES.** A person that willfully
5 violates this chapter, or a rule adopted or order issued under this chapter, except s.
6 551.504 or the notice filing requirements of s. 551.302 or 551.405, or that willfully
7 violates s. 551.505 knowing the statement made to be false or misleading in a
8 material respect, upon conviction, shall be guilty of a Class H felony. An individual
9 convicted of violating a rule or order under this chapter may be fined, but may not
10 be imprisoned, if the individual did not have knowledge of the rule or order. Each
11 of the acts specified shall constitute a separate offense and a prosecution or
12 conviction for any one of such offenses shall not bar prosecution or conviction for any
13 other offense.

14 **(2) CRIMINAL REFERENCE NOT REQUIRED.** The attorney general or the district
15 attorney of the appropriate county, with or without a reference from the
16 administrator, may institute criminal proceedings under this chapter.

17 **(3) NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT.** This chapter does not limit
18 the power of this state to punish a person for conduct that constitutes a crime under
19 other laws of this state.

20 **551.509 Civil liability. (1) SECURITIES LITIGATION UNIFORM STANDARDS ACT.**
21 Enforcement of civil liability under this section is subject to the Securities Litigation
22 Uniform Standards Act of 1998.

23 **(2) LIABILITY OF SELLER TO PURCHASER.** A person is liable to the purchaser if the
24 person sells a security in violation of s. 551.301 or 551.501 and, as to s. 551.501 (2),
25 the purchaser did not know the untruth or omission and the seller cannot sustain the

1 burden of proof that the seller did not know and, in the exercise of reasonable care,
2 could not have known of the untruth or omission. An action under this subsection
3 is governed by the following:

4 (a) The purchaser may maintain an action to recover the consideration paid for
5 the security, less the amount of any income received on the security, and interest at
6 the legal rate under s. 138.04 from the date of the purchase, costs, and reasonable
7 attorney fees determined by the court, upon the tender of the security, or for actual
8 damages as provided in par. (c).

9 (b) The tender referred to in par. (a) may be made any time before entry of
10 judgment. Tender requires only notice in a record of ownership of the security and
11 willingness to exchange the security for the amount specified. A purchaser that no
12 longer owns the security may recover actual damages as provided in par. (c).

13 (c) Actual damages in an action arising under this subsection are the amount
14 that would be recoverable upon a tender less the value of the security when the
15 purchaser disposed of it, and interest at the legal rate under s. 138.04 from the date
16 of the purchase, costs, and reasonable attorney fees determined by the court.

***NOTE: I adopted the phrase “interest at the legal rate under s. 138.04” from s.
551.59 (1) (a) and (2) (a).

17 (3) LIABILITY OF PURCHASER TO SELLER. A person is liable to the seller if the
18 person buys a security in violation of s. 551.501 and, as to s. 551.501 (2), the seller
19 did not know the untruth or omission and the purchaser cannot sustain the burden
20 of proof that the purchaser did not know and, in the exercise of reasonable care, could
21 not have known of the untruth or omission. An action under this subsection is
22 governed by the following:

1 (a) The seller may maintain an action to recover the security, and any income
2 received on the security, costs, and reasonable attorney fees determined by the court,
3 upon the tender of the purchase price, or for actual damages as provided in par. (c).

4 (b) The tender referred to in par. (a) may be made any time before entry of
5 judgment. Tender requires only notice in a record of the present ability to pay the
6 amount tendered and willingness to take delivery of the security for the amount
7 specified. If the purchaser no longer owns the security, the seller may recover actual
8 damages as provided in par. (c).

9 (c) Actual damages in an action arising under this subsection are the difference
10 between the price at which the security was sold and the value the security would
11 have had at the time of the sale in the absence of the purchaser's conduct causing
12 liability, and interest at the legal rate under s. 138.04 from the date of the sale of the
13 security, costs, and reasonable attorney fees determined by the court.

14 (4) LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT. A person acting as
15 a broker-dealer or agent that sells or buys a security in violation of s. 551.401 (1),
16 551.402 (1), or 551.506 is liable to the customer. The customer, if a purchaser, may
17 maintain an action for recovery of actual damages as specified in sub. (2) (a) to (c),
18 or, if a seller, for a remedy as specified in sub. (3) (a) to (c).

19 (5) LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND INVESTMENT ADVISER
20 REPRESENTATIVE. A person acting as an investment adviser or investment adviser
21 representative that provides investment advice for compensation in violation of s.
22 551.403 (1), 551.404 (1), or 551.506 is liable to the client. The client may maintain
23 an action to recover the consideration paid for the advice, interest at the legal rate
24 under s. 138.04 from the date of payment, costs, and reasonable attorney fees
25 determined by the court.

1 **(6) LIABILITY FOR INVESTMENT ADVICE.** A person that receives directly or
2 indirectly any consideration for providing investment advice to another person and
3 that employs a device, scheme, or artifice to defraud the other person or engages in
4 an act, practice, or course of business that operates or would operate as a fraud or
5 deceit on the other person is liable to the other person. An action under this
6 subsection is governed by the following:

7 (a) The person defrauded may maintain an action to recover the consideration
8 paid for the advice and the amount of any actual damages caused by the fraudulent
9 conduct, interest at the legal rate under s. 138.04 from the date of the fraudulent
10 conduct, costs, and reasonable attorney fees determined by the court, less the
11 amount of any income received as a result of the fraudulent conduct.

12 (b) This subsection does not apply to a broker-dealer or its agents if the
13 investment advice provided is solely incidental to transacting business as a
14 broker-dealer and no special compensation is received for the investment advice.

15 **(7) JOINT AND SEVERAL LIABILITY.** The following persons are liable jointly and
16 severally with and to the same extent as persons liable under subs. (2) to (6):

17 (a) A person that directly or indirectly controls a person liable under subs. (2)
18 to (6), unless the controlling person sustains the burden of proof that the person did
19 not know, and in the exercise of reasonable care could not have known, of the
20 existence of conduct by reason of which the liability is alleged to exist.

21 (b) An individual who is a managing partner, executive officer, or director of a
22 person liable under subs. (2) to (6), including an individual having a similar status
23 or performing similar functions, unless the individual sustains the burden of proof
24 that the individual did not know, and in the exercise of reasonable care could not have
25 known, of the existence of conduct by reason of which the liability is alleged to exist.

1 (c) An individual who is an employee of or associated with a person liable under
2 subs. (2) to (6) and who materially aids the conduct giving rise to the liability, unless
3 the individual sustains the burden of proof that the individual did not know, and in
4 the exercise of reasonable care could not have known, of the existence of conduct by
5 reason of which the liability is alleged to exist.

6 (d) A person that is a broker-dealer, agent, investment adviser, or investment
7 adviser representative that materially aids the conduct giving rise to the liability
8 under subs. (2) to (6), unless the person sustains the burden of proof that the person
9 did not know, and in the exercise of reasonable care could not have known, of the
10 existence of conduct by reason of which liability is alleged to exist.

11 (8) RIGHT OF CONTRIBUTION. A person liable under this section has a right of
12 contribution as in cases of contract against any other person liable under this section
13 for the same conduct.

14 (9) SURVIVAL OF CAUSE OF ACTION. A cause of action under this section survives
15 the death of an individual who might have been a plaintiff or defendant.

16 (10) STATUTE OF LIMITATIONS. A person may not obtain relief:

17 (a) Under sub. (2) for violation of s. 551.301, or under sub. (4) or (5), unless the
18 action is instituted within one year after the violation occurred.

19 (b) Under sub. (2), other than for violation of s. 551.301, or under sub. (3) or (6),
20 unless the action is instituted within the earlier of 2 years after discovery of the facts
21 constituting the violation or 5 years after the violation.

22 (11) NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that has made, or has
23 engaged in the performance of, a contract in violation of this chapter or a rule adopted
24 or order issued under this chapter, or that has acquired a purported right under the

1 contract with knowledge of conduct by reason of which its making or performance
2 was in violation of this chapter, may not base an action on the contract.

3 (12) NO CONTRACTUAL WAIVER. A condition, stipulation, or provision binding a
4 person purchasing or selling a security or receiving investment advice to waive
5 compliance with this chapter or a rule adopted or order issued under this chapter is
6 void.

7 (13) SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and remedies provided
8 by this chapter are in addition to any other rights or remedies that may exist, but this
9 chapter does not create a cause of action not specified in this section or s. 551.411 (5).

****NOTE: My renumbering changes to the ^{bill} draft have corrected what I believe was
a mistaken cross-reference in the Wisconsin study group draft. Please let me know if
you believe the study group cross-reference was correct. +

10 **551.511 Rescission offers.** A purchaser, seller, or recipient of investment
11 advice may not maintain an action under s. 551.509 if all of the following apply:

12 (1) The purchaser, seller, or recipient of investment advice receives in a record,
13 before the action is instituted, an offer stating the respect in which liability under
14 s. 551.509 may have arisen and fairly advising the purchaser, seller, or recipient of
15 investment advice of that person's rights in connection with the offer, and any
16 financial or other information necessary to correct all material misrepresentations
17 or omissions in the information that was required by this chapter to be furnished to
18 that person at the time of the purchase, sale, or investment advice, and any of the
19 following:

20 (a) If the basis for relief under this section may have been a violation of s.
21 551.509 (2), an offer to repurchase the security for cash, payable on delivery of the
22 security, equal to the consideration paid, and interest at the legal rate under s. 138.04
23 from the date of the purchase, less the amount of any income received on the security,

1 or, if the purchaser no longer owns the security, an offer to pay the purchaser upon
2 acceptance of the offer damages in an amount that would be recoverable upon a
3 tender, less the value of the security when the purchaser disposed of it, and interest
4 at the legal rate under s. 138.04 from the date of the purchase in cash equal to the
5 damages computed in the manner provided in this subsection.

6 (b) If the basis for relief under this section may have been a violation of s.
7 551.509 (3), an offer to tender the security, on payment by the seller of an amount
8 equal to the purchase price paid, less income received on the security by the
9 purchaser and interest at the legal rate under s. 138.04 from the date of the sale, or,
10 if the purchaser no longer owns the security, an offer to pay the seller upon
11 acceptance of the offer, in cash, damages in the amount of the difference between the
12 price at which the security was purchased and the value the security would have had
13 at the time of the purchase in the absence of the purchaser's conduct that may have
14 caused liability and interest at the legal rate under s. 138.04 from the date of the sale.

15 (c) If the basis for relief under this section may have been a violation of s.
16 551.509 (4), and if the customer is a purchaser, an offer to pay as specified in par. (a),
17 or, if the customer is a seller, an offer to tender or to pay as specified in par. (b).

****NOTE: I believe that modifications made by the Wisconsin study group have
made the cross-reference here used by the study group incorrect. I have inserted what
I believe to be the correct cross-references based upon the uniform act. Please advise if
you believe the cross-references I used in this provision are incorrect.

18 (d) If the basis for relief under this section may have been a violation of s.
19 551.509 (5), an offer to reimburse in cash the consideration paid for the advice and
20 interest at the legal rate under s. 138.04 from the date of payment.

21 (e) If the basis for relief under this section may have been a violation of s.
22 551.509 (6), an offer to reimburse in cash the consideration paid for the advice, the
23 amount of any actual damages that may have been caused by the conduct, and

1 interest at the legal rate under s. 138.04 from the date of the violation causing the
2 loss.

***NOTE: The structure of sub. (1) was modified from the uniform act by the WI study group and I have made some modification to accommodate this change in structure.

3 (2) The offer under sub. (1) states that it must be accepted by the purchaser,
4 seller, or recipient of investment advice within 30 days after the date of its receipt
5 by the purchaser, seller, or recipient of investment advice or any shorter period, of
6 not less than 3 days, that the administrator, by order, specifies.

7 (3) The offeror has the present ability to pay the amount offered or to tender
8 the security under sub. (1).

9 (4) The offer under sub. (1) is delivered to the purchaser, seller, or recipient of
10 investment advice, or sent in a manner that ensures receipt by the purchaser, seller,
11 or recipient of investment advice.

12 (5) The purchaser, seller, or recipient of investment advice that accepts the
13 offer under sub. (1) in a record within the period specified under sub. (2) is paid in
14 accordance with the terms of the offer.

15 SUBCHAPTER VI

16 ADMINISTRATION AND JUDICIAL REVIEW

17 **551.601 Administration.** (1) ADMINISTRATION. The administrator shall
18 administer this chapter.

19 (2) UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful for the
20 administrator or an officer, employee, or designee of the administrator to use for
21 personal benefit or the benefit of others records or other information obtained by or
22 filed with the administrator that are not public under s. 551.607 (2). This chapter
23 does not authorize the administrator or an officer, employee, or designee of the

1 administrator to disclose the record or information, except in accordance with s.
2 551.602, 551.607 (3), or 551.608.

3 (3) NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This chapter does not
4 create or diminish a privilege or exemption that exists at common law, by statute or
5 rule, or otherwise.

6 (4) INVESTOR EDUCATION. The administrator may develop and implement
7 investor education initiatives to inform the public about investing in securities, with
8 particular emphasis on the prevention and detection of securities fraud. In
9 developing and implementing these initiatives, the administrator may collaborate
10 with public and nonprofit organizations with an interest in investor education. The
11 administrator may accept a grant or donation from a person that is not affiliated with
12 the securities industry or from a nonprofit organization, regardless of whether the
13 organization is affiliated with the securities industry, to develop and implement
14 investor education initiatives. This subsection does not authorize the administrator
15 to require participation or monetary contributions of a registrant in an investor
16 education program.

17 (5) SECURITIES INVESTOR EDUCATION AND TRAINING FUNDING. All moneys collected
18 from the administrative assessment under s. 551.604 (4) shall be credited to the
19 appropriation under s. 20.144 (1) (i). Subject to s. 20.144 (1) (i), the division shall use
20 moneys credited to that appropriation for the purposes specified in sub. (4) and s.
21 20.144 (1) (i).

****NOTE: I have modified this provision significantly to conform to restrictions
under this state's law. These modifications in part are modeled after s. 551.605 (2) of
current law. Article X, section 2, of the Wisconsin Constitution requires the proceeds of
court-collected fines and forfeitures to be deposited in the common school fund. *
Accordingly, I have drafted this provision to apply only to administrative assessments.

1 **551.602 Investigations and subpoenas. (1) AUTHORITY TO INVESTIGATE.** The
2 administrator may do any of the following:

3 (a) Conduct public or private investigations within or outside of this state
4 which the administrator considers necessary or appropriate to determine whether
5 a person has violated, is violating, or is about to violate this chapter or a rule adopted
6 or order issued under this chapter, or to aid in the enforcement of this chapter or in
7 the adoption of rules and forms under this chapter.

8 (b) Require or permit a person to testify, file a statement, or produce a record,
9 under oath or otherwise as the administrator determines, as to all the facts and
10 circumstances concerning a matter to be investigated or about which an action or
11 proceeding is to be instituted.


12 (c) Publish a record concerning an action, proceeding, or an investigation
13 under, or a violation of, this chapter or a rule adopted or order issued under this
14 chapter.

15 **(2) ADMINISTRATOR POWERS TO INVESTIGATE.** For the purpose of an investigation
16 under this chapter, the administrator or its designated officer may administer oaths
17 and affirmations, subpoena witnesses, seek compulsion of attendance, take
18 evidence, require the filing of statements, and require the production of any records
19 that the administrator considers relevant or material to the investigation.

20 **(3) PROCEDURE AND REMEDIES FOR NONCOMPLIANCE.** If a person does not appear
21 or refuses to testify, file a statement, produce records, or otherwise does not obey a
22 subpoena as required by the administrator under this chapter, the administrator
23 may apply to, or may refer the matter to the attorney general, district attorney of the
24 appropriate county, or appropriate federal authority who may apply to, the circuit

1 court of of the appropriate county or a court of another state to enforce compliance.

2 The court may do any of the following:

****NOTE: The “appropriate federal authority” is intended to include a US Attorney, pursuant to the WI study group comment.  *

3 (a) Hold the person in contempt.

4 (b) Order the person to appear before the administrator.

5 (c) Order the person to testify about the matter under investigation or in
6 question.

7 (d) Order the production of records.

8 (e) Grant injunctive relief, including restricting or prohibiting the offer or sale
9 of securities or the providing of investment advice.

10 (f) Impose a civil penalty of not less than \$5,000 and not greater than \$250,000
11 for each violation.

12 (g) Grant any other necessary or appropriate relief.

13 (4) APPLICATION FOR RELIEF. This section does not preclude a person from
14 applying to the circuit court of the appropriate county or a court of another state for
15 relief from a request to appear, testify, file a statement, produce records, or obey a
16 subpoena.

17 (5) USE IMMUNITY PROCEDURE. An individual is not excused from attending,
18 testifying, filing a statement, producing a record or other evidence, or obeying a
19 subpoena of the administrator under this chapter or in an action or proceeding
20 instituted by the administrator under this chapter on the ground that the required
21 testimony, statement, record, or other evidence, directly or indirectly, may tend to
22 incriminate the individual or subject the individual to a criminal fine, penalty, or
23 forfeiture. If the individual refuses to testify, file a statement, or produce a record

1 or other evidence on the basis of the individual's privilege against self-incrimination,
 2 the administrator may apply to the circuit court of the appropriate county to compel
 3 the testimony, the filing of the statement, the production of the record, or the giving
 4 of other evidence. The testimony, record, or other evidence compelled under such an
 5 order may not be used, directly or indirectly, against the individual in a criminal case,
 6 except in a prosecution for perjury or contempt or otherwise failing to comply with
 7 the order.

****NOTE: Under current law, use immunity is subject to s. 972.085. See s. 551.56
 (3). The WI study group did not modify the uniform act to correspond to existing
 Wisconsin law, so I have not created a similar provision here. See also the ****NOTE after
 s. 972.085 in this draft.

bill

8 (6) ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER JURISDICTION. At the
 9 request of the securities regulator of another state or a foreign jurisdiction, the
 10 administrator may provide assistance if the requesting regulator states that it is
 11 conducting an investigation to determine whether a person has violated, is violating,
 12 or is about to violate a law or rule of the other state or foreign jurisdiction relating
 13 to securities matters that the requesting regulator administers or enforces. The
 14 administrator may provide the assistance by using the authority to investigate and
 15 the powers conferred by this section as the administrator determines is necessary or
 16 appropriate. The assistance may be provided without regard to whether the conduct
 17 described in the request would also constitute a violation of this chapter or other law
 18 of this state if occurring in this state. In deciding whether to provide the assistance,
 19 the administrator may consider whether the requesting regulator is permitted and
 20 has agreed to provide assistance reciprocally within its state or foreign jurisdiction
 21 to the administrator on securities matters when requested; whether compliance with
 22 the request would violate or prejudice the public policy of this state; and the

1 availability of resources and employees of the administrator to carry out the request
2 for assistance.

3 **551.603 Civil enforcement. (1) CIVIL ACTION INSTITUTED BY ADMINISTRATOR.**

4 If the administrator believes that a person has engaged, is engaging, or is about to
5 engage in an act, practice, or course of business constituting a violation of this
6 chapter or a rule adopted or order issued under this chapter or that a person has, is,
7 or is about to engage in an act, practice, or course of business that materially aids a
8 violation of this chapter or a rule adopted or order issued under this chapter, the
9 administrator may maintain, or may refer the matter to the attorney general or
10 district attorney of the appropriate county who may maintain, an action in the circuit
11 court of the appropriate county to enjoin the act, practice, or course of business and
12 to enforce compliance with this chapter or a rule adopted or order issued under this
13 chapter.

14 **(2) RELIEF AVAILABLE.** In an action under this section and on a proper showing,
15 the court may do any of the following:

16 (a) Issue a permanent or temporary injunction, restraining order, or
17 declaratory judgment.

18 (b) Order other appropriate or ancillary relief, which may include any of the
19 following:

20 1. An asset freeze, accounting, writ of attachment, writ of general or specific
21 execution, and appointment of a receiver or conservator, that may be the
22 administrator, for the defendant or the defendant's assets.

23 2. Ordering the administrator to take charge and control of a defendant's
24 property, including investment accounts and accounts in a depository institution,
25 rents, and profits; to collect debts; and to acquire and dispose of property.

1 3. Imposing a civil penalty up to \$5,000 for a single violation or up to \$250,000
2 for more than one violation; an order of rescission, restitution, or disgorgement
3 directed to a person that has engaged in an act, practice, or course of business
4 constituting a violation of this chapter or the predecessor act or a rule adopted or
5 order issued under this chapter or the predecessor act.

6 4. Ordering the payment of prejudgment and postjudgment interest.

7 (c) Order such other relief as the court considers appropriate.

8 (3) NO BOND REQUIRED. The administrator may not be required to post a bond
9 in an action or proceeding under this chapter.

10 **551.604 Administrative enforcement. (1) ISSUANCE OF AN ORDER OR NOTICE.**

11 If the administrator determines that a person has engaged, is engaging, or is about
12 to engage in an act, practice, or course of business constituting a violation of this
13 chapter or a rule adopted or order issued under this chapter or that a person has
14 materially aided, is materially aiding, or is about to materially aid an act, practice,
15 or course of business constituting a violation of this chapter or a rule adopted or order
16 issued under this chapter, the administrator may do any of the following:

17 (a) Issue an order directing the person to cease and desist from engaging in the
18 act, practice, or course of business or to take other action necessary or appropriate
19 to comply with this chapter.

20 (b) Issue an order denying, suspending, revoking, or conditioning the
21 exemptions for a broker-dealer under s. 551.401 (2) (d) or (f) or an investment adviser
22 under s. 551.403 (2) (a) 3.

23 (c) Issue an order under s. 551.204.

24 (2) SUMMARY PROCESS. An order under sub. (1) is effective on the date of
25 issuance. Upon issuance of the order, the administrator shall promptly serve each

1 person subject to the order with a copy of the order and a notice that the order has
2 been entered. The order must include a statement of any civil penalty or costs of
3 investigation the administrator will seek, a statement of the reasons for the order,
4 and notice that, within 15 days after receipt of a request in a record from the person,
5 the matter will be scheduled for a hearing. If a person subject to the order does not
6 request a hearing and none is ordered by the administrator within 30 days after the
7 date of service of the order, the order, including the imposition of a civil penalty or
8 requirement for payment of the costs of investigation sought in a statement in the
9 order, becomes final as to that person by operation of law. If a hearing is requested
10 or ordered, the administrator, after notice of and opportunity for hearing to each
11 person subject to the order, may modify or vacate the order or extend it until final
12 determination.

13 (3) PROCEDURE FOR FINAL ORDER. If a hearing is requested or ordered pursuant
14 to sub. (2), a hearing must be held pursuant to ch. 227. A final order may not be
15 issued unless the administrator makes findings of fact and conclusions of law in a
16 record in accordance with ch. 227. The final order may make final, vacate, or modify
17 the order issued under sub. (1).

18 (4) CIVIL PENALTY. In a final order under sub. (3), the administrator may impose
19 a civil penalty in the form of an administrative assessment up to \$5,000 for a single
20 violation or up to \$250,000 for more than one violation.

***NOTE: I have added the term "administrative assessment" to address the
constitutional concern mentioned in the ***NOTE following s. 551.601 (5).

21 (5) COSTS. In a final order, the administrator may charge the actual cost of an
22 investigation or proceeding for a violation of this chapter or a rule adopted or order
23 issued under this chapter.

1 **(6) FILING OF CERTIFIED FINAL ORDER WITH COURT; EFFECT OF FILING.** If a petition
2 for judicial review of a final order is not filed in accordance with s. 551.609, the
3 administrator may file a certified copy of the final order with the clerk of a court of
4 competent jurisdiction. The order so filed has the same effect as a judgment of the
5 court and may be recorded, enforced, or satisfied in the same manner as a judgment
6 of the court.

7 **(7) ENFORCEMENT BY COURT; FURTHER CIVIL PENALTY.** If a person does not comply
8 with an order under this section, the administrator may petition a court of competent
9 jurisdiction to enforce the order. The court may not require the administrator to post
10 a bond in an action or proceeding under this section. If the court finds, after service
11 and opportunity for hearing, that the person was not in compliance with the order,
12 the court may adjudge the person in civil contempt of the order. The court may
13 impose a further civil penalty against the person for contempt in an amount not less
14 than \$5,000 but not greater than \$100,000 for each violation and may grant any
15 other relief the court determines is just and proper in the circumstances.

 ***NOTE: I note that the administrative assessment under sub. (4) that is being
enforced would be credited to the appropriation account under s. 20.144 (1) (i), but the
court's additional penalty would not; it would go to the common school fund, as do all other
forfeitures and fines.

16 **551.605 Rules, forms, orders, interpretative opinions, and hearings.**

17 **(1) ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.** The administrator may do
18 any of the following:

19 (a) Issue forms and orders and, after notice and comment, adopt and amend
20 rules necessary or appropriate to carry out this chapter, and repeal rules, including
21 rules and forms governing registration statements, applications, notice filings,
22 reports, and other records.

1 (b) By rule, define terms, whether or not used in this chapter, but those
2 definitions may not be inconsistent with this chapter.

3 (c) By rule, classify securities, persons, and transactions and adopt different
4 requirements for different classes.

5 (2) FINDINGS AND COOPERATION. Under this chapter, except as provided under
6 s. 551.412 (4g) (b) and (c), a rule or form may not be adopted or amended, or an order
7 issued or amended, unless the administrator finds that the rule, form, order, or
8 amendment is necessary or appropriate in the public interest or for the protection
9 of investors and is consistent with the purposes intended by this chapter. In
10 adopting, amending, and repealing rules and forms, s. 551.608 applies in order to
11 achieve uniformity among the states and coordination with federal laws in the form
12 and content of registration statements, applications, reports, and other records,
13 including the adoption of uniform rules, forms, and procedures.

14 (3) FINANCIAL STATEMENTS. Subject to section 15 (h) of the Securities Exchange
15 Act and section 222 of the Investment Advisers Act of 1940, the administrator may
16 require that a financial statement filed under this chapter be prepared in accordance
17 with generally accepted accounting principles in the United States and comply with
18 other requirements specified by rule adopted or order issued under this chapter. A
19 rule adopted or order issued under this chapter may establish:

20 (a) Subject to section 15 (h) of the Securities Exchange Act and section 222 of
21 the Investment Advisers Act of 1940, the form and content of financial statements
22 required under this chapter.

23 (b) Whether unconsolidated financial statements must be filed.

24 (c) Whether required financial statements must be audited by an independent
25 certified public accountant.

1 (4) INTERPRETATIVE OPINIONS. The administrator may provide interpretative
2 opinions or issue determinations that the administrator will not institute a
3 proceeding or an action under this chapter against a specified person for engaging
4 in a specified act, practice, or course of business if the determination is consistent
5 with this chapter. A rule adopted or order issued under this chapter may establish
6 a reasonable charge for interpretative opinions or determinations that the
7 administrator will not institute an action or a proceeding under this chapter.

8 (5) EFFECT OF COMPLIANCE. A penalty under this chapter may not be imposed
9 for, and liability does not arise from, conduct that is engaged in or omitted in good
10 faith in conformity with a rule, form, or order of the administrator under this chapter.

11 (6) PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an administrative
12 proceeding under this chapter must be conducted in public unless the administrator
13 for good cause consistent with this chapter determines that the hearing will not be
14 so conducted.

15 **551.606 Administrative files and opinions. (1) PUBLIC REGISTER OF FILINGS.**
16 The administrator shall maintain, or designate a person to maintain, a register of
17 applications for registration of securities; registration statements; notice filings;
18 applications for registration of broker-dealers, agents, investment advisers, and
19 investment adviser representatives; notice filings by federal covered investment
20 advisers that are or have been effective under this chapter or the predecessor act;
21 notices of claims of exemption from registration or notice filing requirements
22 contained in a record; orders issued under this chapter or the predecessor act; and
23 interpretative opinions or no action determinations issued under this chapter.

24 (2) PUBLIC AVAILABILITY. The administrator shall make all rules, forms,
25 interpretative opinions, and orders available to the public.

1 (3) COPIES OF PUBLIC RECORDS. The administrator shall furnish a copy of a
2 record that is a public record or a certification that the public record does not exist
3 to a person that so requests. A rule adopted under this chapter may establish a
4 reasonable charge for furnishing the record or certification. A copy of the record
5 certified or a certificate by the administrator of a record's nonexistence is prima facie
6 evidence of a record or its nonexistence.

7 **551.607 Public records; confidentiality.** (1) PRESUMPTION OF PUBLIC
8 RECORDS. Except as otherwise provided in sub. (2), records obtained by the
9 administrator or filed under this chapter, including a record contained in or filed with
10 a registration statement, application, notice filing, or report, are public records and
11 are available for public examination.

12 (2) NONPUBLIC RECORDS. The following records are not public records and are
13 not available for public examination under sub. (1):

14 (a) Information and records obtained by the administrator in connection with
15 an audit or inspection under s. 551.411 (4) or a pending investigation under s.
16 551.602.

17 (b) A part of a record filed in connection with a registration statement under
18 ss. 551.301 and 551.303 to 551.305 or a record under s. 551.411 (4) that contains trade
19 secrets or confidential information if the person filing the registration statement or
20 record has asserted a claim of confidentiality or privilege that is authorized by law.

21 (c) A record that is not required to be provided to the administrator or filed
22 under this chapter and is provided to the administrator only on the condition that
23 the record will not be subject to public examination or disclosure.

24 (d) A nonpublic record received from a person specified in s. 551.608 (1).

1 (e) Subject to s. 551.406 (6) (a), any social security number, residential address
2 unless used as a business address, and residential telephone number unless used as
3 a business telephone number, contained in a record that is filed.

****NOTE: I have added to this uniform act provision the cross-reference to s.
551.406 (6) (a), a provision added by the WI study group to follow current law.

4 (f) A record obtained by the administrator through a designee of the
5 administrator that a rule or order under this chapter determines has been
6 appropriately expunged from the administrator's records by the designee.

7 (3) ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is for the purpose of
8 a civil, administrative, or criminal investigation, action, or proceeding or to a person
9 specified in s. 551.608 (1), the administrator may disclose a record or information
10 obtained in connection with an audit or inspection under s. 551.411 (4) or a record
11 or information obtained in connection with a pending investigation under s. 551.602.

12 **551.608 Uniformity and cooperation with other agencies. (1) OBJECTIVE**
13 **OF UNIFORMITY.** The administrator shall, in its discretion, cooperate, coordinate,
14 consult, and, subject to s. 551.607, share records and information with the securities
15 regulator of another state, Canada, a Canadian province or territory, a foreign
16 jurisdiction, the Securities and Exchange Commission, the United States
17 Department of Justice, the Commodity Futures Trading Commission, the Federal
18 Trade Commission, the Securities Investor Protection Corporation, a self-regulatory
19 organization, a national or international organization of securities regulators, a
20 federal or state banking or insurance regulator, and a governmental law
21 enforcement agency to effectuate greater uniformity in securities matters among the
22 federal government, self-regulatory organizations, states, and foreign governments.

1 (B) (2) POLICIES TO CONSIDER. In cooperating, coordinating, consulting, and sharing
2 records and information under this section and in acting by rule, order, or waiver
3 under this chapter, the administrator shall, in its discretion, take into consideration
4 in carrying out the public interest the following general policies:

5 (a) Maximizing effectiveness of regulation for the protection of investors.

6 (b) Maximizing uniformity in federal and state regulatory standards.

7 (c) Minimizing burdens on the business of capital formation, without adversely
8 affecting essentials of investor protection.

9 (3) SUBJECTS FOR COOPERATION. The cooperation, coordination, consultation,
10 and sharing of records and information authorized by this section includes:

11 (a) Establishing or employing one or more designees as a central depository for
12 registration and notice filings under this chapter and for records required or allowed
13 to be maintained under this chapter.

14 (b) Developing and maintaining uniform forms.

15 (c) Conducting a joint examination or investigation.

16 (d) Holding a joint administrative hearing.

17 (e) Instituting and prosecuting a joint civil or administrative proceeding.

18 (f) Sharing and exchanging personnel.

19 (g) Coordinating registrations under ss. 551.301 and 551.401 to 551.404 and
20 exemptions under s. 551.203.

21 (h) Sharing and exchanging records, subject to s. 551.607.

22 (i) Formulating rules, statements of policy, guidelines, forms, and
23 interpretative opinions and releases.

24 (j) Formulating common systems and procedures.

1 (k) Notifying the public of proposed rules, forms, statements of policy, and
2 guidelines.

3 (L) Attending conferences and other meetings among securities regulators,
4 which may include representatives of governmental and private sector organizations
5 involved in capital formation, deemed necessary or appropriate to promote or achieve
6 uniformity.

7 (m) Developing and maintaining a uniform exemption from registration for
8 small issuers, and taking other steps to reduce the burden of raising investment
9 capital by small businesses.

10 **551.609 Judicial review.** A final order issued by the administrator under this
11 chapter is subject to judicial review in accordance with ch. 227, but administrative
12 enforcement orders originally entered without hearing may be reviewed only if the
13 party seeking review has requested a hearing within the time provided by s. 551.604
14 (2).

15 **551.611 Service of process. (1) SIGNED CONSENT TO SERVICE OF PROCESS.** A
16 consent to service of process complying with this section required by this chapter
17 must be signed and filed in the form required by a rule or order under this chapter.
18 A consent appointing the administrator the person's agent for service of process in
19 a noncriminal action or proceeding against the person, or the person's successor or
20 personal representative under this chapter or a rule adopted or order issued under
21 this chapter after the consent is filed, has the same force and validity as if the service
22 were made personally on the person filing the consent. A person that has filed a
23 consent complying with this subsection in connection with a previous application for
24 registration or notice filing need not file an additional consent.

1 **(2) CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.** If a person,
2 including a nonresident of this state, engages in an act, practice, or course of business
3 prohibited or made actionable by this chapter or a rule adopted or order issued under
4 this chapter and the person has not filed a consent to service of process under sub.
5 (1), the act, practice, or course of business constitutes the appointment of the
6 administrator as the person's agent for service of process in a noncriminal action or
7 proceeding against the person or the person's successor or personal representative.

8 **(3) PROCEDURE FOR SERVICE OF PROCESS.** Service under sub. (1) or (2) may be
9 made by providing a copy of the process to the office of the administrator, but it is not
10 effective unless all of the following apply:

11 (a) The plaintiff, which may be the administrator, promptly sends notice of the
12 service and a copy of the process, return receipt requested, to the defendant or
13 respondent at the address set forth in the consent to service of process or, if a consent
14 to service of process has not been filed, at the last known address, or takes other
15 reasonable steps to give notice.

16 (b) The plaintiff files an affidavit of compliance with this subsection in the
17 action or proceeding on or before the return day of the process, if any, or within the
18 time that the court, or the administrator in a proceeding before the administrator,
19 allows.

20 **(4) SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS BY ADMINISTRATOR.**
21 Service pursuant to sub. (3) may be used in a proceeding before the administrator or
22 by the administrator in a civil action in which the administrator is the moving party.

23 **(5) OPPORTUNITY TO DEFEND.** If process is served under sub. (3), the court, or the
24 administrator in a proceeding before the administrator, shall order continuances as

1 are necessary or appropriate to afford the defendant or respondent reasonable
2 opportunity to defend.

3 **551.612 Severability clause.** If any provision of this chapter or its
4 application to any person or circumstances is held invalid, the invalidity does not
5 affect other provisions or applications of this chapter that can be given effect without
6 the invalid provision or application, and to this end the provisions of this chapter are
7 severable.

****NOTE: Wisconsin statutes have a global severability provision. See s. 990.001
(11). In light of this, do you want this provision of the uniform act eliminated from the

bill draft?

8 **551.613 Jurisdiction. (1) SALES AND OFFERS TO SELL.** Sections 551.301,
9 551.302, 551.401 (1), 551.402 (1), 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509,
10 and 551.511 do not apply to a person that sells or offers to sell a security unless the
11 offer to sell or the sale is made in this state or the offer to purchase or the purchase
12 is made and accepted in this state.

13 **(2) PURCHASES AND OFFERS TO PURCHASE.** Sections 551.401 (1), 551.402 (1),
14 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509, and 551.511 do not apply to a
15 person that purchases or offers to purchase a security unless the offer to purchase
16 or the purchase is made in this state or the offer to sell or the sale is made and
17 accepted in this state.

18 **(3) OFFERS IN THIS STATE.** For the purpose of this section, an offer to sell or to
19 purchase a security is made in this state, whether or not either party is then present
20 in this state, if the offer meets any of the following criteria:

21 (a) The offer originates from within this state.

1 (b) The offer is directed by the offeror to a place in this state and received at the
2 place to which it is directed, but for purposes of s. 551.301, an offer to sell which is
3 not directed to or received by the offeree in this state is not made in this state.

4 (4) ACCEPTANCES IN THIS STATE. For the purpose of this section, an offer to
5 purchase or to sell is accepted in this state, whether or not either party is then
6 present in this state, if the acceptance meets all of the following criteria:

7 (a) The acceptance is communicated to the offeror in this state and the offeree
8 reasonably believes the offeror to be present in this state and the acceptance is
9 received at the place in this state to which it is directed.

10 (b) The acceptance has not previously been communicated to the offeror, orally
11 or in a record, outside this state.

12 (5) PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC COMMUNICATIONS. An offer
13 to sell or to purchase is not made in this state when a publisher circulates or there
14 is circulated on the publisher's behalf in this state a bona fide newspaper or other
15 publication of general, regular, and paid circulation that is not published in this
16 state, or that is published in this state but has had more than two-thirds of its
17 circulation outside this state during the previous 12 months, or when a radio or
18 television program or other electronic communication originating outside this state
19 is received in this state. A radio, television program, or other electronic
20 communication is considered as having originated in this state if either the broadcast
21 studio or the originating source of transmission is located in this state, unless any
22 of the following apply:

23 (a) The program or communication is syndicated and distributed from outside
24 this state for redistribution to the general public in this state.

1 (b) The program or communication is supplied by a radio, television, or other
2 electronic network with the electronic signal originating from outside this state for
3 redistribution to the general public in this state.

4 (c) The program or communication is an electronic communication that
5 originates outside this state and is captured for redistribution to the general public
6 in this state by a community antenna or cable, radio, cable television, or other
7 electronic system.

8 (d) The program or communication consists of an electronic communication
9 that originates in this state, but which is not intended for distribution to the general
10 public in this state.

11 (6) INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections 551.403 (1), 551.404
12 (1), 551.405 (1), 551.502, 551.505, and 551.506 apply to a person if the person engages
13 in an act, practice, or course of business instrumental in effecting prohibited or
14 actionable conduct in this state, whether or not either party is then present in this
15 state.

***NOTE: This section, Jurisdiction, was section 610 of the uniform act. However,
because there is an existing s. 551.61, I had to use a different statutory number.

16 **551.614 Fees and expenses. (1) REGISTRATION AND NOTICE FILING FEES AND**
17 **REPORTING.** (a) There shall be a filing fee of \$750 for every registration statement filed
18 under s. 551.303 or 551.304, and for every notice filing under s. 551.302. If a
19 registration statement is denied or withdrawn before the effective date or a
20 pre-effective stop order is entered under s. 551.306, or a notice filing is withdrawn,
21 the filing fee shall be retained.

22 (b) 1. An indefinite amount of securities shall be registered for offer and sale
23 in this state under a registration statement relating to redeemable securities issued

1 by an open-end management company or a face amount certificate company, as
2 defined in the Investment Company Act of 1940, and the applicant shall pay the fee
3 under par. (a). The registrant also shall, within 60 days after the end of each fiscal
4 year during which its registration statement is effective and within 60 days after the
5 registration is terminated, file a report on a form prescribed by rule of the division.

6 The form shall require the registrant to do one of the following:

7 a. Elect not to include the information under subd. 1. b. and instead pay a fee
8 of \$1,500.

9 b. Report the amount of securities sold to persons in this state during the
10 preceding fiscal year or, if the registration is terminated, during the portion of the
11 preceding fiscal year during which the registration was effective, and pay a fee of 0.05
12 percent of the dollar amount of the securities sold to persons in this state, but not less
13 than \$150 nor more than \$1,500.

14 2. An indefinite amount of securities is eligible for offer and sale in this state
15 resulting from a notice filing under s. 551.302 for the initial offer of a federal covered
16 security under section 18 (b) (2) of the Securities Act of 1933, if the filing party has
17 notified the division of securities of the issuer's fiscal year, and the filing party pays
18 the fee under par. (a). The filing party shall also, within 90 days after the end of each
19 fiscal year following the filing under s. 551.302, and within 90 days after sales in this
20 state have terminated, file a report to allow the division of securities to determine
21 that the amount of the fee paid is correct. The report shall be on a form prescribed
22 by rule of the division and shall require the filing party to do one of the following:

23 a. Elect not to include the information under subd. 2. b. and instead pay a fee
24 of \$1,500.

1 b. Report the amount of securities sold to persons in this state during the
2 preceding fiscal year or, if sales have terminated, during the portion of the preceding
3 fiscal year during which sales were made, and pay a fee of 0.05 percent of the dollar
4 amount of the securities sold to persons in this state, but not less than \$150 nor more
5 than \$1,500.

6 **(2) FEES RELATED TO BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT**
7 **ADVISER REPRESENTATIVES, AND FEDERAL COVERED ADVISERS.** Every applicant for an
8 initial or renewal license under s. 551.401, 551.402, 551.403, or 551.404 shall pay a
9 filing fee of \$200 in the case of a broker-dealer or investment adviser and \$30 in the
10 case of an agent representing a broker-dealer or issuer or an investment adviser
11 representative. Every federal covered adviser in this state that is required to make
12 a notice filing under s. 551.405 shall pay an initial or renewal notice filing fee of \$200.
13 A broker-dealer, investment adviser, or federal covered adviser maintaining a
14 branch office within this state shall pay an additional filing fee of \$30 for each branch
15 office. When an application is denied, or an application or a notice filing is
16 withdrawn, the filing fee shall be retained.

17 **(3) EXAMINATION EXPENSES.** The expenses reasonably attributable to the
18 examination of any matter arising under this chapter shall be charged to the
19 applicant, registrant, or licensee involved, but the expenses so charged shall not
20 exceed such maximum amounts as the division of securities by rule prescribes.

21 **(4) OTHER FEES.** The division of securities may by rule require the payment of
22 prescribed fees for delinquent or materially deficient filings of information or
23 documents required under this chapter to be filed with the division or an
24 organization designated under s. 551.406 (1) (intro.).

1 (5) FEES PAID TO STATE. All fees and expenses collected by the division under this
2 section shall be paid into the state treasury.

***NOTE: I added "by the division" in sub. (5) because one might argue that payments to IARD and Web-CRD are "under this section." Although sub. (5) is modeled after existing s. 551.52 (5), the language is somewhat antiquated. It would be preferable to say that such fees are deposited into the general fund and credited to a specified appropriation account.

3 SUBCHAPTER VII

4 TRANSITION

5 **551.701 Effective date.** This chapter takes effect on the effective date of this
6 section [revisor inserts date].

***NOTE: This provision of the uniform act is unnecessary but may be useful in allowing readers to easily identify, from the statutory text, when this recodification of ch. 551 becomes effective.

7 **551.703 Application of act to existing proceeding and existing rights**

8 **and duties.** (1) APPLICABILITY OF PREDECESSOR ACT TO PENDING PROCEEDINGS AND

9 EXISTING RIGHTS. The predecessor act exclusively governs all actions or proceedings

10 that are pending on the effective date of this subsection [revisor inserts date] or

11 may be instituted on the basis of conduct occurring before the effective date of this

12 subsection [revisor inserts date], but a civil action may not be maintained to

13 enforce any liability under the predecessor act unless instituted within any period

14 of limitation that applied when the cause of action accrued or within 5 years after the

15 effective date of this subsection [revisor inserts date], whichever is earlier.

16 (2) CONTINUED EFFECTIVENESS UNDER PREDECESSOR ACT. All effective

17 registrations under the predecessor act, and all administrative orders relating to the

18 registrations, rules, statements of policy, interpretative opinions, declaratory

19 rulings, no action determinations, and conditions imposed on the registrations under

20 the predecessor act, remain in effect while they would have remained in effect if this

1 chapter had not been reenacted. They are considered to have been filed, issued, or
2 imposed under this chapter, but are exclusively governed by the predecessor act.

3 (3) APPLICABILITY OF PREDECESSOR ACT TO OFFERS OR SALES. The predecessor act
4 exclusively applies to an offer or sale made within one year after the effective date
5 of this subsection [revisor inserts date] pursuant to an offering made in good faith
6 before the effective date of this subsection [revisor inserts date] on the basis of an
7 exemption available under the predecessor act.

8 SECTION 17. 552.01 (6) (c) of the statutes is amended to read:

9 552.01 (6) (c) Whose equity securities of any class are or have been registered
10 under ch. 551 or predecessor laws, or are registered under section 12 of the securities
11 exchange act of 1934 or which is an entity identified in s. ~~551.22 (3), (4) or (5)~~ 551.201
12 (3); and

13 History: 1971 c. 300; 1981 c. 16; 1983 a. 200; 1985 a. 195; 1995 a. 27.

14 SECTION 18. 552.05 (2) (intro.) of the statutes is amended to read:

15 552.05 (2) (intro.) The registration statement shall be filed on forms prescribed
16 by the division, and shall be accompanied by a consent by the offeror to service of
17 process specified in s. ~~551.65 (1)~~ 551.611 and the filing fee specified in s. 552.15 (1),
18 and shall contain the following information and such additional information as the
19 division by rule prescribes:

20 History: 1971 c. 300; 1981 c. 16 ss. 9, 18; 1983 a. 200; 1985 a. 195; 1987 a. 381; 1995 a. 27; 1999 a. 32.

21 SECTION 19. 560.036 (1) (fm) 2. of the statutes is amended to read:

22 560.036 (1) (fm) 2. It serves as a manager, comanager or in any other
23 underwriting capacity with regard to the sale of evidences of indebtedness or other
obligations or as a broker-dealer as defined in s. ~~551.02 (3)~~ 551.102 (4).

24 History: 1983 a. 390; 1985 a. 182 s. 57; 1987 a. 27, 403; 1989 a. 31; 1991 a. 37, 39, 189; 1993 a. 112; 1997 a. 27; 1999 a. 150 s. 672.

SECTION 20. 611.76 (11) of the statutes is amended to read:

1 611.76 (11) SECURITY REGULATION. The filing with the division of securities of
2 a certified copy of the plan of conversion as approved by the commissioner constitutes
3 registration under s. ~~551.27~~ 551.305 of the securities authorized to be issued
4 thereunder.

History: 1971 c. 260; 1979 c. 102 ss. 107, 236 (5), (13); 1981 c. 314; 1983 a. 192, 215; 1985 a. 29, 215; 1995 a. 27; 1997 a. 79; 1999 a. 85; 2003 a. 33.

5 **SECTION 21.** 644.22 of the statutes is amended to read:

6 **644.22 Securities regulation.** A membership interest in a domestic mutual
7 holding company shall not constitute a security, as defined in s. ~~551.02 (13)~~ 551.102
8 (28).

History: 1997 a. 227.

9 **SECTION 22.** 893.66 (3) of the statutes is amended to read:

10 893.66 (3) This section does not apply to actions subject to s. ~~551.59 (5)~~ 551.509
11 (10) or 553.51 (4).

History: 1993 a. 310; 2001 a. 16.

12 **SECTION 23.** 946.79 (1) (a) of the statutes is amended to read:

13 946.79 (1) (a) “Financial institution” means a bank, savings bank, savings and
14 loan association, credit union, loan company, sales finance company, insurance
15 premium finance company, community currency exchange, seller of checks,
16 insurance company, trust company, securities broker–dealer, as defined in s. ~~551.02~~
17 ~~(3)~~ 551.102 (4), mortgage banker, mortgage broker, pawnbroker, as defined in s.
18 134.71 (1) (e), telegraph company, or dealer in precious metals, stones, or jewels.

History: 2003 a. 36.

19 **SECTION 24.** 946.82 (4) of the statutes is amended to read:

20 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
21 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
22 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
23 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,

1 221.0636, 221.0637, 221.1004, ~~551.41, 551.42, 551.43, 551.44~~, 553.41 (3) and (4),
2 553.52 (2), 940.01, 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30,
3 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09,
4 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05,
5 943.06, 943.10, 943.20 (3) (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24
6 (2), 943.27, 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39,
7 943.40, 943.41 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76,
8 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21
9 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08,
10 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64,
11 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150; 2001 a. 16, 105, 109; 2003 a. 36, 321; 2005 a. 212.

12

13 **SECTION 25.** 972.085 of the statutes is amended to read:

14 **972.085 Immunity; use standard.** Immunity from criminal or forfeiture
15 prosecution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15,
16 139.20, 139.39 (5), 195.048, 196.48, ~~551.56 (3)~~, 553.55 (3), 601.62 (5), 767.87 (4),
17 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and 979.07 (1) and ch. 769,
18 provides immunity only from the use of the compelled testimony or evidence in
19 subsequent criminal or forfeiture proceedings, as well as immunity from the use of
20 evidence derived from that compelled testimony or evidence.

History: 1989 a. 122; 1995 a. 225, 400; 1997 a. 35; 2005 a. 443 s. 265.

***NOTE: Because s. 551.602 (5) does not provide that immunity is subject to s. 972.085, I am striking the cross-reference rather than changing the cross-reference.

21

SECTION 26. Effective date.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1109/P1dn

ARG:.....

wj

Please review the attached draft carefully to ensure that it is consistent with your intent.

I tried to coordinate the numbering in this draft with the numbering in the uniform act wherever possible. This promotes "uniformity" in making it easier for administrators in other states, and other individuals, to find relevant provisions of Wisconsin law if they know the section number of the uniform act. Accordingly, I have at times changed the numbering provided by the Wisconsin study group. Also, because I cannot "reuse" statutory numbers in the same session, I could not use s. 551.410, 551.510, or 551.610 (which we would number s. 551.41, 551.51, or 551.61). With respect to s. 551.41, this does not present a problem, as s. 551.41 of the uniform act is omitted from the draft and moving section 410 of the study group draft to section 411 (s. 551.411), with appropriate modifications to cross-references, brings the Wisconsin study group numbering back into conformity with the uniform act. With respect to section 510 and 610 (what would be ss. 551.51 and 551.61), I changed the numbering to ss. 551.511 and 551.613. In other instances, where modifications by the Wisconsin study group have resulted in new provisions inserted between uniform act provisions, I have numbered these new provisions so as not to disrupt the parallel to the uniform act numbering. Where provisions of the uniform act are omitted from the draft, there may be a "gap" in numbering in this draft, which is intentional and for the purpose of maintaining a parallel to the uniform act numbering wherever possible.

In the future, it may be useful to know which provisions are modified from the uniform act. The following provisions of the attached draft are modified from the uniform act, are an addition to the act, or include a significant decision of the Wisconsin study group with respect to an option of the uniform act: s. 551.102 (1g), (5) (b) 3., (5m), (15) (intro.), (17) (d) and (e), (28) (intro.), (b), (d), (e), (f), (g) and (h), and (32); 551.103; 551.201 (1); 551.202 (2) (e), (6), (13) (am), (14), (15), (23), (24), and (25); 551.204 (1) (3) and (4); 551.302 (1) (a), (b), and (c) and (5); 551.303 (3) (a); 551.304 (2) (r) and (4); 551.305 (2), (10), and (11); 551.306 (1) (g); 551.401 (2) (intro.), (cm), and (f); 551.402 (2) (d) and (h), (4), (5), and (6); 551.403 (2) (a) (intro.), 2m., and 3. and (3); 551.404 (3), (5), and (6); 551.405 (2) (a) 1. and 2m., (3), and (4); 551.406 (1), (3), and (6); 551.407 (2); 551.411 (4), (5), (8), and (9); 551.412 (2) (intro.), (3), (4) (e) 1., (o), (p), (q), and (r) and (4g) and (4r); 551.508 (1); 551.509 (2) and (3); 551.511 (1); 551.602 (1) (c) and (3); 551.603 (1) and (2)

Parallelism

to

and

*

(b) 3.; 551.604 (4) and (7); 551.605 (2) and (5); 551.607 (2) (a), (e), and (f) and (3); 551.609; 551.613 (3) (b); and 551.614. In addition, the following provisions of the uniform act are omitted from the attached draft: section 302 (b), 305 (f), 306 (b), 401 (b) (1) (G) and (2), 410 [subject covered under s. 551.614], 510 (a), 609 (b), and 702. For details on most of the modifications, additions, or omissions, the Wisconsin study group notes in the study group draft should be consulted. Section 612 of the uniform act is unnecessary because of Wisconsin's global severability provision in s. 990.001 (11), but I have retained it in the draft anyway for the sake of uniformity.

please consult

Under our drafting conventions, we do not create a list and use "and" or "or" in the penultimate item of the list. Instead, we use a phrase to the effect of "all of the following" or "any of the following" in the introductory clause. In most locations, this system worked fine. In a few sections of the uniform act, there was not a good fit. See, for example, ss. 551.304 (2), 551.411 (3), 551.412 (4), and 551.613 (3) and (4) of the attached draft.

In a number of instances, changes made by the Wisconsin study group affected the numbering in the Wisconsin study group draft so that, in other provisions, the cross-reference numbering used by the study group from the uniform act was not accurate. In some of these instances, I have corrected the cross-references; in other instances my renumbering to correspond to the uniform act has automatically corrected these cross-references.

The attached draft includes numerous embedded notes containing specific questions or comments about the draft.

Please let me know if you have questions or comments about the attached draft. I look forward to working with you further to bring the draft into an introducible form.

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