




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 09 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 (B) ordering the administrator to take charge and control of a defendant's
2 property, including investment accounts and accounts in a depository institution, rents, and
3 profits; to collect debts; and to acquire and dispose of property;

4 (C) imposing a civil penalty up to \$5,000 for a single violation or up to \$250,000
5 for more than one violation; an order of rescission, restitution, or disgorgement directed to a
6 person that has engaged in an act, practice, or course of business constituting a violation of this
7 Chapter or the predecessor act or a rule adopted or order issued under this Chapter or the
8 predecessor act; and

9 (D) ordering the payment of prejudgment and postjudgment interest; or

10 (3) order such other relief as the court considers appropriate.

11 (c) [No bond required.] The administrator may not be required to post a bond in an
12 action or proceeding under this Chapter.

13
14 **Official Comments**

15 **Prior Provisions:** 1956 Act Section 408; RUSA Section 603

16 1. Section 408 of the 1956 Act was limited to injunctions. This Section follows RUSA
17 in broadening the civil remedies available when the administrator believes that a violation has
18 occurred. A primary purpose of a broad range of potential sanctions is to enable administrators
19 to better tailor appropriate sanctions to particular misconduct.

20
21 2. The administrator alternatively may proceed to seek administrative enforcement under
22 Section 604; to deny, suspend, or revoke a securities registration under Section 306; or to deny,
23 suspend, revoke, or take other action against a broker-dealer, agent, investment adviser, or
24 investment adviser representative registration under Section 412.

25
26 3. Constitutional due process considerations can also be addressed by rulemaking or
27 incorporation of the applicable administrative procedure act provisions of each jurisdiction. The
28 term "upon a proper showing" has a settled meaning in the federal securities laws. See, e.g.,
29 Securities Act of 1933 Section 20(b).

30
31 4. As with Sections 509(g)(3) and (4), materially aid in Section 603(a) does not include

1 ministerial or clerical acts.
2
3

4 **Wisconsin Study Group Comments**

5 Section 603(a). The injunction authority provision is being amended by adding language found
6 in current Wisconsin Stat. Sec.551.57, which parallels language added to Act Section 602(c),
7 noted above. As amended, the section provides that, in addition to the Division having the
8 authority to unilaterally seek a court injunction, the Division also can refer the matter to the state
9 Attorney General or an appropriate District Attorney.

10
11
12 **SECTION 604. ADMINISTRATIVE ENFORCEMENT.**

13 (a) [**Issuance of an order or notice.**] If the administrator determines that a person has
14 engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a
15 violation of this Chapter or a rule adopted or order issued under this Chapter or that a person has
16 materially aided, is materially aiding, or is about to materially aid an act, practice, or course of
17 business constituting a violation of this Chapter or a rule adopted or order issued under this
18 Chapter, the administrator may:

19 (1) issue an order directing the person to cease and desist from engaging in the act,
20 practice, or course of business or to take other action necessary or appropriate to comply with this
21 Chapter;

22 (2) issue an order denying, suspending, revoking, or conditioning the exemptions for a
23 broker-dealer under Section 401(b)(1)(D) or (F) or an investment adviser under Section
24 403(b)(1)(C); or
(2) (e) or (g)
(2) (a) 4.

25 (3) issue an order under Section 204.

26 (b) [**Summary process.**] An order under subsection (a) is effective on the date of
27 issuance. Upon issuance of the order, the administrator shall promptly serve each person subject
28 to the order with a copy of the order and a notice that the order has been entered. The order must

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

10 (c) **[Procedure for final order.]** If a hearing is requested or ordered pursuant to
11 subsection (b), a hearing must be held pursuant to Chapter 227. A final order may not be issued
12 unless the administrator makes findings of fact and conclusions of law in a record in accordance
13 with Chapter 227. The final order may make final, vacate, or modify the order issued under
14 subsection (a).

15 (d) **[Civil penalty.]** In a final order under subsection (c), the administrator may impose a
16 civil penalty up to \$5,000 for a single violation or up to \$250,000 for more than one violation.

17 (e) **[Costs.]** In a final order, the administrator may charge the actual cost of an
18 investigation or proceeding for a violation of this Chapter or a rule adopted or order issued under
19 this Chapter.

20 (f) **[Filing of certified final order with court; effect of filing.]** If a petition for judicial
21 review of a final order is not filed in accordance with Section 609, the administrator may file a
22 certified copy of the final order with the clerk of a court of competent jurisdiction. The order so

1 filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in
2 the same manner as a judgment of the court.

3 (g) [Enforcement by court; further civil penalty.] If a person does not comply with an
4 order under this section, the administrator may petition a court of competent jurisdiction to
5 enforce the order. The court may not require the administrator to post a bond in an action or
6 proceeding under this section. If the court finds, after service and opportunity for hearing, that
7 the person was not in compliance with the order, the court may adjudge the person in civil
8 contempt of the order. The court may impose a further civil penalty against the person for
9 contempt in an amount not less than \$5,000 but not greater than \$100,000 for each violation and
10 may grant any other relief the court determines is just and proper in the circumstances.

11 Official Comments

12 **Prior Provisions:** RUSA Sections 602, 712.

13 1. Section 604, unlike Section 603, may be initiated by the administrator without prior
14 judicial process or a prior hearing. The section, among other matters, empowers the
15 administrator to act summarily in appropriate circumstances.

16
17 2. Sections 603 and 604 are intended to be available to the administrator against persons
18 not subject to stop orders under Section 306 or proceedings against registered broker-dealers,
19 agents, investment advisers, or investment adviser representatives under Section 412. All
20 persons or securities not subject to Section 306 or 412 will be subject to Sections 603 and 604.
21 A person must be covered by either (1) Sections 306 or 412 or (2) Sections 603 or 604.

22
23 3. Service of an order or notice under this Section is not effective unless made in
24 accordance with Section 611.

25 26 27 **SECTION 605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND** 28 **HEARINGS.**

29 (a) [Issuance and adoption of forms, orders, and rules.] The administrator may:

1 (1) issue forms and orders and, after notice and comment, may adopt and amend rules
2 necessary or appropriate to carry out this Chapter and may repeal rules, including rules and forms
3 governing registration statements, applications, notice filings, reports, and other records;

4 (2) by rule, define terms, whether or not used in this Chapter, but those definitions
5 may not be inconsistent with this Chapter; and

6 (3) by rule, classify securities, persons, and transactions and adopt different
7 requirements for different classes.

8 (b) **[Findings and cooperation.]** Under this Chapter, except as provided under Section
9 411(d)(19)(B) and (C), a rule or form may not be adopted or amended, or an order issued or
10 amended, unless the administrator finds that the rule, form, order, or amendment is necessary or
11 appropriate in the public interest or for the protection of investors and is consistent with the
12 purposes intended by this Chapter. In adopting, amending, and repealing rules and forms,
13 Section 608 applies in order to achieve uniformity among the States and coordination with
14 federal laws in the form and content of registration statements, applications, reports, and other
15 records, including the adoption of uniform rules, forms, and procedures.

16 (c) **[Financial statements.]** Subject to Section 15(h) of the Securities Exchange Act and
17 Section 222 of the Investment Advisers Act of 1940, the administrator may require that a
18 financial statement filed under this Chapter be prepared in accordance with generally accepted
19 accounting principles in the United States and comply with other requirements specified by rule
20 adopted or order issued under this Chapter. A rule adopted or order issued under this Chapter
21 may establish:

1 (1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the
2 Investment Advisors Act of 1940, the form and content of financial statements required under
3 this Chapter;

4 (2) whether unconsolidated financial statements must be filed; and

5 (3) whether required financial statements must be audited by an independent certified
6 public accountant.

7 (d) **[Interpretative opinions.]** The administrator may provide interpretative opinions or
8 issue determinations that the administrator will not institute a proceeding or an action under this
9 Chapter against a specified person for engaging in a specified act, practice, or course of business
10 if the determination is consistent with this Chapter. A rule adopted or order issued under this
11 Chapter may establish a reasonable charge for interpretative opinions or determinations that the
12 administrator will not institute an action or a proceeding under this Chapter.

13 (e) **[Effect of compliance.]** A penalty under this Chapter may not be imposed for, and
14 liability does not arise from conduct that is engaged in or omitted in good faith in conformity
15 with a rule, form, or order of the administrator under this Chapter.

16 (f) **[Presumption for public hearings.]** A hearing in an administrative proceeding under
17 this Chapter must be conducted in public unless the administrator for good cause consistent with
18 this Chapter determines that the hearing will not be so conducted.

19
20 **Official Comments**

21 **Prior Provisions:** 1956 Act Section 412; RUSA Sections 705, 707.

22
23 1. It is anticipated that the administrator will propose amendments or make rules under
24 Section 605(a) to remain coordinate with relevant federal law, as well as appropriate rules of the
25 National Association of Securities Dealers, and to achieve uniformity among the States.
26

1 (a) [**Presumption of public records.**] Except as otherwise provided in subsection (b),
2 records obtained by the administrator or filed under this Chapter, including a record contained in
3 or filed with a registration statement, application, notice filing, or report, are public records and
4 are available for public examination.

5 (b) [**Nonpublic records.**] The following records are not public records and are not
6 available for public examination under subsection (a):

7 (1) information and records obtained by the administrator in connection with an audit
8 or inspection under Section 410(d) or a pending investigation under Section 602;

9 (2) a part of a record filed in connection with a registration statement under Sections
10 301 and 303 through 305 or a record under Section 410(d) that contains trade secrets or
11 confidential information if the person filing the registration statement or record has asserted a
12 claim of confidentiality or privilege that is authorized by law;

13 (3) a record that is not required to be provided to the administrator or filed under this
14 Chapter and is provided to the administrator only on the condition that the record will not be
15 subject to public examination or disclosure;

16 (4) a nonpublic record received from a person specified in Section 608(a);

17 (5) any social security number, residential address unless used as a business address,
18 and residential telephone number unless used as a business telephone number, contained in a
19 record that is filed; and

20 (6) a record obtained by the administrator through a designee of the administrator that
21 a rule or order under this Chapter determines has been appropriately expunged from the
22 administrator's records by the designee.

1 (c) [Administrator discretion to disclose.] If disclosure is for the purpose of a civil,
2 administrative, or criminal investigation, action, or proceeding or to a person specified in Section
3 608(a), the administrator may disclose a record or information obtained in connection with an
4 audit or inspection under Section 410(d) or a record or information obtained in connection with a
5 pending investigation under Section 602.

6
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Official Comments

8 **Prior Provisions:** RUSA Section 703; SEC Rule Section 200.80(b)(4); Securities
9 Exchange Act of 1934 Sections 24(d) and (e).

- 10
11 1. Section 607(a) reflects the extensive development of freedom of information and
12 open records laws since the 1956 Act was adopted.
- 13
14 2. Section 607(b) may insulate from public disclosure records or other information that
15 may be available under a state freedom of information or open records act. Unless the state
16 freedom of information or open records act implements a constitutional provision, this Act as the
17 later and more specific enactment should control as a matter of statutory construction. A state
18 may amend its freedom of information act, open records act or this section to eliminate any
19 inconsistencies.
- 20
21 3. Records and other information obtained by an administrator in connection with an
22 audit or inspection under subsection 411(d) or an investigation under Section 602 may be made
23 public in the enforcement action, even if records and other information would otherwise be
24 subject to subsection 607(b)(1).
- 25
26 4. An administrator may orally disclose information under Section 607(c) to a person
27 specified in Section 608(a) for the purposes specified in Section 607(c).

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Wisconsin Study Group Comments

1 Section 607(b)(1). This subsection (which restricts the Administrator from making public the
2 results of examinations of broker-dealers and investment advisers) is being revised to (i) add
3 language, based on the equivalent Wisconsin provision in current Stats. sec. 551.33(4), to cover
4 "information" obtained in the course of the examination in addition to records; and (ii) add the
5 term "pending" to provide that information and records relating to an investigation is non-public
6 only with respect to pending investigations, which is being added to remain consistent with
7 current Wisconsin law in Division rule DFI-Sec 7.05(2)(e).

8 Section 607(b)(6). This subsection grants enabling authority for the Administrator to adopt rules
9 or orders to deal with CRD or IARD records and is being revised in the following respects:

10 1. The word "appropriately" is added to what was previously designated as subparagraph
11 (A) because there can be circumstances involving expungements from CRD/IARD
12 records under appropriate circumstances where the Division would want to have authority
13 to act by rule or order;

14 2. Subparagraph (B) has been deleted because it would create situations where the
15 Division would get enmeshed in proceedings revisiting whether a prior CRD/IARD
16 "determination of nondisclosure" (as separate and distinct from expungement situations)
17 was appropriate.

18 Section 607(c). This section is being amended to make terminology revisions that are consistent
19 with the changes being made to Act Section 607(b)(1).

20 21 22 **SECTION 608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.**

23 (a) [**Objective of uniformity.**] The administrator shall, in its discretion, cooperate,
24 coordinate, consult, and, subject to Section 607, share records and information with the securities
25 regulator of another State, Canada, a Canadian province or territory, a foreign jurisdiction, the
26 Securities and Exchange Commission, the United States Department of Justice, the Commodity
27 Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection
28 Corporation, a self-regulatory organization, a national or international organization of securities
29 regulators, a federal or state banking and insurance regulator, and a governmental law
30 enforcement agency to effectuate greater uniformity in securities matters among the federal
31 government, self-regulatory organizations, States, and foreign governments.

1 (b) [**Policies to consider.**] In cooperating, coordinating, consulting, and sharing records
2 and information under this section and in acting by rule, order, or waiver under this Chapter, the
3 administrator shall, in its discretion, take into consideration in carrying out the public interest the
4 following general policies:

- 5 (1) maximizing effectiveness of regulation for the protection of investors;
- 6 (2) maximizing uniformity in federal and state regulatory standards; and
- 7 (3) minimizing burdens on the business of capital formation, without adversely
8 affecting essentials of investor protection.

9 (c) [**Subjects for cooperation.**] The cooperation, coordination, consultation, and sharing of
10 records and information authorized by this section includes:

- 11 (1) establishing or employing one or more designees as a central depository for
12 registration and notice filings under this Chapter and for records required or allowed to be
13 maintained under this Chapter;
- 14 (2) developing and maintaining uniform forms;
- 15 (3) conducting a joint examination or investigation;
- 16 (4) holding a joint administrative hearing;
- 17 (5) instituting and prosecuting a joint civil or administrative proceeding;
- 18 (6) sharing and exchanging personnel;
- 19 (7) coordinating registrations under Sections 301 and 401 through 404 and
20 exemptions under Section 203;
- 21 (8) sharing and exchanging records, subject to Section 607;
- 22 (9) formulating rules, statements of policy, guidelines, forms, and interpretative
23 opinions and releases;

- 1 (10) formulating common systems and procedures;
- 2 (11) notifying the public of proposed rules, forms, statements of policy, and
- 3 guidelines;
- 4 (12) attending conferences and other meetings among securities regulators, which
- 5 may include representatives of governmental and private sector organizations involved in capital
- 6 formation, deemed necessary or appropriate to promote or achieve uniformity; and
- 7 (13) developing and maintaining a uniform exemption from registration for small
- 8 issuers, and taking other steps to reduce the burden of raising investment capital by small
- 9 businesses.

10 **Official Comments**

11 **Prior Provisions:** 1956 Act Section 415; RUSA Sections 704 and 803; 19(c) of the

12 Securities Act of 1933.

13 1. Uniformity of regulation among the states and coordination with the Securities and

14 Exchange Commission is a principal objective of this Act. Section 608 is intended to encourage

15 such cooperation to the maximum extent appropriate. Operative phrases such as “shall, in its

16 discretion” in Sections 608(a) and (b) are intended to be precisely coordinate with the directive

17 that Congress gave to the Securities and Exchange Commission in Section 19(c) of the Securities

18 Act of 1933.

19

20

21

22

23 2. The goals of uniformity among the states and coordination with related federal

24 regulation, including self regulatory organizations, may be enhanced by greater use of

25 information technology systems such as the Web-CRD, the Investment Adviser Registration

26 Depository (IARD), or the Securities and Exchange Commission Electronic Data Gathering,

27 Analysis and Retrieval System (EDGAR). These types of techniques are consistent with a

28 potential system of “one stop filing” of all federal and state forms that is encouraged by this Act.

29

30 3. This Act is intended, to the extent practicable, to be revenue neutral in its impact on

31 existing state laws.

32

33 4. Section 608(c) lists some joint or coordinated efforts which might be undertaken.

34 Other appropriate cooperative activities are also encouraged.

35

36 5. Court decisions interpreting the securities laws have construed these acts to achieve

1 "broad protection to investors," a remedial approach that "embodies a flexible rather than a static
2 principle, one that is capable of adaption to meet the countless and variable schemes devised by
3 those who seek to use the money of others on the promise of profits." SEC v. W.J. Howey Co,
4 328 U.S. 293, 299, 301 (1946).

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7
8 **SECTION 609. JUDICIAL REVIEW.**

9 (a) [**Judicial review of orders.**] A final order issued by the administrator under this
10 Chapter is subject to judicial review in accordance with Chapter 227, but administrative
11 enforcement orders originally entered without hearing may be reviewed only if the party seeking
12 review has requested a hearing within the time provided by [section 604(b)].

13 **Official Comments**

14
15 **Prior Provisions:** 1956 Act Section 411; RUSA Section 711(b).

16 1. The 1956 Act Section 411 specified procedures for judicial review of orders, in part
17 modeled on Section 12 of the Model Administrative Procedure Act, 54 Handbook of National
18 Conference of Commissioners on Uniform State Laws 334 (1944) and partly on Section 25 of the
19 Securities Exchange Act.

20
21 2. A rule adopted under this Act may be subject to judicial review in accordance with the
22 state administrative procedure act.

23
24 3. In those states in which judicial review of rules is permitted, a state may choose to add
25 Section 609(b). In those states in which judicial review of rules is not permitted, Section 609(b)
26 should be deleted.

27
28 **Wisconsin Study Group Comments**

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30
31 Section 609(a). This section is being revised to add language from current Wisconsin securities
32 law, Stats. sec. 551.61(5) [relating to judicial review]. As revised, the section provides that a
33 named party in a summarily-issued administrative enforcement order must meet the filing
34 deadlines in Act Section 604(b) for preserving their administrative hearing rights (and going
35 through the hearing process) in order to be able to seek judicial review.

36 Uniform Act Section 609(b) [not included]. Because Wisconsin does not provide for judicial
37 review of administrative rules-- either under Chapter 227 or under the Wisconsin securities law --

1 the optional, bracketed subsection is being deleted.

2
3
4 **SECTION 610. JURISDICTION.**

5 (a) [**Sales and offers to sell.**] Sections 301, 302, 401(a), 402(a), 403(a), 404(a), 501, 506,
6 509, and 510 do not apply to a person that sells or offers to sell a security unless the offer to sell
7 or the sale is made in this State or the offer to purchase or the purchase is made and accepted in
8 this State.

9 (b) [**Purchases and offers to purchase.**] Sections 401(a), 402(a), 403(a), 404(a), 501,
10 506, 509, and 510 do not apply to a person that purchases or offers to purchase a security unless
11 the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made
12 and accepted in this State.

13 (c) [**Offers in this State.**] For the purpose of this section, an offer to sell or to purchase a
14 security is made in this State, whether or not either party is then present in this State, if the offer:

15 (1) originates from within this State; or

16 (2) is directed by the offeror to a place in this State and received at the place to which
17 it is directed, but for purposes of section 301, an offer to sell which is not directed to or received
18 by the offeree in this State is not made in this State.

19 (d) [**Acceptances in this State.**] For the purpose of this section, an offer to purchase or
20 to sell is accepted in this State, whether or not either party is then present in this State, if the
21 acceptance:

22 (1) is communicated to the offeror in this State and the offeree reasonably believes the
23 offeror to be present in this State and the acceptance is received at the place in this State to which
24 it is directed; and

1 (2) has not previously been communicated to the offeror, orally or in a record, outside
2 this State.

3 (e) [**Publications, radio, television, or electronic communications.**] An offer to sell or
4 to purchase is not made in this State when a publisher circulates or there is circulated on the
5 publisher's behalf in this State a bona fide newspaper or other publication of general, regular, and
6 paid circulation that is not published in this State, or that is published in this State but has had
7 more than two thirds of its circulation outside this State during the previous 12 months or when a
8 radio or television program or other electronic communication originating outside this State is
9 received in this State. A radio or television program, or other electronic communication is
10 considered as having originated in this State if either the broadcast studio or the originating
11 source of transmission is located in this State, unless:

12 (1) the program or communication is syndicated and distributed from outside this
13 State for redistribution to the general public in this State;

14 (2) the program or communication is supplied by a radio, television, or other
15 electronic network with the electronic signal originating from outside this State for redistribution
16 to the general public in this State;

17 (3) the program or communication is an electronic communication that originates
18 outside this State and is captured for redistribution to the general public in this State by a
19 community antenna or cable, radio, cable television, or other electronic system; or

20 (4) the program or communication consists of an electronic communication that
21 originates in this State, but which is not intended for distribution to the general public in this
22 State.

1 (f) [Investment advice and misrepresentations.] Sections 403(a), 404(a), 405(a), 502,
2 505, and 506 apply to a person if the person engages in an act, practice, or course of business
3 instrumental in effecting prohibited or actionable conduct in this State, whether or not either
4 party is then present in this State.

5
6 **Official Comments**

7 **Source of Law:** 1956 Act Section 414; RUSA Section 801.

8
9 1. Section 610 defines the application of the Act to interstate or international transactions
10 when only some of the elements of a violation occur in this State. This Section applies to all
11 types of proceedings specified by the Act – administrative, civil, and criminal. The law is now
12 settled that a person may violate the law of a particular state without ever being within the state
13 or performing each act necessary to violate the law within that state.

14
15 2. Section 610 generally follows Section 414 of the 1956 Act, but has been modernized
16 to reflect the development of the Internet and other electronic communications after 1956.

17
18 3. Section 610 can be illustrated in the context of a civil action under Section 509(b) by a
19 purchaser in State A against a seller in State B:

20 Section 610(a) would apply when an “offer to sell is made in this State.”

21
22 Section 610(c) provides that an offer which originates in State B and is directed to State
23 A is made in both states. The securities act of State A would apply under Section 610(c)(2). The
24 act of State B would apply also, under Section 610(c)(1). The intent is to prevent a seller in State
25 B from using that state as a base of operations for defrauding person in other states.

26
27 Section 610(e) addresses offers made through publications, radio, television, or electronic
28 communications. The subsection provides a series of safe harbors for advertisements in
29 newspapers, magazines, radio, television, or electronic media that either originate outside State A
30 or that originate in State A but are directed outside the state to the general public. With respect
31 to bona fide newspapers or other publications of general, regular, and paid circulation, the safe
32 harbor requires that more than two thirds of its circulation be outside State A. With respect to
33 radio, television, or other electronic communications, safe harbors are specified in Sections
34 610(e)(1) through (4).

35
36 Section 610(d), however, provides that a person in State A who makes an offer to
37 purchase as a result of communication described in Section 610(e) may cause the act to be
38 applicable if the offeror accepts the offer “in this State.” Section 610(d) defines when an offer is
39 accepted “in this State.”
40

1
2 If a selling broker-dealer in State B solely sends a confirmation into State A, or the
3 purchaser in State A sends a check from within State A, the act will not apply unless, under
4 Section 610(d), the confirmation or delivery constitutes the seller's acceptance of the purchaser's
5 offer to buy in State A.

6
7 The applicability of the act to purchaser is addressed by Section 610(b) which is the
8 converse of Section 610(a). Under Section 509(c) there can be liability of purchasers to sellers.

9
10 Section 610(f) is a new provision that specifies jurisdictions in cases involving
11 investment advice and misrepresentations.

12
13 4. Under subsection 202(20) certain out-of-state offers or sales are exempt from
14 securities registration.

15
16 5. The phrase "other electronic means" is coextensive with computer or other
17 information technology permitted by subsections 102(8), 102(25).

18
19 6. Under Section 610 the administrator may adopt interpretative rules or orders to specify
20 when particular uses of new electronic communications, including the Internet, involve an offer
21 to sell or to purchase a security, acceptance of an order to purchase or sell a security, or an act or
22 practice involving prohibited conduct, within a State, whether or not a purchaser, seller, or other
23 party is then present in the State. The NASAA Interpretive Order Concerning Broker-Dealers,
24 Agents, and Investment Adviser Representatives Using the Internet for General Dissemination of
25 Information for Products and Services (Apr. 23, 1997) is an illustration of an interpretative order
26 that would be in compliance with the administrator's authority under Section 610. Under this
27 Order, broker-dealers, agents, investment advisers, and investment adviser representatives who
28 distribute information on available products and services through communications on the Internet
29 generally to anyone having access to the Internet such as postings on a bulletin board or home
30 page shall not be deemed to be transacting business in a State if specified conditions are satisfied
31 including a legend clearly stating that the broker-dealer, agent, investment adviser, or investment
32 adviser representative may transact business in that State only if first registered, excluded or
33 exempted from applicable registration requirements.

34
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36 **Wisconsin Study Group Comments**

37
38 Section 610(c)(2). This jurisdictional provision is being amended by adding language from
39 current Wisconsin securities law, Stats. sec. 551.66(2) to provide that no civil liability cause of
40 action exists for violation of the securities registration requirement relating to an offer to sell that
41 is not directed to or received by the offeree "in this state" (Wisconsin).

42
43
44 **SECTION 611. SERVICE OF PROCESS.**

1 (a) [**Signed consent to service of process.**] A consent to service of process complying
2 with this Section required by this Chapter must be signed and filed in the form required by a rule
3 or order under this Chapter. A consent appointing the administrator the person's agent for
4 service of process in a noncriminal action or proceeding against the person, or the person's
5 successor or personal representative under this Chapter or a rule adopted or order issued under
6 this Chapter after the consent is filed, has the same force and validity as if the service were made
7 personally on the person filing the consent. A person that has filed a consent complying with this
8 subsection in connection with a previous application for registration or notice filing need not file
9 an additional consent.

10 (b) [**Conduct constituting appointment of agent for service.**] If a person, including a
11 nonresident of this State, engages in an act, practice, or course of business prohibited or made
12 actionable by this Chapter or a rule adopted or order issued under this Chapter and the person has
13 not filed a consent to service of process under subsection (a), the act, practice, or course of
14 business constitutes the appointment of the administrator as the person's agent for service of
15 process in a noncriminal action or proceeding against the person or the person's successor or
16 personal representative.

17 (c) [**Procedure for service of process.**] Service under subsection (a) or (b) may be made
18 by providing a copy of the process to the office of the administrator, but it is not effective unless:

19 (1) the plaintiff, which may be the administrator, promptly sends notice of the service
20 and a copy of the process, return receipt requested, to the defendant or respondent at the address
21 set forth in the consent to service of process or, if a consent to service of process has not been
22 filed, at the last known address, or takes other reasonable steps to give notice; and

1 (2) the plaintiff files an affidavit of compliance with this subsection in the action or
2 proceeding on or before the return day of the process, if any, or within the time that the court, or
3 the administrator in a proceeding before the administrator, allows.

4 (d) [Service in administrative proceedings or civil actions by administrator.]

5 Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the
6 administrator in a civil action in which the administrator is the moving party.

7 (e) [Opportunity to defend.] If process is served under subsection (c), the court, or the
8 administrator in a proceeding before the administrator, shall order continuances as are necessary
9 or appropriate to afford the defendant or respondent reasonable opportunity to defend.

10
11 **Official Comments**

12 **Prior Provisions:** 1956 Act Sections 414(g) and (h); RUSA Section 708.

13
14 1. Section 611 follows the 1956 Act and RUSA in providing for a signed consent to
15 service of process in Section 611(a); a substituted service of process in Section 611(b); and
16 process and opportunity to defend in Sections 611(c) through (e).

17
18 2. An issuer is not required to file a consent to service of process unless it proposes to
19 offer a security in this State through someone acting on an agency basis. Since the civil liability
20 provisions of Section 509(b) apply only in a suit by a purchaser against a seller, the issuer in a
21 firm commitment underwriting is civilly liable only to the underwriter, who, in turn, may be
22 liable to the dealer, who, in turn, may be liable to the purchaser. In contrast, in a best efforts
23 underwriting, when the security is sold on an agency basis and title passes directly to the
24 purchaser, the issuer can be liable to the purchaser.

25
26 3. Section 611(b) generally follows Section 414(h) of the 1956 Act and Section 708(c) of
27 RUSA. The intent is to provide for substituted service of process when a seller in one state
28 directs an offer into a second state either in violation of the laws of the second state or
29 fraudulently. Under Section 611(b) the purchaser may sue the seller in the purchaser's state and
30 then bring an action on the judgment in the seller's state. The constitutionality of this type of
31 statute has long been sustained.

32
33 4. This section was originally based on the type of nonresident motorist statute whose
34 constitutionality was sustained in *Hess v. Pawlowski*, 274 U.S. 352 (1927) and subsequently in

1 other contexts. See, e.g., *International Shoe Co. v. State of Wash.*, 326 U.S. 310 (1945);
2 *Travelers Health Ass'n v. Commonwealth of Va.*, 339 U.S. 643 (1950).
3
4

5 **SECTION 612. FEES AND EXPENSES.**

6 (a)(1) There shall be a filing fee of \$750 for every registration statement filed under
7 Sections 303 or 304, and for every notice filing under Section 302. If a registration statement is
8 denied or withdrawn before the effective date or a pre-effective stop order is entered under
9 Section 306, or a notice filing is withdrawn, the filing fee shall be retained.

10 (a)(1)(A) An indefinite amount of securities shall be registered for offer and sale in this
11 state under a registration statement relating to redeemable securities issued by an open-end
12 management company or a face amount certificate company, as defined in the Investment
13 Company Act of 1940, and the applicant shall pay the fee under par. (a). The registrant also
14 shall, within 60 days after the end of each fiscal year during which its registration statement is
15 effective and within 60 days after the registration is terminated, file a report on a form prescribed
16 by rule of the division. The form shall require the registrant to do one of the following:

17 1. Elect not to include the information under subd. (a)(1)(A)2. and instead pay a fee
18 of \$1,500.

19 2. Report the amount of securities sold to persons in this state during the preceding
20 fiscal year or, if the registration is terminated, during the portion of the preceding
21 fiscal year during which the registration was effective, and pay a fee of 0.05% of the
22 dollar amount of the securities sold to persons in this state, but not less than \$150 nor
23 more than \$1,500.

24 (a)(1)(B) An indefinite amount of securities is eligible for offer and sale in this state

1 resulting from a notice filing under Section 302 for the initial offer of a federal covered security
2 under section 18 (b) (2) of the Securities Act of 1933, if the filing party has notified the division
3 of the issuer's fiscal year, and the filing party pays the fee under par. (a). The filing party shall
4 also, within 90 days after the end of each fiscal year following the filing under Section 302, and
5 within 90 days after sales in this state have terminated, file a report to allow the division to
6 determine that the amount of the fee paid is correct. The report shall be on a form prescribed by
7 rule of the division and shall require the filing party to do one of the following:

8 1. Elect not to include the information under subd. (a)(1)(B) 2. and instead pay a fee
9 of \$1,500.

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

14 (b) Every applicant for an initial or renewal license under Sections 401, 402, 403 or 404
15 shall pay a filing fee of \$200 in the case of a broker-dealer or investment adviser and \$30 in the
16 case of an agent representing a broker-dealer or issuer or an investment adviser representative.

17 Every federal covered adviser in this state that is required to make a notice filing under Section
18 405 shall pay an initial or renewal notice filing fee of \$200. A broker-dealer, investment adviser,
19 or federal covered adviser maintaining a branch office within this state shall pay an additional
20 filing fee of \$30 for each branch office. When an application is denied, or an application or a
21 notice filing is withdrawn, the filing fee shall be retained.

22 (c) The expenses reasonably attributable to the examination of any matter arising under
23 this chapter shall be charged to the applicant, registrant or licensee involved, but the expenses so

1 charged shall not exceed such maximum amounts as the division by rule prescribes.

2 (d) The division may by rule require the payment of prescribed fees for delinquent or
3 materially deficient filings of information or documents required under this chapter to be filed
4 with the division or an organization designated under Section 406(a).

5 (e) All fees and expenses collected under this section shall be paid into the state treasury.

6
7 **Official Comments**

8
9 **[Set forth below are the Official Comments to Uniform Act Section 410, Fees and**
10 **Expenses]**

11
12 **Prior Provisions:** 1956 Act Section 202(b); RUSA Section 206.

13
14 1. Each state should determine the appropriate fee for each type of registration and for
15 each type of renewal, denial, or withdrawal of a registration.

16
17 2. Similarly each state should determine whether it wishes to remove the brackets from
18 Section 410(g) and charge a single fee for dually registered agents and investment adviser
19 representatives.

20
21 3. If a State prefers to have the fees in this section established by rule, amend this section
22 to read as follows, inserting the appropriate reference to the State's administrative procedure act:

23
24 **[SECTION 410. FILING FEES.**

25 (a) **[Fee established by administrator.]** The administrator shall establish fees by
26 rule pursuant to the [state administrative procedure act] for:

27 (1) an initial filing of an application as a broker-dealer and renewal of an
28 application by a broker-dealer for registration, but, if the filing results in a denial or
29 withdrawal, the administrator shall retain an amount of the fee established by the
30 administrator;

31 (2) an application for registration as an agent and renewal of registration as an
32 agent, but, if the filing results in a denial or withdrawal, the administrator shall retain an
33 amount of the fee established by the administrator;

34 (3) an application for registration as an investment adviser and renewal of
35 registration as an investment adviser, but, if the filing results in a denial or withdrawal, the
36 administrator shall retain an amount of the fee established by the administrator.

37 (4) an application for registration as an investment adviser representative, a
38 renewal of registration as an investment adviser representative, and a change of registration
39 as an investment adviser representative, but, if the filing results in a denial or withdrawal, the

1 administrator shall retain an amount of the fee established by the administrator; and
2 (5) an initial fee and annual notice fee for a federal covered investment adviser
3 required to file a notice under Section 405.

4 (b) [Payment.] A person required to pay a filing or notice fee under this section may
5 transmit the fee through or to a designee as a rule or order provides under this [Act].
6

7 [(c) [Dual agent/investment adviser representative.] An investment adviser representative who
8 is registered as an agent under Section 402 and who represents a person that is both registered as
9 a broker-dealer under Section 401 and registered as an investment adviser under Section 403 or
10 required as a federal covered investment adviser to make a notice filing under Section 405 is not
11 required to pay an initial or annual registration fee for registration as an investment adviser
12 representative.]
13

14 Wisconsin Study Group Comments

15 Section 612. The section is being created in order to adopt the current Wisconsin securities law
16 treatment of fees in Stats. sec. 551.52(1) and (2), which consolidate in one location all of the
17 statutorily imposed securities registration, notice-filing and securities licensing fees.
18

19 **SECTION 613. SEVERABILITY CLAUSE.** If any provision of this Chapter or its
20 application to any person or circumstances is held invalid, the invalidity does not affect other
21 provisions or applications of this Chapter that can be given effect without the invalid provision or
22 application, and to this end the provisions of this Chapter are severable.

23 Official Comments

24 **Prior Provisions:** 1956 Act Section 417; RUSA Section 805.
25
26

1 [ARTICLE] 7

2 TRANSITION

3
4 **SECTION 701. EFFECTIVE DATE.** This Chapter takes effect on [insert date, which
5 should be at least 60 days after enactment].

6
7 **SECTION 702. REPEALS.** The following act is repealed: "Wisconsin Uniform Securities
8 Law".

9
10 **SECTION 703. APPLICATION OF ACT TO EXISTING PROCEEDING AND**
11 **EXISTING RIGHTS AND DUTIES.**

12 (a) [Applicability of predecessor act to pending proceedings and existing rights.] The
13 predecessor act exclusively governs all actions or proceedings that are pending on the effective
14 date of this Chapter or may be instituted on the basis of conduct occurring before the effective
15 date of this Chapter, but a civil action may not be maintained to enforce any liability under the
16 predecessor act unless instituted within any period of limitation that applied when the cause of
17 action accrued or within five years after the effective date of this Chapter, whichever is earlier.

18 (b) [Continued effectiveness under predecessor act.] All effective registrations under
19 the predecessor act, all administrative orders relating to the registrations, rules, statements of
20 policy, interpretative opinions, declaratory rulings, no action determinations, and conditions
21 imposed on the registrations under the predecessor act remain in effect while they would have
22 remained in effect if this Chapter had not been enacted. They are considered to have been filed,
23 issued, or imposed under this Chapter, but are exclusively governed by the predecessor act.

1 (c) [**Applicability of predecessor act to offers or sales.**] The predecessor act
2 exclusively applies to an offer or sale made within one year after the effective date of this
3 Chapter pursuant to an offering made in good faith before the effective date of this Chapter on
4 the basis of an exemption available under the predecessor act.

5

6

Official Comments

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Prior Provisions: 1956 Act Section 418; RUSA Section 807.

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12

Prior law governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of a State blue sky statute. See *Hilton v. Mumaw*, 522 F.2d 588, 600 (9th Cir. 1975).