



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 07 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 reporting: Prior Provision: RUSA Section 402(2). RUSA added this exemption to authorize
2 nonissuer secondary trading in the securities of issuers that were subject to the periodic reporting
3 requirements of the Securities Exchange Act of 1934. To bar immediate secondary trading in
4 nonregistered initial public offerings, there was a further requirement that these securities be
5 subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of
6 1934 for not less than 90 days. Section 202(4) only covers the guarantor because if the issuer of
7 the security is a reporting company under Sections 13 or 15(d) of the Securities Exchange Act of
* 8 1934, the transaction is preempted by Section 18(b)(4)(A) of the Securities Act of 1933.

9
10 Section 18(b)(4)(A) of the National Securities Markets Improvement Act of 1996 defines
11 nonissuer transactions under Section 4(1) of the Securities Act of 1933 (“transactions by persons
12 other than an issuer, underwriter, or dealer”) as “federal covered securities,” see Section 102(7),
13 if the issuer files reports with the Securities and Exchange Commission under Sections 13 or
14 15(d) of the Securities Exchange Act of 1934. Under Section 18(a) of the Securities Act of 1933
15 no state statute, rule, order, or other administrative action with respect to registration of securities
* 16 or reporting requirements may apply to a federal covered security. To harmonize Section 202(4)
17 with Sections 18(a) and 18(b)(4)(A) of the Securities Act of 1933, the 90 day reporting period in
18 RUSA Section 402(2) is not adopted in this Act.

19
20 6. Section 202(5): Nonissuer transactions in specified fixed income securities: Prior
21 Provisions: 1956 Act Section 402(b)(2)(B); RUSA Section 402(4). The concept of a fixed
22 income security rated by a nationally recognized statistical rating organization in one of its four
23 highest rating categories described in Section 202(5)(A) is well established in federal securities
24 law in Form S-3 adopted under the Securities Act of 1933 and the net capital Rule 15c3-
25 1(c)(2)(vi)(F) adopted under the Securities Exchange Act of 1934. See 2 Louis Loss & Joel
26 Seligman, Securities Regulation 649-653 (3d ed. rev. 1999). Nationally recognized statistical
27 rating organizations have been identified by the Securities and Exchange Commission and
28 include such organizations as Moody’s and Standard and Poor’s. Rating categories typically
29 begin with AAA and under this Act would include BBB as the fourth highest rating category.

30
31 Section 202(5)(B) follows the 1956 Act and RUSA, but also addresses blank check and
32 similar offerings, which became major concerns at the state and federal levels during the past two
33 decades. Cf. Securities Act of 1933 Rule 419. See Official Comment (3).

34
35 This subsection includes both debt securities with fixed maturity or a fixed interest rate and
36 preferred stock with fixed dividend provisions.

37
38 7. Section 202(6): Unsolicited brokerage transactions: Prior Provisions: 1956 Act Section
39 402(b)(3); RUSA Section 402(5). Section 18(b)(4)(B) of the Securities Act of 1933 defines as
40 federal covered securities those subject to Section 4(4) of the Securities Act of 1933: “brokerage
* 41 transactions executed upon customers’ orders on any exchange or in the over-the-counter market
42 but not the solicitation of such orders.” Section 202(6) is intended to provide exemption for
43 nonagency transactions by dealers not within the scope of Section 4(4).

44
45 The 1956 Act Section 402(b)(3) had provided that the administrator “may by rule require that

1 the customer acknowledge upon a specified form that the same was unsolicited, and that a signed
2 copy of each such form be preserved by the broker-dealer for a specified period.” This type of
3 requirement is preempted by Section 18(a) of the Securities Act of 1933 for federal covered
4 securities and is viewed as unnecessary for the limited class of dealer nonagency transactions that
5 will be exempted by Section 202(6).

6
7 8. Section 202(7): Nonissuer transactions by pledgees: Prior Provisions: 1956 Act Section
8 402(b)(7); RUSA Section 402(9). This subsection is identical to the 1956 Act and substantively
9 identical to RUSA.

10
11 9. Section 202(8): Nonissuer transactions with federal covered investment advisers: No
12 Prior Provision. This exemption was added because of a recognition that federal covered
13 investment advisers are sophisticated financial professionals capable of determining the merits of
14 a security and do not require the protections provided by requiring registration in a particular
15 state.

16
17 10. Section 202(9): Specified exchange transactions: No Prior Provision. Section 202(9)
18 provides a state counterpart to the exemption in Section 3(a)(10) of the Securities Act of 1933.

19
20 11. Section 202(10): Underwriter transactions: Prior Provisions: 1956 Act Section
21 402(b)(4); RUSA Section 402(6). This subsection is substantively identical to the 1956 Act and
22 RUSA.

23
24 12. Section 202(11): Unit secured transactions: Prior Provisions: 1956 Act
25 Section 402(b)(5); RUSA Section 402(7). In recent years the application of this exemption has
26 been one of concern to state securities administrators. The conditions that conclude this
27 exemption are new and are intended to address these concerns.

28
29 13. Section 202(12): Bankruptcy, guardian, or conservator transactions: Prior Provisions:
30 1956 Act Section 402(b)(6); RUSA Section 402(8). This subsection is identical to that in the
31 1956 Act and RUSA.

32
33 14. Section 202(13): Transactions with specified investors: Prior Provision: 1956 Act
34 Section 402(b)(8). The 1956 Act contains similar but less inclusive language in Section
35 402(b)(8). If the Securities and Exchange Commission adopts a rule defining “qualified
36 purchaser” as used in Section 18(b)(3) of the Securities Act to specify certain purchasers of
37 federal covered securities, part or all of this exemption will be redundant. As of September
38 2002, the Commission has proposed, but not adopted, Rule 146(c).

39
40 Section 202(13)(B) is limited to transactions for the account of a federal covered investment
41 adviser and is not intended to reach transactions on behalf of others by such adviser.

42
43 15. Section 202(14): Limited offering transactions: Prior Provisions: 1956 Act Section
44 402(b)(9); RUSA Section 402(11). The reference in the prefatory language to “a single issue”
45 signifies that two or more issues can be “integrated” and potentially destroy the exemption. There

1 are two general tests for integration under the federal securities laws. The states similarly have
2 followed generally these types of integration principles with respect to securities transaction
3 exemptions. First, there is a six month "buffer" before and after an offer, offer to sell, or sale of
4 a transaction exempt under Section 202(14) during which no other issue can be distributed if
5 integration automatically is to be avoided. See Rule 147(b)(2) and Rule 502(a) of the Securities
6 Act of 1933. Second, if two issues occur within six months, integration may occur depending
7 upon the following factors:

- 8
9 (i) are the offerings part of a single plan of financing;
10 (ii) do the offerings involve issuance of the same class of securities;
11 (iii) are the offerings made at or about the same time;
12 (iv) is the same type of consideration to be received; and
13 (v) are the offerings made for the same general purpose.

14
15 See generally 3 Louis Loss & Joel Seligman, Securities Regulation 1231-1248 (3d ed. rev. 1999).

16
17 Section 402(b)(9) of the 1956 Act and Section 402(11) of the 1985 Act provide alternative
18 limited offering transaction exemptions. The 1956 Act was limited to offers to no more than ten
19 persons (other than institutional investors specified in Section 402(b)(8)); all purchasers in the
20 State had to purchase for investment; and no remuneration was given for soliciting prospective
21 purchasers in the State. RUSA, in contrast, was limited to no more than 25 purchasers (other
22 than financial or institutional investors); no general solicitation or advertising; and no
23 remuneration was paid to a person other than a broker-dealer for soliciting a prospective
24 purchaser.

25
26 This Section would apply to preorganization limited offerings as well as operating company
27 limited offerings. The Securities Act of 1933 Sections 3(b) and 4(2) also apply to both. In
28 contrast, the 1956 Act Section 402(b)(10) and RUSA Section 402(12) used similar concepts in
29 separate Sections to apply to preorganization limited offerings.

30
31 Section 18(b)(4)(D) of the Securities Act of 1933 defines as federal covered securities those
32 issued under Securities and Exchange Commission rules under Section 4(2) of the Securities Act.
33 This would include Rule 506, which uses the "accredited investor" definition in Rule 501(a).
34 When a transaction involves Rule 506, Section 18(b)(4)(D) further provides "that this paragraph
35 does not prohibit a state from imposing notice filing requirements that are substantially similar to
36 those required by rule or regulation under Section 4(2) that are in effect on September 1, 1996."
37 These notice requirements are found in Section 302(c) of this Act.

38
39 A majority of states have adopted a Uniform Limited Offering Exemption, coordinate to
40 varying degrees with Regulation D. The authority to adopt this and other exemptive rules is
41 provided in Section 203.

42
43 16. Section 202(15): Transactions with existing security holders: Prior Provisions: 1956
44 Act Section 402(b)(11); RUSA Section 402(14). Section 3(a)(9) of the Securities Act of 1933
45 exempts exchange offerings with existing security holders. Under Section 18(b)(4)(C)

1 transactions subject to Section 3(a)(9) are federal covered securities. See Section 102(7).
2 Notice requirements in the earlier 1956 Act and RUSA accordingly would be preempted by the
3 Securities Act of 1933. See Section 18(a) of the Securities Act of 1933. Otherwise this
4 exemption is substantively identical to the 1956 Act and RUSA.

5
6 17. Section 202(16): Offerings registered under this [Act] and the Securities Act of 1933:
7 Prior Provisions: 1956 Act Section 402(b)(12); RUSA Section 402(15). This exemption
8 generally follows the 1956 Act and RUSA. Rule 165 of the Securities Act of 1933, which was
9 adopted in 1999, allows the offeror of securities in a business combination to make written
10 communications that offer securities for sale before a registration statement is filed as long as
11 specified conditions are satisfied.

12
13 RUSA Section 402(15)(ii) also required that a registration statement be filed under this Act,
14 but not yet be effective. By eliminating the filing requirement this exemption will reach the offer
15 (but not the sale) of a security that is anticipated to be a federal covered security by applying for
16 listing on the New York Stock Exchange or other exchange specified in Section 18(b)(1) of the
17 Securities Act of 1933, but the listing and federal covered security status has not yet become
18 effective.

19
20 18. Section 202(17): Offerings when registration has been filed, but is not effective under
21 this [Act] and exempt from the Securities Act of 1933: Prior Provisions: RUSA Section 402(16).
22 If a rule is adopted by the administrator a solicitation of interest document must accompany a
23 registration by qualification as specified in Section 304(b)(13).

24
25 Oral offers may be made after a registration statement has been filed, both before and after a
26 registration statement is effective.

27
28 This exemption does not operate unless the administrator adopts a rule under 202(17)(B).

29
30 19. Section 202(18): Control transactions: Prior Provision: RUSA Section 402(17). Until
31 1972 mergers and similar transactions were not considered to involve sales and did not have to
32 register under the Securities Act of 1933. In 1972 the Securities and Exchange Commission
33 adopted Rule 145 defining many mergers and similar transactions to be sales and abandoned its
34 earlier "no sale" doctrine. See 3 Louis Loss & Joel Seligman, Securities Regulation 1262-1280
35 (3d ed. rev. 1999).

36
37 Because most merger and similar transactions require shareholder approval and shareholders
38 often have appraisal rights if they choose to dissent, the potential for abuse is less than in an
39 offering of securities for cash. When appropriate the administrator can deny, condition, limit or
40 revoke this exemption under Section 204. Section 202(18) does not follow the requirement in
41 RUSA Section 402(17) that written notice of the transactions and a copy of the solicitation
42 materials be given to the administrator 10 days before the consummation of the transaction and,
43 that the administrator is empowered to disallow the exemption within the next 10 days.

44
45 20. Section 202(19): Rescission offers: No Prior Provision. See Section 510 for discussion

1 of rescission offers.

2
3 21. Section 202(20): Out-of-state offers or sales: Source of law: Colo. Section 11-51-102(7).
4 Compare A.S. Goldmen & Co., Inc. v. New Jersey Bur. of Sec., 163 F.3d 780 (3d Cir. 1999),
5 which held that under the United States Constitution's Commerce Clause a State could authorize
6 a securities administrator to prevent a broker-dealer from selling securities from a State to
7 purchasers in other States where purchase of the securities was authorized. The concluding
8 phrase "and is not part of an unlawful plan or scheme to evade this [Act]" is intended to preclude
9 reliance on this exemption by boiler rooms and others engaged in illegal activities.

10
11 Section 202(20) provides an exemption from securities registration and does not address an
12 administrator's power to investigate and bring enforcement actions under Articles 5 and 6.

13
14 22. Section 202(21): Employee benefit plans: Prior Provision: RUSA Section 401(b)(12).
15 The 1956 Act Section 402(a)(11) was limited to investment contracts issued in connection with
16 specified employee benefit plans if the administrator was given 30 days written notice.

17
18 In 1979, the United States Supreme Court in *International Bhd. of Teamsters v. Daniel*, 439
19 U.S. 551 (1979), held that a noncontributory, mandatory pension plan subject to the Employee
20 Retirement Income Security Act of 1974 (ERISA) was not a security within the meaning of the
21 Securities Act of 1933 or the Securities Exchange Act of 1934. The Securities and Exchange
22 Commission staff subsequently took the position that the interests of employees in involuntary,
23 contributory plans are not securities. Sec. Act Rel. 6188, 19 SEC Dock. 465, 473 (1980). Both
24 contributory and noncontributory pension or welfare plans subject to ERISA are excluded from
25 the definition of security in Section 102(28).

26
27 In this definition, the term "advisors" does not mean "investment advisers," as defined in
28 Section 102(15).

29
30 With respect to employee benefit plans that are securities, Section 202(21) provides an
31 exemption, but follows RUSA in not limiting the exemption to investment contracts and not
32 requiring 30 days notice to the administrator.

33
34 Section 202(21) is modeled, in part, on Rule 701(c) adopted under the Securities Act of 1933.
35 Compliance with Rule 701 will provide compliance with this exemption.

36
37 Both the 1956 Act and RUSA, for unstated reasons, treated employee benefit plans as exempt
38 securities, rather than exempt securities transactions. There appears to be no appropriate reason
39 to do so.

40
41 Resale of employee benefit plan securities can occur under appropriate section 202
42 transaction exemptions. Section 202(21) is not intended to provide a new method of publicly
43 issuing securities.

44
45 The administrator, when appropriate, can deny, condition, limit, or revoke an exemption

1 under Section 202(21). See Section 204.
2

3 23. Section 202(22): Specified dividends and tender offers and judicially recognized
4 reorganizations: Prior Provision: 1956 Act Section 401(j)(6)(B) and (D); RUSA Section
5 101(13)(vi). Section 202(22)(A) and (B) generally follow exclusions from the definition of sale
6 in the 1956 Act and RUSA. Section 202(22)(C) is new and corresponds to Rule 162, recently
7 adopted under the Securities Act of 1933, which allows the offeror in a stock exchange offer to
8 solicit tenders of securities before a registration statement is effective as long as no securities are
9 purchased until the registration statement is effective and the tender offer has expired.

10
11 24. Section 202(23): Nonissuer transactions involving specified foreign issuer securities
12 traded on designated securities exchanges. This exemption expressly covers Toronto Stock
13 Exchange issuers that are public reporting companies under Canadian securities law and meet the
14 180 day continuous reporting requirement. In conformance with the North American Free Trade
15 Agreement (NAFTA) and General Agreement on Trade in Services (GATS), the exemption
16 separately provides authority for the administrator to designate by rule or order other specific
17 foreign jurisdictions and their trading exchanges upon an adequate showing. The exemption also
18 provides authority for an administrator to revoke any designation if necessary or appropriate in
19 the public interest and for the protection of investors.
20
21

22 **Wisconsin Study Group Comments**

23 Section 202(6). The Uniform Act's section is being amended to grant authority to the
24 administrator to require by rule the documentation of an unsolicited order by a broker-dealer of
25 certain securities, which is consistent with current Wisconsin law.

26 Section 202(13). The section is being amended by adding a new subsection (B), relating to a sale
27 or offer to sell to an accredited investor in order to conform to current Wisconsin law.

28 Section 202(14). This exemption is being revised to mirror the securities registration exemption
29 currently set forth under Stats. Sec. 551.23(11).

30 Section 202(15). The "offer to existing securityholder" registration exemption is being modified
31 to include provisions from the current Wisconsin securities law exemption that establish a 10-day
32 notice filing requirement to qualify for the exemption (although the filing requirement is not
33 applicable in the context of any federal covered security issuer transaction).

34 Section 202(23). A reference is being added to include the TSX Venture Exchange, Inc., based
35 on action taken by the members of the North American Securities Administrators Association at
36 its 2004 Annual Conference to expand the Canadian trading marketplaces designated in the
37 NASAA Uniform Exemption (which this subsection adopts) to include the TSX Venture
38 Exchange.

39 Section 202(24). This exemption is being added to mirror the securities registration exemption

1 currently available under Stats. Sec. 551.23(10).

2 Section 202(26). A provision is being added to this subsection in order to retain the current
3 Wisconsin securities law registration exemption for preorganization subscriptions, as set forth in
4 Stats. Sec. 551.23(9) [which was based on the exemption originally set forth in Section
5 402(b)(10) of the 1956 Uniform Securities Act]. The addition of the separate exemption is
6 considered appropriate because of the changes made to the language in Uniform Act Section
7 202(14) making it an offeree exemption rather than a purchaser exemption, and which would not
8 enable Uniform Act Section 202(14) to be used to also cover preorganization subscriptions.

9
10
11 **SECTION 203. ADDITIONAL EXEMPTIONS AND WAIVERS.** A rule adopted or
12 order issued under this Chapter may exempt a security, transaction, or offer; a rule under this
13 Chapter may exempt a class of securities, transactions, or offers from any or all of the
14 requirements of Sections 301 through 306 and 504; and an order under this Chapter may waive,
15 in whole or in part, any or all of the conditions for an exemption or offer under Sections 201 and
16 202.

17
18 **Official Comments**

19 **Prior Provision:** RUSA Section 403.

20 1. Under this type of authority, 50 of 53 jurisdictions through September 2002 had adopted
21 the Uniform Limited Offering Exemption (ULOE) or a Regulation D exemption, and 32
22 jurisdictions had adopted a Rule 144A exemption. This Act does not incorporate ULOE or a
23 Rule 144A exemption because of their complexity and the likelihood of periodic updating of
24 their provisions. Rule 144A, and similar exemptions in ULOE, can be most effectively
25 implemented by rule rather than statute.

26
27 2. Under Section 203 a state would also be authorized to adopt by rule or order new
28 exemptions as circumstances warrant for new technologies such as the Internet. Cf. NASAA
29 Resolution Regarding Securities Offered on Internet, NASAA Rep. ¶7040 (Jan. 7, 1996).

30
31 3. It is the intent of this Section that ULOE, Rule 144A, and additional exemptions or
32 waivers be adopted uniformly by states, to the extent this is practicable.
33
34

what about WI change?

1 **Prior Provisions:** 1956 Act Section 402(c); RUSA Section 404.

2 1. Section 204 is potentially far reaching. The ability to deny, condition, limit, or revoke the
3 exemptions specified in Sections 201(3)(C), 201(7), 201(8), 202, or 203 is adopted concomitant
4 with the breadth of these exemptions. One or more than one security, transaction, or offer can be
5 covered by a Section 204 order.

6
7 2. The courts have given a securities administrator's decision to deny or revoke an
8 exemption substantial deference when there was compliance with applicable due process and
9 statutory requirements. See, e.g., Johnson-Bowles Co., Inc. v. Div. of Sec., 829 P.2d 101 (Utah
10 Ct. App. 1992).

11
12 **Wisconsin Study Group Comments**

13 Section 204(a). This section is being amended to conform to the current Wisconsin securities
14 law provision in Stats. Sec. 551.24(1) that enables the Division to deny or revoke any exempt
15 security registration exemption. Language is being added to clarify that such denial or revocation
16 authority does not extend to any "Federal covered security" as defined in Act Section 102(7).

17 Sections 204(c) & (d). Subsections (c) and (d) are being added in order to conform to existing
18 provisions of Wisconsin securities law. Currently, under Stats. Sec. 551.24(5), the burden of
19 proving an exemption is on the person claiming it, which provision was derived from Section
20 402(d) of the 1956 Uniform Act. Currently, Stats. Sec. 551.24(6) specifies how the 10-day
21 notice filing procedure operates in practice in the event the Division staff raises an issue with the
22 filing party during the 10-day review period.

1 [ARTICLE] 3

2
3 REGISTRATION OF SECURITIES AND
4 NOTICE FILING OF FEDERAL COVERED SECURITIES
5
6

7
8 SECTION 301. SECURITIES REGISTRATION REQUIREMENT.

9 It is unlawful for a person to offer or sell a security in this State unless:

- 10 (1) the security is a federal covered security;
- 11 (2) the security, transaction, or offer is exempted from registration under this Chapter;
- 12 or
- 13 (3) the security is registered under this Chapter.
- 14

15 Official Comments

16 **Prior Provisions:** 1956 Act Section 301; RUSA Section 301.

17 1. This Section is substantively identical to the 1956 Act and RUSA except for the addition
18 of Section 301(1), which is necessitated by the National Securities Markets Improvement Act of
19 1996. See Section 102(7).

20 2. Except for federal covered securities, exempt securities, or securities offered or sold in
21 exempt transactions, no sale of a security may be made in this State before the security is
22 registered. "Sale" is defined in Section 102(26); "in this State" is addressed in Section 610; and
23 securities registration is addressed in Sections 303 through 306.

24 3. The Securities Act of 1933 permits certain types of offers during the "waiting period"
25 between the filing and effectiveness of a registration statement. The exemptive provisions of
26 Sections 202(16) and (17) operate to permit similar offers for securities that are not federal
27 covered securities and are in the process of registration under federal or state statutes or both.

28 4. Notice filings and fees applicable to federal covered securities, see Section 102(7), are
29 addressed in Section 302.

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1 **SECTION 302. NOTICE FILING.**

2 (a) [Required filing of records.] With respect to a federal covered security, as defined in
3 Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)(as may be amended
4 from time to time)), that is not otherwise exempt under Sections 201 through 203, a rule adopted
5 by the administrator or an order issued under this Chapter, may require the filing of any or all of
6 the following records:

7 (1) **Prior to Offer:** Not later than the initial offer of the federal covered security in
8 this State, a copy of each document that is part of its registration statement filed with the
9 securities and exchange commission under the Securities Act of 1933, which may, at the option
10 of the issuer, be accompanied by a form containing the information specified by the administrator
11 by rule. If a filing is required under this paragraph, the filing shall be accompanied by a consent
12 to service of process signed by the issuer and a notice filing fee under Section 612. Any notice
13 filing required under this paragraph is effective upon receipt by the administrator of the
14 documents and fees required under this paragraph, or upon the effectiveness of the registration
15 statement under the Securities Act of 1933, whichever is later.

16 (2) **After Offer:** After the initial offer of a federal covered security in this State, a
17 copy of each document that is part of an amendment to its registration statement filed with the
18 Securities and Exchange Commission under the Securities Act of 1933, concurrent with the
19 federal filing, which may, at the option of the issuer, be accompanied by a form containing the
20 information specified by the administrator by rule. If a filing is required under this paragraph and
21 the amendment relates either to a name change of the issuer, or a change in the designation of the
22 federal covered security, the filing shall be accompanied by a fee in the amount prescribed by the
23 rule or order requiring the filing. Unless the issuer requests a later effective date, an amendment

1 filing required under this paragraph is effective upon receipt by the administrator of the
2 documents and fees required under this paragraph.

3 (3) **Unit Trust/Investment Company.** For a unit investment trust or closed-end
4 investment company to extend its offering beyond a one-year period, a notice of extension,
5 together with any filing fee prescribed by rule or order, at the time prescribed by rule or order.

6 (b) **Notice filings for federal covered securities under Section 18(b)(4)(D).** With
7 respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities
8 Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this Chapter may require a notice
9 filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as
10 promulgated by the Securities and Exchange Commission, and a consent to service of process
11 complying with Section 611 signed by the issuer not later than 15 days after the first sale of the
12 federal covered security in this State and the payment of a fee as provided in Section 612 or by
13 rule of the administrator; and the payment of a fee as provided in Section 612 or by rule of the
14 administrator for any late filing.

15 (c) **Stop orders.** Except with respect to a federal security under Section 18(b)(1) of the
16 Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that there is a
17 failure to comply with a notice or fee requirement of this section, the administrator may issue a
18 stop order suspending the offer and sale of a federal covered security in this State. If the
19 deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be
20 imposed by the administrator.

21 (d) **Waiver.** The administrator may, by rule or order, waive or further condition any
22 waiver of a requirement under this section or under any rules promulgated by the administrator,
23 or orders issued, under this section.

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Official Comments

3

No Prior Provision.

4

1. The little used "registration by notification" in the 1956 Act Section 302 or "registration by filing" in RUSA Section 302 are omitted from this Act because of the notice filing approach required by Section 18(b)(2) of the Securities Act of 1933 for federal covered securities, which, in essence, replaces the need for registration by notification.

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2. For Rule 506 offerings which are addressed by Section 18(d)(4)(D) of the Securities Act of 1933, the Securities and Exchange Commission requires the filing of Form D. See Rule 503. When an issuer meets the conditions of Rule 506, Section 302(c) is intended to limit required state filings to no more than a requirement of filing a copy of Form D, including the Appendix, a consent to service of process, and a fee.

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3. The definition of "filing" in Section 102(8) will permit states to receive electronic filing of records under this Section. An administrator may also accept under this Section a signed consent filed electronically with a designee of the administrator. See Section 105.

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4. If a State prefers to have the fees in this section established by rule, replace the phrase "a fee of \$[]" in subsections (a), (b), and (c) with the phrase "a fee established by the administrator by rule". See Comment 3 to Section 410.

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23

Wisconsin Study Group Comments

24

Sections 302(a)(1) & (2). These provisions of the Uniform Act are being modified to include language from current Wisconsin securities law, Stats. Sec. 551.29(1)(a) & (b) that were created in 1997 to conform to the National Securities Markets Improvements Act of 1996 ("NSMIA") and that establish the filing and sales report process and procedures for initial and renewal filings of open-end mutual funds (as a category of federal covered security). Those filing procedures have been used in Wisconsin since 1997.

25

26

27

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29

Section 302(a)(3). This is a new subsection taken from existing Stats. Sec. 551.29(1)(c), which provides a special extension procedure for use by unit investment trusts and closed-end mutual funds.

30

31

32

Section 302(d). This is a new subsection taken from existing Stats. Sec. 551.29(6), which provides waiver authority to the Administrator.

33

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SECTION 303. SECURITIES REGISTRATION BY COORDINATION.

1 (a) **[Registration permitted.]** A security for which a registration statement has been
2 filed under the Securities Act of 1933 in connection with the same offering may be registered by
3 coordination under this section.

4 (b) **[Required records.]** A registration statement and accompanying records under this
5 section must contain or be accompanied by the following records in addition to the information
6 specified in Section 305 and a consent to service of process complying with Section 611:

7 (1) a copy of the latest form of prospectus filed under the Securities Act of 1933;
8 (2) a copy of the articles of incorporation and bylaws or their substantial equivalents
9 currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture
10 or other instrument governing the issuance of the security to be registered; and a specimen, copy,
11 or description of the security that is required by rule adopted or order issued under this Chapter;

12 (3) copies of any other information or any other records filed by the issuer under the
13 Securities Act of 1933 requested by the administrator ; and

14 (4) an undertaking to forward each amendment to the federal prospectus, other than
15 an amendment that delays the effective date of the registration statement, promptly after it is filed
16 with the Securities and Exchange Commission.

17 (c) **[Conditions for effectiveness of registration statement.]** A registration statement
18 under this section becomes effective simultaneously with or subsequent to the federal registration
19 statement when all the following conditions are satisfied:

20 (1) a stop order under subsection (d) or Section 306 or issued by the Securities and
21 Exchange Commission is not in effect and a proceeding is not pending against the issuer under
22 Section 306; and

1 1. Registration by coordination was one of the key innovations of the 1956 Act. As in the
2 1956 Act, Section 303 streamlines the content of the registration statement and the procedure by
3 which a registration statement becomes effective, but not the substantive standards governing the
4 effectiveness of a registration statement.

5
6 2. The phrase “in connection with the same offering” in Section 303 does not require that the
7 federal and state registration statements be filed simultaneously or become effective
8 simultaneously. A registration by coordination can be filed in a State after the effectiveness of
9 the federal registration statement as long as the administrator does not conclude that the interval
10 was too long to consider the State registration statement “the same offering.”

11
12 3. Section 303 is similar to the 1956 Act except that these provisions have been modernized
13 to include electronic filing and electronic notification. Cf. Sections 102(8), 102(25), 105. It is
14 anticipated that this will facilitate simultaneous filing with the Securities and Exchange
15 Commission and the States which is consistent with the uniformity intended by this Act.
16 Simultaneous or sequential filing could be administered through a designee similar to the current
17 Web-CRD or in conjunction with the Securities and Exchange Commission’s Electronic Data
18 Gathering, Analysis, and Retrieval (EDGAR) system or otherwise.

19
20 4. Section 303(b) is not intended to limit the administrator to requiring only the information
21 and records filed with the Securities and Exchange Commission.

22
23 5. Sections 303(c) through (e) describe the conditions to be satisfied to achieve effectiveness
24 of a coordinated filing. “Price amendment” is defined in Section 102(23). The administrator
25 retains the right to test the registration statement by the substantive standards of Section 306(a)
26 and may issue a stop or denial order if the administrator believes any of those provisions are
27 applicable.

28
29
30
31 **SECTION 304. SECURITIES REGISTRATION BY QUALIFICATION.**

32 (a) **[Registration permitted.]** A security may be registered by qualification under this
33 section.

34 (b) **[Required records.]** A registration statement under this section must contain the
35 information or records specified in Section 305, a consent to service of process complying with
36 Section 611, and, if required by rule adopted under this Chapter, the following information or
37 records:

1 (1) with respect to the issuer and any significant subsidiary, its name, address, and
2 form of organization; the State or foreign jurisdiction and date of its organization; the general
3 character and location of its business; a description of its physical properties and equipment; and
4 a statement of the general competitive conditions in the industry or business in which it is or will
5 be engaged;

6 (2) with respect to each director and officer of the issuer, and other person having a
7 similar status or performing similar functions, the person's name, address, and principal
8 occupation for the previous five years; the amount of securities of the issuer held by the person as
9 of the 30th day before the filing of the registration statement; the amount of the securities
10 covered by the registration statement to which the person has indicated an intention to subscribe;
11 and a description of any material interest of the person in any material transaction with the issuer
12 or a significant subsidiary effected within the previous three years or proposed to be effected;

13 (3) with respect to persons covered by paragraph (2), the aggregate sum of the
14 remuneration paid to those persons during the previous 12 months and estimated to be paid
15 during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents,
16 subsidiaries, and affiliates of the issuer;

17 (4) with respect to a person owning of record or owning beneficially, if known, 10
18 percent or more of the outstanding shares of any class of equity security of the issuer, the
19 information specified in paragraph (2) other than the person's occupation;

20 (5) with respect to a promoter, if the issuer was organized within the previous three
21 years, the information or records specified in paragraph (2), any amount paid to the promoter
22 within that period or intended to be paid to the promoter, and the consideration for the payment;

1 (6) with respect to a person on whose behalf any part of the offering is to be made in a
2 nonissuer distribution, the person's name and address; the amount of securities of the issuer held
3 by the person as of the date of the filing of the registration statement; a description of any
4 material interest of the person in any material transaction with the issuer or any significant
5 subsidiary effected within the previous three years or proposed to be effected; and a statement of
6 the reasons for making the offering;

7 (7) the capitalization and long term debt, on both a current and pro forma basis, of the
8 issuer and any significant subsidiary, including a description of each security outstanding or
9 being registered or otherwise offered, and a statement of the amount and kind of consideration,
10 whether in the form of cash, physical assets, services, patents, goodwill, or anything else of
11 value, for which the issuer or any subsidiary has issued its securities within the previous two
12 years or is obligated to issue its securities;

13 (8) the kind and amount of securities to be offered; the proposed offering price or the
14 method by which it is to be computed; any variation at which a proportion of the offering is to be
15 made to a person or class of persons other than the underwriters, with a specification of the
16 person or class; the basis on which the offering is to be made if otherwise than for cash; the
17 estimated aggregate underwriting and selling discounts or commissions and finders' fees,
18 including separately cash, securities, contracts, or anything else of value to accrue to the
19 underwriters or finders in connection with the offering or, if the selling discounts or commissions
20 are variable, the basis of determining them and their maximum and minimum amounts; the
21 estimated amounts of other selling expenses, including legal, engineering, and accounting
22 charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of
23 any underwriting or selling group agreement under which the distribution is to be made or the

1 proposed form of any such agreement whose terms have not yet been determined; and a
2 description of the plan of distribution of any securities that are to be offered otherwise than
3 through an underwriter;

4 (9) the estimated monetary proceeds to be received by the issuer from the offering; the
5 purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for
6 each purpose; the order or priority in which the proceeds will be used for the purposes stated; the
7 amounts of any funds to be raised from other sources to achieve the purposes stated; the sources
8 of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill,
9 otherwise than in the ordinary course of business, the names and addresses of the vendors, the
10 purchase price, the names of any persons that have received commissions in connection with the
11 acquisition, and the amounts of the commissions and other expenses in connection with the
12 acquisition, including the cost of borrowing money to finance the acquisition;

13 (10) a description of any stock options or other security options outstanding, or to be
14 created in connection with the offering, and the amount of those options held or to be held by
15 each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that
16 holds or will hold 10 percent or more in the aggregate of those options;

17 (11) the dates of, parties to, and general effect concisely stated of each managerial or
18 other material contract made or to be made otherwise than in the ordinary course of business to
19 be performed in whole or in part at or after the filing of the registration statement or that was
20 made within the previous two years, and a copy of the contract;

21 (12) a description of any pending litigation, action, or proceeding to which the issuer
22 is a party and that materially affects its business or assets, and any litigation, action, or
23 proceeding known to be contemplated by governmental authorities;

1 (13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other
2 sales literature intended as of the effective date to be used in connection with the offering and
3 any solicitation of interest used in compliance with Section 202(17)(B);

4 (14) a specimen or copy of the security being registered, unless the security is
5 uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial
6 equivalents, in effect; and a copy of any indenture or other instrument covering the security to be
7 registered;

8 (15) a signed or conformed copy of an opinion of counsel concerning the legality of
9 the security being registered, with an English translation if it is in a language other than English,
10 which states whether the security when sold will be validly issued, fully paid, and nonassessable
11 and, if a debt security, a binding obligation of the issuer;

12 (16) a signed or conformed copy of a consent of any accountant, engineer, appraiser,
13 or other person whose profession gives authority for a statement made by the person, if the
14 person is named as having prepared or certified a report or valuation, other than an official
15 record, that is public, which is used in connection with the registration statement;

16 (17) a balance sheet of the issuer as of a date within four months before the filing of
17 the registration statement; a statement of income and a statement of cash flows for each of the
18 three fiscal years preceding the date of the balance sheet and for any period between the close of
19 the immediately previous fiscal year and the date of the balance sheet, or for the period of the
20 issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds
21 of the offering is to be applied to the purchase of a business, the financial statements that would
22 be required if that business were the registrant; and

1 (18) any additional information or records required by rule adopted or order issued
2 under this Chapter, including, without limitation, a report by accountants, engineers, appraisers,
3 or another professional person as deemed necessary by the administrator.

4 (c) [**Conditions for effectiveness of registration statement.**] A registration statement
5 under this section becomes effective 30 days, or any shorter period provided by rule adopted or
6 order issued under this Chapter, after the date the registration statement or the last amendment
7 other than a price amendment is filed, if:

8 (1) a stop order is not in effect and a proceeding is not pending under Section 306;

9 (2) the administrator has not issued an order under Section 306; or

10 (3) the applicant or registrant has not requested that effectiveness be delayed.

11 (d) [**Delay of effectiveness of registration statement.**] The administrator may delay
12 effectiveness once for not more than 90 days if the administrator determines and notifies via
13 comment letter or other letter that the registration statement is not complete in all material
14 respects and promptly notifies the applicant or registrant of that determination, which may be by
15 means of a comment letter or correspondence and not an order. The administrator may also
16 further delay effectiveness for a further period of not more than 30 days if the administrator
17 determines that the delay is necessary or appropriate.

18 (e) [**Prospectus distribution may be required.**] A rule adopted or order issued under
19 this Chapter may require as a condition of registration under this section that a prospectus
20 containing a specified part of the information or record specified in subsection (b) be sent or
21 given to each person to which an offer is made, before or concurrently, with the earliest of:

22 (1) the first offer made in a record to the person otherwise than by means of a public
23 advertisement, by or for the account of the issuer or another person on whose behalf the offering

- 1 is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or
2 subscription taken by the person as a participant in the distribution;
- 3 (2) the confirmation of a sale made by or for the account of the person;
- 4 (3) payment pursuant to such a sale; or
- 5 (4) delivery of the security pursuant to such a sale.

6
7 **Official Comments**

8 **Prior Provisions:** 1956 Act Section 304; RUSA Section 304.

9 1. This Section generally follows the 1956 Act and RUSA. Any security may be registered
10 by qualification, whether or not another type of registration is available. Ordinarily, however,
11 registration by qualification will only be used by an issuer when no other procedure is available.

12
13 2. Section 304(b) originally was modeled on Schedule A of the Securities Act of 1933.

14
15 3. In Section 304(b)(12) pending litigation can include litigation that has not yet been filed.

16
17 4. Section 304(b)(17) uses the same terminology as is used currently in Regulation S-X of
18 the Securities and Exchange Commission. Under Sections 605(a) and (c) the administrator is
19 authorized to specify the form and content of rules and forms governing registration statements
20 and the form and content of financial statements required under this Act.

21
22 5. Under Sections 304(b)(18) and 307 the administrator may require additional information or
23 may waive in whole or in part or condition any of the requirements of Section 304(b). Section
24 304(b)(18), for example, would authorize the administrator to require that a report by an
25 accountant, engineer, appraiser or other professional person be filed. Section 304(b)(18) would
26 also authorize that securities of designated classes under a trust indenture contain additional
27 specified information.

28
29
30 **Wisconsin Study Group Comments**

31 Section 304(b)(18). Consistent with the Official Comment #3 to Uniform Act Section 304, this
32 section is being modified to add language added from current Stats. Sec. 551.27(5) enabling the
33 Administrator to require a report by an accountant, appraiser or other professional person.

34 Section 304(d). This subsection is being amended to provide that, in addition to the issuance of a
35 formal order, a comment letter process can be used to institute the 90-day-delay-of-effectiveness
36 action authorized under the subsection.

1
2 **SECTION 305. SECURITIES REGISTRATION FILINGS.**

3 (a) **Who may file.** A registration statement may be filed by the issuer, a person on whose
4 behalf the offering is to be made, or a broker-dealer registered under this Chapter.

5 (b) **Filing fee.** A person filing a registration statement shall pay a filing fee as provided in
6 Section 612 or, as may be supplemented, by rule of the administrator. If a registration statement
7 is withdrawn before the effective date or a preeffective stop order is issued under Section 306,
8 the administrator shall retain the fee as provided in section 612 or, as may be supplemented, by
9 rule of the administrator.

10 (c) **Status of offering.** A registration statement filed under Section 303 or 304 must
11 specify:

12 (1) the amount of securities to be offered in this State;

13 (2) the States in which a registration statement or similar record in connection with
14 the offering has been or is to be filed; and

15 (3) any adverse order, judgment, or decree issued in connection with the offering by a
16 State securities regulator, the Securities and Exchange Commission, or a court.

17 (d) **Incorporation by reference.** A record filed under this Chapter or the predecessor act
18 within five years preceding the filing of a registration statement may be incorporated by reference
19 in the registration statement to the extent that the record is currently accurate.

20 (e) **[Nonissuer distribution.]** In the case of a nonissuer distribution, information or a
21 record may not be required under subsection (i) or Section 304, unless it is known to the person
22 filing the registration statement or to the person on whose behalf the distribution is to be made or
23 unless it can be furnished by those persons without unreasonable effort or expense.

no
(g) 1 see or (g) ?
comment

1 (f) **Form of subscription.** A rule adopted or order issued under this Chapter may require
2 as a condition of registration that a security registered under this Chapter be sold only on a
3 specified form of subscription or sale contract and that a signed or conformed copy of each
4 contract be filed under this Chapter or preserved for a period specified by the rule or order, which
5 may not be longer than five years.

6 (g) **Effective period.** Except while a stop order is in effect under Section 306, a
7 registration statement is effective for one year after its effective date, or for any longer period
8 designated in an order under this Chapter during which the security is being offered or distributed
9 in a nonexempted transaction by or for the account of the issuer or other person on whose behalf
10 the offering is being made or by an underwriter or broker-dealer that is still offering part of an
11 unsold allotment or subscription taken as a participant in the distribution. For the purposes of a
12 nonissuer transaction, all outstanding securities of the same class identified in the registration
13 statement as a security registered under this Chapter are considered to be registered while the
14 registration statement is effective. If any securities of the same class are outstanding, a
15 registration statement may not be withdrawn until one year after its effective date. A registration
16 statement may be withdrawn only with the approval of the administrator.

17 (h) **[Periodic reports.]** While a registration statement is effective, a rule adopted or order
18 issued under this Chapter may require the person that filed the registration statement to file
19 reports, not more often than quarterly, to keep the information or other record in the registration
20 statement reasonably current and to disclose the progress of the offering.

21 (i) **[Posteffective amendments.]** A registration statement may be amended after its
22 effective date. The posteffective amendment becomes effective when the administrator so
23 orders. If a posteffective amendment is made to increase the number of securities specified to be

1 offered or sold, the person filing the amendment shall pay a registration fee as provided in
2 Section 612 or, as may be supplemented, by rule of the administrator. A posteffective
3 amendment relates back to the date of the offering of the additional securities being registered if,
4 within one year after the date of the sale, the amendment is filed and the additional registration
5 fee is paid.

6 (j) **Indentures.** The administrator may by rule require that securities shall be issued
7 under a trust indenture, unless waived by the administrator.

8
9

Official Comments

10 **Prior Provisions:** 1956 Act Section 305; RUSA Section 305.

11 1. Section 305 generally follows the 1956 Act and RUSA except that earlier provisions in
12 both Acts referring to Investment Company Act of 1940 securities, which are federal covered
13 securities, see Section 102(7), have been deleted.

14
15 2. Section 305 is applicable both to registration by coordination, see Section 303, and to
16 registration by qualification, see Section 304.

17
18 3. Section 305(a) expressly authorizes registration by “a person on whose behalf the offering
19 is to be made.” This would permit a nonissuer, cf. Section 102(18), or a broker-dealer to file a
20 registration statement independent of the issuer.

21
22 4. This Act is intended, to the extent practicable, to be revenue neutral in its impact on
23 existing state law, see Comment 3 to Section 608. Accordingly, Section 305(b) does not specify
24 what fees states should provide. If a State prefers to have the fees in this section established by
25 rule, replace the phrase “a fee of \$[]” in subsections (b) and (j) with the phrase “a fee
26 established by the administrator by rule pursuant to the [state administrative procedure act]” and
27 replace the phrase “\$[] of the fee” in subsection (b) with the phrase “an amount of the fee
28 established by the administrator by rule”. See Comment 3 to Section 410.

29
30 5. Section 305(c), which generally follows the 1956 Act and RUSA, does not require in
31 Section 305(c)(3) disclosure of an order permitting the withdrawal of a registration statement.
32 The administrator may, however, require disclosure of this information in a registration by
33 qualification under Section 304(b)(18).

34
35 6. Section 305(c), like every other provision concerned with the content of the registration
36 statement, must be read with Section 306(a)(1) which judges the accuracy and completeness of

1 the registration statement as of its effective date unless an order denying effectiveness had been
2 entered before the effective date. A registration statement must be kept current with changing
3 developments until the effectiveness date, but a registration statement is not required to be
4 amended after the effective date except to correct inaccuracies or deficiencies which existed as of
5 the effective date. An administrator, however, separately may require under Section 305(i) or (j)
6 periodic reports or amendments to keep reasonably current the information contained in the
7 registration statement.

8
9 7. Under Section 305(d) incorporation by reference is permitted as a matter of administrative
10 practice.

11
12 8. Section 305(e) is the substantive equivalent to provisions in the 1956 Act and RUSA.
13 This subsection is designed to address nonissuer offerings where the seller cannot obtain certified
14 financial statements and other normally required records. The phrase "without unreasonable
15 effort or expense" originated in Section 10(a)(3) of the Securities Act of 1933. It is not meant to
16 apply to expenses incidental to supplying required information required for registration in the
17 case of a nonissuer distribution by a person in a control relationship with the issuer or otherwise
18 having access to or contractual rights to obtain the required information. Section 305(e) applies
19 only to registration by qualification under Section 304 and periodic reports for either registration
20 by coordination or registration by qualification under Section 305(i).

21
22 9. Section 305(f), follows the 1956 Act and RUSA, and authorizes the administrator to
23 require the impoundment of funds until the issuer receives a specified amount from the sale of
24 the security in this State or elsewhere and to require the escrow of promotional stock until
25 specific conditions are met. This Section is limited to a security issued within the past five years
26 or to be issued to a promoter for a consideration substantially different from the public offering
27 price or to a person for a consideration other than cash. The typical distribution subject to
28 Section 305(f) will be a relatively new promotional or speculative offering. Section 305(f)
29 follows the 1956 Act and RUSA and provides that the administrator may not reject a depository
30 solely because of its location in another state. Unlike the statute in *Schwaemmle Const. Co. v.*
31 *Michigan Dep't of Commerce*, 360 N.W.2d 141 (Mich. 1984), Section 305(f) broadly provides
32 that the administrator "may determine the conditions of any escrow or impoundment under this
33 subsection." As in *Schwaemmle*, this power will operate only until the impounded funds or
34 escrowed shares are released.

35
36 10. Section 305(g) follows the 1956 Act in authorizing the administrator to specify the form
37 of a subscription or sale contract.

38
39 11. Section 305(h) generally follows the 1956 Act and RUSA. The term "nonissuer
40 transaction" or "nonissuer distribution" is defined in Section 102(18). A sale by a nonissuer
41 would have to be registered under Section 301 unless it is exempted or involves a federal covered
42 security. Section 202(1) exempts "isolated nonissuer transactions." When a nonissuer
43 transaction is not exempt under Section 202(1), it may still be exempted under other transaction
44 exemptions.
45

1 (1) the registration statement as of its effective date or before the effective date in the
2 case of an order denying effectiveness, an amendment under Section 305(j) as of its effective
3 date, or a report under Section 305(i), is incomplete in a material respect or contains a statement
4 that, in the light of the circumstances under which it was made, was false or misleading with
5 respect to a material fact;

6 (2) this Chapter or a rule adopted or order issued under this Chapter or a condition
7 imposed under this Chapter has been willfully violated, in connection with the offering, by the
8 person filing the registration statement; by the issuer, a partner, officer, or director of the issuer
9 or a person having a similar status or performing a similar function; a promoter of the issuer; or
10 a person directly or indirectly controlling or controlled by the issuer; but only if the person filing
11 the registration statement is directly or indirectly controlled by or acting for the issuer; or by an
12 underwriter;

13 (3) the security registered or sought to be registered is the subject of a permanent or
14 temporary injunction of a court of competent jurisdiction or an administrative stop order or
15 similar order issued under any federal, foreign, or state law other than this Chapter applicable to
16 the offering, but the administrator may not institute a proceeding against an effective registration
17 statement under this paragraph more than one year after the date of the order or injunction on
18 which it is based, and the administrator may not issue an order under this paragraph on the basis
19 of an order or injunction issued under the securities act of another State unless the order or
20 injunction was based on conduct that would constitute, as of the date of the order, a ground for a
21 stop order under this section;

22 (4) the issuer's enterprise or method of business includes or would include activities
23 that are unlawful where performed;

1 (5) with respect to a security sought to be registered under Section 303, there has been
2 a failure to comply with the undertaking required by Section 303(b)(4);

3 (6) the applicant or registrant has not paid the filing fee, but the administrator shall
4 void the order if the deficiency is corrected; or

5 (7) the offering will work or tend to work a fraud upon purchasers or would so
6 operate.

7 (b) **Institution of stop order.** The administrator may not institute a stop order
8 proceeding against an effective registration statement on the basis of conduct or a transaction
9 known to the administrator when the registration statement became effective unless the
10 proceeding is instituted within 30 days after the registration statement became effective.

11 (c) **Summary process.** The administrator may summarily revoke, deny, postpone, or
12 suspend the effectiveness of a registration statement pending final determination of an
13 administrative proceeding. Upon the issuance of the order, the administrator shall promptly
14 notify each person specified in subsection (e) that the order has been issued, the reasons for the
15 revocation, denial, postponement, or suspension, and that within 10 days after the receipt of a
16 request in a record from the person the matter will be scheduled for a hearing. If a hearing is not
17 requested and none is ordered by the administrator, within 30 days after the date of service of the
18 order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice
19 of and opportunity for hearing for each person subject to the order, may modify or vacate the
20 order or extend the order until final determination.

21 (e) [**Procedural requirements for stop order.**] A stop order may not be issued under
22 this Chapter without:

1 (1) appropriate notice to the applicant or registrant, the issuer, and the person on
2 whose behalf the securities are to be or have been offered;

3 (2) an opportunity for hearing; and

4 (3) findings of fact and conclusions of law in a record in accordance with Chapter
5 227.

6 (f) [**Modification or vacation of stop order.**] The administrator may modify or vacate a
7 stop order issued under this section if the administrator finds that the conditions that caused its
8 issuance have changed or that it is necessary or appropriate in the public interest or for the
9 protection of investors.

10 Official Comments

11
12 **Prior Provisions:** 1956 Act Section 306; RUSA Section 306.

13
14 1. This Section generally follows the 1956 Act and RUSA and applies to both registration by
15 coordination under Section 303 and registration by qualification under Section 304.

16
17 2. Section 306(a)(1) follows the 1956 Act and RUSA in testing in a suspension or revocation
18 proceeding the completeness and accuracy of a registration statement as of the registration
19 statement's effective date. A registration statement that becomes misleading because of a
20 development that occurs after its effective date is not a ground for the issuance of a stop order
21 under Section 306(a)(1). An administrator, however, may require periodic reports under Section
22 305(i) or a posteffective amendment under Section 305(j). With respect to periodic reports under
23 Section 305(i), a misleading report would be the basis of a stop order under Section 306(a)(1) if
24 it is materially inaccurate as of the date it was filed.

25
26 3. On the meaning of "willfully," see Comment 2 under Section 508.

27
28 4. A violation by an issuer has the same consequences whether the issuer has filed a
29 registration statement or has had a broker-dealer file it. But this is not the case when the
30 registration statement is filed by a broker-dealer acting independently.

31
32 5. The verb "is" at the beginning of Section 306(a)(3) means that a stop order or injunction
33 that has expired or been vacated is not the ground for action under this paragraph.

34
35 6. Section 306(a)(4) applies to activity that is conducted in a State where that activity is

1 illegal. It does not apply if the activity is not illegal under that State's law. This paragraph is not
2 meant to apply to activity which is lawful where conducted but would be illegal if conducted in
3 the State where the registration statement is filed.

4
5 7. Sections 306(a)(5) and (6) follow the 1956 Act and RUSA.

6
7 8. Sections 306(a)(7) and (b) address merit regulation. Sections 306(E) and (F) of the 1956
8 Act authorized a stop order when an "offering has worked or tended to work a fraud upon
9 purchasers or would so operate" or "the offering has been or would be made with unreasonable
10 amounts of underwriters' and sellers' discounts, commissions, or other compensation, or
11 promoters' profits or participation, or unreasonable amounts or kinds of options." By 1985 a
12 majority of states which had adopted the 1956 Act had adopted this approach to merit regulation
13 rather than the earlier and broader "unfair, unjust or inequitable" standard that then applied in a
14 minority of States.

15
16 RUSA Sections 306(a)(5) and (6) adopted provisions substantively identical to the 1956 Act
17 and included in brackets an "unfair, unjust, or inequitable" alternative.

18
19 The National Securities Markets Improvement Act of 1996 subsequently preempted merit
20 regulation of federal covered securities. See Section 102(7).

21
22 Sections 306(a)(7) and (b) take a different approach. Subject to the National Securities
23 Markets Improvement Act of 1996, merit standards are retained but hortatory paragraph 306(b)
24 encourages the administrator, to the extent practicable, to adopt, by rule or order, standards that
25 provide notice to issuers of a state's merit standards. Notice will address one criticism of merit
26 regulation. See generally 1 Louis Loss & Joel Seligman, Securities Regulation 111-124 (3d ed.
27 rev. 1998). Statements of Policy of the North American Securities Administrator Association
28 that have been adopted by a state would provide notice in compliance with Section 306(b).
29 Similarly other state rules or orders could be adopted in the future to address new types of
30 securities as they occur.

31
32 An order under Section 306(b) can be adopted after a securities registration statement has
33 been filed. Under Section 306(b) an administrator, by rule or order, for example, could adopt a
34 standard that would provide the basis for a stop order denying effectiveness to a development
35 stage company that has no specific business purpose or plan or has indicated that its primary
36 business plan is to engage in a merger or acquisition with an unidentified company, entity, or
37 person. "Blank check offerings" are subject to Rule 419 adopted under the Securities Act of
38 1933. See Comment 3 to Section 202.

39
40 9. Section 306(c) follows the 1956 Act and RUSA and allows an administrator up to 30 days
41 after a registration statement becomes effective to institute a stop order proceeding on the basis
42 of a fact or transaction known when the registration statement became effective. This is to avoid
43 the necessity of an administrator issuing a stop order prematurely.

44
45 10. Sections 306(d) and (e) assure each person subject to a stop order of notice, opportunity

1 for a hearing, and findings of fact and conclusions of law contained in a record.

2
3 11. An administrator must consider the public interest when issuing a stop order and may
4 under Section 306(f) consider the public interest when modifying or vacating a stop order. See,
5 e.g., *TechnoMedical Lab., Inc. v. Utah Sec. Div.*, 744 P.2d 320, 324-325 (Utah Ct. App. 1987) (a
6 state has a valid public interest in stopping the issuance of hundreds of thousands of public shares
7 that did not comply with the disclosure requirements of securities registration); cf. stop orders
8 under the Securities Act of 1933, see 1 Louis Loss & Joel Seligman, *Securities Regulation* 576-
9 589 (3d ed. rev. 1998).

10
11 12. As of September 2002 46 jurisdictions had adopted a form of Section 306(a)(7)(A) (“will
12 tend to work a fraud or would so operate”); 34 jurisdictions had adopted a form of Section
13 306(a)(7)(B) (“unreasonable amounts of underwriters’ and sellers’ discounts, commissions, or
14 other compensation, or promoter profits or participations, or unreasonable amounts or kinds of
15 options”); and 16 jurisdictions had adopted a form of bracketed Section 306(a)(7)(C) (“terms that
16 are unfair, unjust, or inequitable”).

17 18 19 **Wisconsin Study Group Comments**

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21 Sections 306(a)(7)(B) & (C) [not included]. Subsections 306(a)(7)(B) and (C) of the Uniform
22 Act, which would permit denial of a registration application based on unreasonable amounts of
23 fees or promotional interests, or if the offering was unfair or inequitable, are being deleted to
24 conform to the current Wisconsin securities law. Similar provisions formerly in Wisconsin
25 securities law were eliminated during 1996 as part of the repeal of merit reviews in Wisconsin.
26

27 **SECTION 307. WAIVER AND MODIFICATION.** . The administrator may waive or
28 modify, in whole or in part, any or all of the requirements of Sections 302, 303, and 304(b) or the
29 requirement of any information or record in a registration statement or in a periodic report filed
30 pursuant to Section 305(i).

31 32 **Official Comments**

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34 **Prior Provision:** RUSA Section 303(h).

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36 Section 307 follows RUSA Section 303(h) and empowers the administrator to waive or
37 modify any of the requirements of 302, 303, 304(b), or the requirement of any information or
38 record in a registration statement. An example would be the expedited procedure several states
39 have adopted to coordinate with shelf registration under Rule 415 of the Securities Act of 1933.
40 In waiving or modifying requirements the administrator must make a finding satisfying the

1 requirements of Section 605(b).
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[ARTICLE] 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

SECTION 401. BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS.

(a) [Registration requirement.] It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this Chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) [Exemptions from registration.] The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer if its only transactions effected in this State are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered as a broker-dealer under this Chapter or not required to be registered as a broker-dealer under this Chapter;

(C) institutional investors and accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act of 1933;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of

1 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered
2 under the securities act of the State in which the customer maintains a principal place of
3 residence;

4 (F) a bona fide preexisting customer whose principal place of residence is in this
5 State but was not present in this State when the customer relationship was established, if:

6 (i) the broker-dealer is registered under the Securities Exchange Act of 1934
7 or not required to be registered under the Securities Exchange Act of 1934 and is registered under
8 the securities laws of the State in which the customer relationship was established and where the
9 customer had maintained a principal place of residence; and

10 (ii) within 45 days after the customer's first transaction in this State, the
11 person files an application for registration as a broker-dealer in this State and a further
12 transaction is not effected more than 75 days after the date on which the application is filed, or, if
13 earlier, the date on which the administrator notifies the person that the administrator has denied
14 the application for registration or has stayed the pendency of the application for good cause;
15 provided the person may effect unsolicited orders to liquidate open positions in existing customer
16 accounts if no commission or other remuneration is paid or given directly or indirectly for
17 effecting such transactions.

18 (G) any other person exempted by rule adopted or order issued under this Chapter.

19 (c) [**Limits on employment or association.**] It is unlawful for a broker-dealer, or for an
20 issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State,
21 directly or indirectly, to employ or associate with an individual to engage in an activity related to
22 securities transactions in this State if the registration of the individual is denied, suspended or
23 revoked or the individual is barred from employment or association with a broker-dealer, an

1 issuer, an investment adviser, or a federal covered investment adviser by an order of the
2 administrator under this Chapter, the Securities and Exchange Commission, or a self-regulatory
3 organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or
4 issuer did not know and in the exercise of reasonable care could not have known, of the denial,
5 suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause,
6 an order under this Chapter may modify or waive, in whole or in part, the application of the
7 prohibitions of this subsection to the broker-dealer.

8 (d) [**Foreign transactions.**] A rule adopted or order issued under this Chapter may
9 permit:

10 (1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that
11 does not have a place of business in this State to effect transactions in securities with or for, or
12 attempt to effect the purchase or sale of any securities by:

13 (A) an individual from Canada or other foreign jurisdiction who is temporarily
14 present in this State and with whom the broker-dealer had a bona fide customer relationship
15 before the individual entered the United States;

16 (B) an individual from Canada or other foreign jurisdiction who is present in this
17 State and whose transactions are in a self-directed tax advantaged retirement plan of which the
18 individual is the holder or contributor in that foreign jurisdiction; or

19 (C) an individual who is present in this State, with whom the broker-dealer
20 customer relationship arose while the individual was temporarily or permanently resident in
21 Canada or the other foreign jurisdiction; and

22 (2) an agent who represents a broker-dealer that is exempt under this subsection to
23 effect transactions in securities or attempt to effect the purchase or sale of securities in this State

1 as permitted for a broker-dealer described in paragraph (1).

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Official Comments

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Prior Provisions: 1956 Act Section 201; RUSA Sections 201-202.

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1. “Broker-dealer” is defined in Section 102(4). The scope of the Section 401(a) reference
6 “to transact business in this State” is specified in Section 610. “Transacts a business” has been
7 held to mean “more than a trivial or *de minimis* business.” *United States v. Schwartz*, 464 F.2d
8 499, 506 (2d Cir. 1972), *cert. denied*, 409 U.S. 1009 (1972).

9

10

2. Under Section 401(a) a person can be required to register as a securities broker-dealer only
11 if the person transacts business in securities. See, e.g., *AMR Realty Co. v. State*, 373 A.2d 1002
12 (N.J. Supr. Ct. App. Div. 1977) (requirement that the transactions involve securities).

13

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3. “Bona fide” is a much construed term particularly in the U.C.C. context. See, e.g., *MCC*
15 *Proceeds, Inc. v. Advest, Inc.*, 743 N.Y.S.2d 1 (N.Y. A.D. 2002) (comparing bona fide to good
16 faith standard).

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4. Section 401(b)(1)(D) was added to provide relief in situations where a broker-dealer is
19 accepting orders from a sophisticated financial professional who is making the investment
20 decisions for its customers.

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5. Under 401(b)(1)(E) and (F) preexisting customers must be bona fide. A principal place of
23 residence, for example, normally would be the residence where the customer spends a majority of
24 time. These exemptions were intended to facilitate ongoing broker-customer relationships with
25 customers who have established a second or other residence for such purposes as a winter home
26 (i.e. “snowbirds”).

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6. Section 401(c) prohibits a broker-dealer or issuer from employing or associating with an
29 individual in a capacity for which that individual has been suspended by the administrator.
30 Violation of this provision does not result in strict liability. In order for a broker-dealer or issuer
31 to be liable, the broker-dealer or issuer must have known or should have known of the
32 administrator’s order to the individual suspended or barred. Cf. Comment 17 to Section 412.

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7. Section 401(d) recognizes the increasingly transnational nature of securities brokerage and
35 permits, if the administrator adopts a rule or order, transactions by a Canadian or a foreign
36 broker-dealer with a person from Canada or other foreign jurisdiction who is resident in this
37 State. This subsection is not self-executing and is effective only if the administrator adopts a rule
38 or order.

39

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8. To give effect to action taken by rule or order under Section 401(d), there must be a
41 transaction registration exemption that will enable securities transactions to take place in
42 customer accounts involving the broker-dealers and agents contemplated in Section 401(d). See

1 Sections 202 and 203.

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Wisconsin Study Group Comments

6 Section 401(b)(1). The requirement that a broker-dealer not have a place of business in the state
7 as a condition to availability of this registration exemption is being deleted in order to conform to
8 current Wisconsin law.

9 Section 401(b)(1)(C). This section is being revised to include entity-type accredited investors
10 under Regulation D in order to conform to current Wisconsin law.

11 Section 401(b)(1)(F)(ii). This section is being revised to include a provision permitting
12 unsolicited liquidation transactions in an existing customer's account in order to enable a
13 customer to liquidate an open position in the event that registration is not granted within the
14 prescribed time period.

15 Section 401(b)(1)(G). This "de minimis" exemption from registration in the Uniform Act is
16 being deleted because it is not recognized as an exemption under current Wisconsin law.

17 Section 401(b)(2). The "governmental securities dealer" exemption from registration in the
18 Uniform Act is being deleted because it is not recognized as an exemption under current
19 Wisconsin law.

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SECTION 402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

23 (a) [Registration requirement.] It is unlawful for an individual to transact business in
24 this State as an agent ^{→ defined term in § 1.102} unless the individual is registered under this Chapter as an agent or is
25 exempt from registration as an agent under subsection (b).

26 (b) [Exemptions from registration.] The following individuals are exempt from the
27 registration requirement of subsection (a):

28 (1) an individual who represents a broker-dealer in effecting transactions in this State
29 limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C.
30 Section 78^{0(h)}(~~o~~)(2));

31 (2) an individual who represents a broker-dealer that is exempt under Section 401(b)

1 or (d);

2 (3) an individual who represents an issuer with respect to an offer or sale of the
3 issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who
4 is not compensated in connection with the individual's participation by the payment of
5 commissions or other remuneration based, directly or indirectly, on transactions in those
6 securities;

7 (4) an individual who represents an issuer and who effects transactions in the issuer's
8 securities exempted by Section 202, other than Section 202(11), (14) and (24);

9 (5) an individual who represents an issuer that effects transactions solely in federal
10 covered securities of the issuer, but an individual who effects transactions in a federal covered
11 security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section
12 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the
13 agent's participation by the payment of commissions or other remuneration based, directly or
14 indirectly, on transactions in those securities;

15 (6) an individual who represents a broker-dealer registered in this State under Section
16 401(a) or exempt from registration under Section 401(b) in the offer and sale of securities for an
17 account of a nonaffiliated federal covered investment adviser with investments under
18 management in excess of \$100,000,000 acting for the account of others pursuant to discretionary
19 authority in a signed record;

20 (7) an individual who represents an issuer in connection with the purchase of the
21 issuer's own securities;

22 (8) an individual who represents an issuer or broker-dealer and who restricts
23 participation to performing clerical or ministerial acts; or

1 (9) any other individual exempted by rule adopted or order issued under this Chapter.

2 (c) [**Registration effective only while employed or associated.**] The registration of an
3 agent is effective only while the agent is employed by or associated with a broker-dealer
4 registered under this Chapter or an issuer that is offering, selling, or purchasing its securities in
5 this State.

6 (d) [**Limit on employment or association.**] It is unlawful for a broker-dealer, or an
7 issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate
8 with an agent who transacts business in this State on behalf of broker-dealers or issuers unless
9 the agent is registered under subsection (a) for the broker-dealer or issuer or exempt from
10 registration under subsection (b).

11 (e) [**Limit on affiliations.**] Except as permitted under (f) below, an individual may not
12 act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer
13 or the issuer for which the agent acts are affiliated by direct or indirect common control or are
14 authorized by rule or order under this Chapter.

15 (f) An agent may make offers and sales of securities for more than one issuer that is a
16 limited partnership or for more than one issuer that is an investment company without obtaining
17 a separate registration for each limited partnership or investment company represented by the
18 agent if all of the following conditions are satisfied:

19 (1) the limited partnerships have the same general partner or the investment
20 companies have the same investment adviser.

21 (2) an application to amend the agent's registration to name each limited
22 partnership or investment company as the agent's employer is filed with and approved by the
23 administrator before the agent makes any offers or sales in the State on behalf of the additional

1 limited partnership or investment company.

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3 **Official Comments**

4 **Prior Provisions:** RUSA Sections 201-202.

* 5 1. “Agent” is defined in Section 102(2). The scope of the Section 402(a) reference to
6 “transact business in this State” is specified in Section 610. An administrator may by rule or
7 order take action under Section 401(d)(2) to address an agent.

8
9 2. An independent contractor must be either a broker-dealer or an agent if the individual
10 transacts business as a broker-dealer or agent. There is no other status permitted under this Act
11 for securities activities.

12
13 3. A broker-dealer in violation of Section 402(a) may be disciplined under Section 412 and
14 be subject to a civil or administrative enforcement action under Section 603 or 604.

15
16 4. Under Sections 402(b)(3) and (5) an agent may be exempt if acting for an issuer and
17 receiving compensation (for example, as a corporate executive), as long as the compensation is
18 not a commission or other remuneration based on transactions in the issuer’s own securities.
19 Such an agent could receive a salary with conventional benefits, including an annual bonus
20 (related to his or her performance) as an executive, and still be within this exemption unless the
21 agent is also being compensated directly or indirectly for participation in the specified securities
22 transactions.

23
24 5. Section 402(b)(6) was added to provide relief in situations where an agent is accepting
25 orders from a sophisticated financial professional who is making the investment decisions for its
26 customers.

27
28 6. Ministerial or clerical acts in Section 402(b)(8) might include preparing routine written
29 communications or responding to inquiries.

30
31 7. Section 402(e) limits agents to a single employment or affiliation unless a rule or order of
32 the administrator authorizes multiple affiliations. In any event an agent must be registered, see
33 Section 402(a), or exempt from registration, see Section 402(b). Registration is effective only
34 while an agent is employed by or associated with a broker-dealer or an issuer. See Section
35 402(c).

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38 **Wisconsin Study Group Comments**
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1 Section 402(b)(4). Cross-references to two other securities registration exemptions are being
2 added to this section in order to allow payment of commissions or other remuneration only to
3 registered broker-dealers.

4 Section 402(b)(8). This section is being revised to add "or broker-dealer" to clarify that a person
5 who performs only clerical or ministerial acts on behalf of either an issuer or a broker-dealer is
6 not required to be registered as an agent.

7 Section 402(d). This section is being revised to include language clarifying that such agents need
8 to be registered with the applicable broker-dealer or issuer.

9 Section 402(e) and Section 402(f). A reference is being added under Uniform Act Section 402(e)
10 to an exception to the prohibition on dual-agent registration under newly created Act Section
11 402(f), in order to accommodate agents representing more than one limited partnership or more
12 than one investment company with common general partners or investment advisers. This
13 change conforms to a similar provision under current Wisconsin law.

14

15

16 **SECTION 403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND**

17 **EXEMPTIONS.**

18 (a) [**Registration requirement.**] It is unlawful for a person to transact business in this
19 State as an investment adviser unless the person is registered under this Chapter as an investment
20 adviser or is exempt from registration as an investment adviser under subsection (b).

21 (b) [**Exemptions from registration.**] The following persons are exempt from the
22 registration requirement of subsection (a):

23 (1) a person whose only clients in this State are:

24 (A) federal covered investment advisers, investment advisers registered under this
25 Chapter, or broker-dealers registered under this Chapter;

26 (B) institutional investors and accredited investors as defined in Rule 501(a)(1),
27 (2), (3), (7) or (8) under the Securities Act of 1933;

28 (C) bona fide preexisting clients whose principal places of residence are not in
29 this State if the investment adviser is registered or exempt from registration under the securities

1 act of the State in which the clients maintain principal places of residence; or

2 (D) any other client exempted by rule adopted or order issued under this Chapter;

3 (2) a person without a place of business in this State if the person has had, during the
4 preceding 12 months, not more than five clients that are resident in this State in addition to those
5 specified under paragraph (1); or

6 (3) any other person exempted by rule adopted or order issued under this Chapter.

7 (c) **[Limits on employment or association.]** It is unlawful for an investment adviser,
8 directly or indirectly, to employ or associate with an individual to engage in an activity related to
9 investment advice in this State if the registration of the individual is denied, suspended or
10 revoked or the individual is barred from employment or association with an investment adviser,
11 federal covered investment adviser, or broker-dealer by an order under this Chapter, the
12 Securities and Exchange Commission, or a self-regulatory organization, unless the investment
13 adviser did not know, and in the exercise of reasonable care could not have known, of the denial,
14 suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the
15 administrator, by order, may waive, in whole or in part, the application of the prohibitions of this
16 subsection to the investment adviser.

17 (d) **[Investment adviser representative registration required.]** It is unlawful for an
18 investment adviser to employ or associate with an individual required to be registered under this
19 Chapter as an investment adviser representative who transacts business in this State on behalf of
20 the investment adviser unless the individual is registered under Section 404(a) or is exempt from
21 registration under Section 404(b).

22

1 **Official Comments**

2 **Prior Provisions:** 1956 Act Section 201; RUSA Sections 203-204.

3 1. “Investment adviser” is defined in Section 102(15). The scope of the Section 403(a)
4 reference to “transact business in this State” is specified in Section 610.

5
6 2. Excluded from the definition of investment adviser in Section 102(15)(C) is a broker-
7 dealer who receives no special compensation for investment advisory services. Such a broker-
8 dealer would not have to register as both a broker-dealer and investment adviser in this State. A
9 broker-dealer that does receive special compensation, on the other hand, would also meet the
10 statutory definition of investment adviser and would be required to register in both capacities.

11
12 3. Section 403(b)(2) is consistent with the National Securities Markets Improvement Act of
13 1996 which prohibits a State from regulating an investment adviser that does not have a place of
14 business in this State and had fewer than six clients who were state residents during the
15 preceding 12 months.

16
17 4. Section 403(c) prohibits an investment adviser from employing an individual who is
18 prohibited from such employment or association by the administrator. Violation of this provision
19 does not result in strict liability. To be liable the investment adviser must have known or should
20 have known of the administrator’s order to the individual suspended or barred.
21

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23 **Wisconsin Study Group Comments**

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25 Section 403(b)(1). This section is being revised to delete conditions for reliance on this
26 registration exemption that do not currently exist under Wisconsin law.

27 Section 403(b)(1)(B). Cross-references to entity-type accredited investors are being added to this
28 registration exemption in order to conform to current Wisconsin law.

29 Section 403(b)(1)(C). This section is being revised to permit an investment adviser to service
30 existing bona fide clients without registration in Wisconsin if the investment adviser is either
31 registered or *exempt* from registration under the securities act of the home state of the client.

32 Section 403(c). This section is being revised to include a “denial” of a registration to the list of
33 enforcement actions that would prohibit an investment adviser from employing or associating
34 with a person to provide investment advice in this state.

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36
37 **SECTION 404. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION**
38 **REQUIREMENT AND EXEMPTIONS.**

delivered 5/11/02

1 **(a) [Registration requirement.]** It is unlawful for an individual to transact business in
2 this State as an investment adviser representative unless the individual is registered under this
3 Chapter as an investment adviser representative or is exempt from registration as an investment
4 adviser representative under subsection (b).

5 **(b) [Exemptions from registration.]** The following individuals are exempt from the
6 registration requirement of subsection (a):

7 (1) an individual who is employed by or associated with an investment adviser that is
8 exempt from registration under Section 403(b) or a federal covered investment adviser that is
9 excluded from the notice filing requirements of Section 405; and

10 (2) any other individual exempted by rule adopted or order issued under this Chapter.

11 **(c) [Registration effective only while employed or associated.]** The registration of an
12 investment adviser representative is effective only while the investment adviser representative is
13 employed by or associated with an investment adviser registered under this Chapter or a federal
14 covered investment adviser that has made or is required to make a notice filing under Section
15 405.

16 **(d) [Limit on affiliations.]** An individual may transact business as an investment adviser
17 representative for more than one investment adviser or federal covered investment adviser unless
18 a rule adopted or order issued under this Chapter prohibits or limits an individual from acting as
19 an investment adviser representative for more than one investment adviser or federal covered
20 investment adviser.

21 **(e) [Limits on employment or association.]** It is unlawful for an individual acting as an
22 investment adviser representative, directly or indirectly, to conduct business in this State on
23 behalf of an investment adviser or a federal covered investment adviser if the registration of the

1 individual as an investment adviser representative is suspended or revoked or the individual is
2 barred from employment or association with an investment adviser or a federal covered
3 investment adviser by an order under this Chapter, the Securities and Exchange Commission, or
4 a self-regulatory organization. Upon request and for good cause, the administrator, by order
5 issued, may waive, in whole or in part, the application of the requirements of this subsection.

6 (f) [Referral fees.] An investment adviser registered or exempt from registration under
7 this Chapter, a federal covered investment adviser that has filed a notice under Section 405 or is
8 exempt from such notice filing requirement, or a broker-dealer registered or exempt from
9 registration under this Chapter is not required to employ or associate with an individual as an
10 investment adviser representative if the only compensation paid to the individual for a referral of
11 investment advisory clients is paid to an investment adviser registered or exempt from
12 registration under this Chapter, a federal covered investment adviser who has filed a notice or is
13 exempt from filing a notice under Section 405, or a broker-dealer registered or exempt from
14 registration under this Chapter with which the individual is employed or associated as an
15 investment adviser representative.

16 Official Comments

17 No Prior Provision.

18 1. "Investment adviser representative" is defined in Section 102(16). The scope of the
19 Section 404(a) reference to "transacts business in this State" is specified in Section 610.

20
21 2. Neither the 1956 Act nor RUSA provided for the registration of investment adviser
22 representatives. In recent years, however, the states increasingly have done so.

23
24
25 3. Under this Act a sole practitioner may register as an investment adviser. See Section 403.
26 The Investment Adviser Registration Depository currently provides for entry of the legal name of
27 the individual as the investment adviser and the entry of any name the individual is doing
28 business under that is different from the individual's name. A sole practitioner is not required to

1 register under Section 404 as an investment adviser representative, unless the administrator
2 requires such registration.
3

4 4. Section 404(e) prohibits an investment adviser representative from association with a
5 federal covered investment adviser when such association is prohibited by an order of the
6 administrator. Unlike similar provisions in Sections 401 and 403, there is no culpability
7 requirement that the investment adviser representative “knows or in the exercise of reasonable
8 care should have known” of a suspension or bar because the order should be received by the
9 investment adviser representative. As with Sections 401 and 403, the administrator may waive
10 this prohibition. Cf. Comment 17 to Section 412.
11

12 5. The administrator may adopt rules or orders under Section 404(f) in accordance with
13 Section 605. The Securities and Exchange Commission has adopted a rule that addresses referral
14 fees in Rule 206(4)-3 of the Investment Advisers Act of 1940.
15

16 6. For a state that intends to extend Section 404(f) to those broker-dealers and investment
17 advisers who are not required to register and those federal covered investment advisers not
18 required to file a notice, this subsection should read:
19

20 (f) [**Referral Fees.**] An investment adviser registered under this [Act], a federal covered
21 investment adviser that has filed a notice under Section 405, or a broker-dealer registered
22 under this [Act] is not required to employ or associate with an individual as an investment
23 adviser representative if the only compensation paid to the individual for a referral of
24 investment advisory clients is paid to an investment adviser registered under this [Act], or not
25 required to register under this [Act], a federal covered investment who has filed a notice
26 under Section 405 or is not required to file a notice under Section 405, or a broker-dealer
27 registered under this [Act] or not required to register under this [Act] with which the
28 individual is employed or associated as an investment adviser representative.
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31 Wisconsin Study Group Comments 32

33 Section 404(c). This section is being revised for purposes of clarity.

34 Section 404(e). This section is being amended to provide that *any* person may make a request of
35 the administrator to waive the application of the requirements under this section.

36 Section 404(f). This section is being revised to add the following persons to those persons
37 identified in this subsection who may receive referral fees, (i) investment advisers who are
38 exempt from registration or are exempt from filing a notice; or (ii) broker-dealers who are
39 exempt from registration.
40
41

defined 551.102

1 **SECTION 405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING**
2 **REQUIREMENT.**

3 (a) [**Notice filing requirement.**] Except with respect to a federal covered investment
4 adviser described in subsection (b), it is unlawful for a federal covered investment adviser to
5 transact business in this State as a federal covered investment adviser unless the federal covered
6 investment adviser complies with subsection (c).

7 (b) [**Notice filing requirement not required.**] The following federal covered investment
8 advisers are not required to comply with subsection (c):

9 (1) a federal covered investment adviser without a place of business in this State if its
10 only clients in this State are:

11 (A) federal covered investment advisers, investment advisers registered under this
12 Chapter, and broker-dealers registered under this Chapter;

13 (B) institutional investors and accredited investors as defined and listed in Sec.
14 230.501(a)(1), (2), (3) or (7) under Regulation D under the Securities Act of 1933;

15 (C) bona fide preexisting clients whose principal places of residence are not in
16 this State; or

17 (D) other clients specified by rule adopted or order issued under this Chapter;

18 (2) a federal covered investment adviser without a place of business in this State if
19 the person has had, during the preceding 12 months, not more than five clients that are resident in
20 this State in addition to those specified under paragraph (1); and

21 (3) any other person excluded by rule adopted or order issued under this Chapter.

22 (c) [**Notice filing procedure.**] A person acting as a federal covered investment adviser,
23 not excluded under subsection (b), shall file a notice, a consent to service of process complying

1 with Section 611, and such records as have been filed with the Securities and Exchange
2 Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued
3 under this Chapter and pay the fees specified in Section 410(e).

4 (d) **[Effectiveness of filing.]** The notice under subsection (c) becomes effective upon its
5 filing and expires on December 31 unless one of the following occurs:

6 (1) the notice filing is renewed;

7 (2) the notice filing is limited or extended for not more than six months and the notice
8 filer pays a fee, adjusted proportionately by the administrator by rule or order; or

9 (3) the administrator specifies a different expiration date by rule or order.

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Official Comments

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No Prior Provision.

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1. "Federal covered investment adviser" is defined in Section 102(6). The scope of the
Section 405(a) reference to "transacts business in this State" is specified in Section 610.

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2. Section 405(b)(2) is necessitated by the National Securities Markets Improvement Act
of 1996 and is intended to coordinate this Act with the Investment Advisers Act of 1940.

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3. Section 404(c) provides limits on those who can be employed by or associated with a
federal covered investment adviser.

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4. The succession provision of Section 407(a) is available to a federal covered
investment adviser who has filed a notice under Section 405.

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Wisconsin Study Group Comments

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Section 405(b)(1)(B). This section is being revised to add entity-type accredited investors, in
order to conform to current Wisconsin law.

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Section 405(d). This section is being revised to provide that registrations expire on 12/31 of each
year in the absence of certain actions, in order to conform to current Wisconsin law.

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1 **SECTION 406. REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT**
2 **ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.**

3 (a) [**Application for initial registration.**] A person shall register as a broker-dealer,
4 agent, investment adviser, or investment adviser representative by filing with the administrator,
5 or an organization which the administrator by rule designates an application and a consent to
6 service of process complying with Section 611, and paying the fee specified in Section 410 and
7 any reasonable fees charged by the designee of the administrator for processing the filing. The
8 application must contain:

- 9 (1) the information or record required for the filing of a uniform application; and
10 (2) upon request by the administrator, any other financial or other information or
11 record that the administrator determines is appropriate.

12 (b) [**Amendment.**] If the information or record contained in an application filed under
13 subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall
14 promptly file a correcting amendment.

15 (c)(1) [**Effectiveness of registration.**] If an order is not in effect and a proceeding is not
16 pending under Section 411, registration is effective at the following times prior to the expiration
17 of 30 days from the filing of the application, unless the registration is denied:

- 18 (A) the date that the administrator issues registration to the applicant;
19 (B) the date that approval of registration status is transmitted by the administrator to
20 the applicant through the central registration depository of the National Association of
21 Securities Dealers, Inc; or
22 (C) on January 1 for any renewal application filed during December of the preceding
23 year with the central registration depository, unless the administrator makes a written