



# 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 14 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.

**Gary, Aaron**

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**From:** brooke.billick@artisanpartners.com  
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**Subject:** Uniform Securities Act  
**Attachments:** Summary of Consolidated Comments to LRB WI-USA Bill FINAL 9-2007.doc

Aaron,

Attached are the comments and responses from the Wisconsin Advisory Group and the Division of Securities relating to the Legislative Reference Bureau's preliminary draft of the Wisconsin Uniform Securities Act. These comments and responses are intended to address the questions or notes in the draft act.

A note of explanation is appropriate for the attached document. Last spring, the draft bill was forwarded to all of the members of the Wisconsin Advisory Group, including staff members of the Division of Securities. During the summer, comments were received from members of the Advisory Group regarding certain provisions of the draft, such as section 551.102(11)(L) and Section 551.401(4). Subsequent to these comments, the Division staff prepared a response addressing each of the questions raised by the LRB staff in the draft Act as well as the points raised by the Advisory Group members. I then circulated the Division's responses to the group for their review and comment and also solicited a vote on the points identified as reflecting a split of opinion.

The attached document represents the result of the various comments circulated. Included in this document are the Advisory Group's suggestions and the Division's comments. Where a split of opinion occurred, I have included the results of informal polling on the issue.

All of the members of the Wisconsin Advisory Group are being included on this email. My appreciation to all for their time, effort and participation in this project.

If you have any questions, please feel free to contact me.

Best regards, Brooke Billick

<<Summary of Consolidated Comments to LRB WI-USA Bill FINAL 9-2007.doc>>

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09/25/2007

**Summary of Wisconsin Advisory Group and DFI/Division of Securities (DOS)  
Comments to LRB Legislative Bill Draft of a Proposed Wisconsin Uniform  
Securities Act**

September 23, 2007

This document is intended to provide a response to each identified Note of the LRB staff appearing in the draft bill.

Page 17. LRB Note following Section 13. 227.54 Stay of proceedings. DOS does not object to the deletion in that section of Chapter 227, of the cross-reference to existing 551.62 (noting that there is no equivalent provision to 551.62 in the NCCUSL Uniform Securities Act).

Page 17. LRB Note following 551.102(1g). DOS agrees that the definition of "accredited investor" (which is not part of the NCCUSL Uniform Securities Act version) is not necessary, such that subsection (1g) can be deleted.

Page 18. LRB Note following 551.102(2). DOS' comment is that the exclusions from the definition of "Agent" currently listed in 551.02(a) to (c) will be adopted by rule via use of the rule-making authority in that statutory section.

Page 18-19. [551.102(4)(c). Finalize Bank/Broker-Dealer exclusion language with Wisconsin Bankers Association]

Page 19. LRB Note following 551.102(4)(e). Similar to the DOS comments to 551.102(2), the exclusions from the definition of broker-dealer currently listed in 551.02(d) to (g) will be adopted by rule via use of the rule-making authority in that statutory section.

Page 22. **Split of opinion.** LRB Note following 551.102(11)(L).

**Comment** – Members of the WI Advisory Group proposed that this section read as follow:

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

DOS' comment is that the language of (L) [which follows the NCCUSL version language], should remain as it is because the Division wants to keep the definition of "institutional investor," as applied to federal covered advisers, expressly limited to when they are acting for their own account -- not when acting for a customer account. As such, the Division's recommendation is at odds with the WI Advisory Group's Subchapter IV Commentators' 6/18 2007 Memorandum that recommended removal of the last phrase "acting for its own account."

**Resolution** – Of those members of the group who responded and expressed their opinion, there was an even split between those in favor of retaining 551.102(11)(L) as proposed and those in favor of deleting “acting for its own account.” Even though the introductory language of 551.102(11) “whether acting for itself or for others in a fiduciary capacity” may be awkward in relation to the language in (11)(L), the language “acting for its own account” should be retained in (11)(L) for purposes of uniformity and to avoid a potential argument that a client of a federal covered investment adviser should automatically be accorded “institutional investor” status by virtue of an advisory relationship, without regard to the characteristics of the client.

Page 23. LRB Note following 551.102(15). DOS’ comment is that the exclusions from the definition of “Investment Adviser” in current 551.02(15)(e),(ed) and (eh) will be added later by administrative rule using the rule-making authority in 551.02(15)(h).

Page 24. LRB Note following 551.102(16)(c)(intro.) and (c)1. While the Division understands that the LRB’s proposed amendments adding the “notwithstanding...” clauses in lines 16 and 20 on page 24 is an attempt to be more precise, the Division’s comment is that the clauses are confusing such that the Division recommends the clauses not be added to the NCCUSL Uniform Act language. Separately, the Division does not object to the LRB’s suggested language modification that would add to lines 17 & 18 the language “in addition to the place of business.”

Page 25. LRB Note following 551.102(16)(d). DOS’ comment is that although the definition of “investment adviser representative” provides that it does not include a person employed by a federal covered adviser unless certain conditions are met, because that definition follows the NCCUSL language, the Division’s position is that the NCCUSL Uniform Act language should be followed.

Page 26. LRB Note following 551.102(17)(e). [Definition of “Issuer” (relating to a viatical settlement investment that is not a fractional or pool interest).

WI Advisory Group’s Subchapter IV Commentators propose that this section read as follow:

(e) With respect to a viatical settlement investment that is not a fractional or pool interest, “issuer” means the viatical settlement provider, as defined in s. 632.68 3 (1) (e), or the person who purchases or otherwise acquires the viatical settlement from a viatical settlement provider and then offers or sells viatical settlement investments therein except that, under this paragraph, “issuer” does not include a broker–dealer or agent licensed under s. ~~551.406~~ this chapter and does not include the viator of the insurance policy, certificate of insurance, or death benefit underlying the viatical settlement investment.

The Division's recommendations are to: (i) substitute for the cross-reference to 551.406 in line 6, the language "this chapter" (consistent with the recommendation in the WI Advisory Group's Subchapter IV Commentators' 6/18/2007 Memorandum); and (2) continue to use the term "viator" (in line 6) which is a term used in the substituted definition below of "viatical settlement investment" in 551.102(32) that was created by the Division several years ago for a legislative Bill draft regarding viatical settlements.

Page 26. LRB Note following 551.102(20). DOS' comment is that the language "partnership" in line 16 is satisfactory as is (rather than listing the various types of partnerships; e.g. limited partnerships, general partnerships, limited liability partnerships, etc.).

Page 30. LRB Note following 551.102(28)(f) and (g). DOS' reply to the LRB's question is that the Division agrees with adding new paragraphs (f) and (g) that cross-reference the separate statutory provisions in ss. 707.11 and 642.22, Wis. Stats., which provide, respectively, that time-share interests created and marketed in accordance with certain requirements, and membership interests in a mutual holding company, are not securities.

Page 30. LRB Note following 551.102(28)(h). DOS' comment is that the Division has no problems with the LRB's readability edits to this paragraph.

Page 31. LRB Note following 551.102(32).

The Wisconsin Advisory Group proposes that 551.102(32) read as follows:

(32) "Viatical settlement investment" means the entire interest or any fractional or pool interest in a life insurance policy or certificate of insurance or in the death benefit thereunder that is the subject of a viatical settlement as defined in s. 632.68, Stats. "Viatical settlement investment" does not include any of the following:

(a). The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to a viatical settlement provider pursuant to s. 632.68, Stats.

(b) The exercise of accelerated benefits pursuant to the life insurance policy or certificate and consistent with applicable law.

DOS' comment is that the proposed LRB draft language of a definition of "viatical settlement investment" be replaced by the definitional language created several years ago by the Division for a legislative Bill Draft dealing with the viatical settlement subject. Such language was recently provided by the Division to the WI Advisory Group's

Subchapter IV Commentators who included such definitional language in their 6/18/2007 Memorandum regarding licensing-related provisions of the LRB Bill Draft.

Page 32. LRB Note following 551.103. References to federal statutes. The Division agrees with the LRB recommendation to add at the end of the section, the bracketed language "as later amended" contained in the NCCUSL Uniform Act version.

Page 32. LRB Note following 551.105. Electronic records and signatures. DOS' reply to the LRB's question is that the Division does not believe it is necessary to cross-reference in this section the Uniform Electronic Transactions Act (which was adopted in Wisconsin by 2003 Wisconsin Act 294, and currently is contained in the separate statutory provisions in ss. 137.11 to 137.24, Stats.)

Page 34. LRB Note following 551.201(1)(b). DOS' reply to the LRB's comment regarding the specific industrial revenue bond exemption language [contained in paragraph (b) as taken from current 551.22(1)(b)] is that because such language (which is not part of the Uniform Act municipal security exemption) has been used in Wisconsin in its present form for over 25 years, the Division believes that the language should be retained as is.

Page 35. LRB Note following 551.201(5). DOS' reply to the LRB's comment regarding use of the term "railroad" in the public utility/common carrier registration exemption is that, although 2005 Wisconsin Act 179 eliminated a number of regulatory provisions throughout the Wisconsin statutes related to railroads, the Division's position is that the specific reference to "railroad" should be retained to maintain uniformity with the NCCUSL Uniform Act language. [When law firms preparing "blue sky surveys" of various state securities laws in connection with multi-state offerings of the securities of a railroad issuer would notice the "magic word" -- "railroads" -- was not in Wisconsin's exemption section based on this Uniform Act provision, it would trigger inquiries etc. to the Division regarding the language discrepancy in Wisconsin.]

Page 36. LRB Note following 551.201(6). DOS' reply to the LRB's comment is that the Division believes that the comma after the word "sale" in line 3 on page 36 needs to be put back in to keep consistent with the NCCUSL Uniform Act language and clarify the meaning of the provision.

Page 37. LRB Note following 551.201(9). DOS' reply to the LRB's comment is that the Division will act to adopt by rule under 551.203, certain of the additional exempt security provisions currently found in the Wisconsin Securities Law, such as relating to service corporations [in 551.22(11)]. DOS' reply to the LRB's second comment is that the LRB is correct that not including in the WI Advisory Group's Draft the current employee plan exemption in 551.22(10) is because of the provision in 551.102(28) that excludes ERISA plans from the definition of "security." Additionally, there is the separate securities registration exemption in 551.202(21) of the NCCUSL Uniform Act version that covers employee plans (Reference NCCUSL Drafters' Notes to 551.202(21) on pages 57 & 58).

Page 42. LRB Note following 551.202(13)(am). "Accredited investor," stand-alone exemption. DOS' review of this provision identified that the WI Advisory Group's draft of this provision needs to be revised to have the timing of the filing required for purposes of claiming use of the exemption be changed in line 2 on page 42 to delete "or offer to sell" so as to read: "prior to the sale in this state" ... to an [individual] accredited investor...." By making that language change, although offers to Wisconsin accredited investors will not require a prior filing, a filing with the Division would be required prior to making a sale to an individual accredited investor in Wisconsin, unless one of the filing exclusions is available under subsections 1, 2, or 3 of 551.202(13)(am). Related edits needed in paragraph (13)(am) as a result of the line 2 change are: (i) in line 4, delete the language "or offeror" after "seller;" (ii) in line 9, delete "offered or" after "to be"; (iii) in line 11, substitute "seller" for "offeror;" and (iv) in line 13, delete "or offeror."

**Note**—One member of the Advisory Group suggested that the first line of 551.202(13)(am) be revised to state as follows:

(am) An accredited investor as defined in rule 501(a) adopted under the Securities Act of 1933; provided that prior to a sale or offer to sell . . .

The member's comment was this change "would be consistent with how accredited investor is used elsewhere with a definitional reference in context (see., e.g., 551.401(2)(cm))."

Page 48. LRB Note following 551.204(1). The Division's reply to the LRB's renumbering question is that the cross-reference on line 5 of page 48 should read "551.306(3)," as discussed below in the Division's comment to 551.306(3) to (6).

Page 48. LRB Note following 551.204(2). The Division agrees with the LRB's deletion of Section 204(c) of the WI Advisory Group's Draft [re burden of proof] because that subject matter is sufficiently dealt with in sec. 551.503.

Page 49. LRB Note following 551.302(1) (intro.). The Division agrees that the phrase "as may be amended from time to time" (in line 9 on page 49) can be deleted because of the addition of the language "as later amended" to s. 551.103 References to federal statutes. discussed above which covers the subsequent-amendment-to-federal-statutes situation.

Page 50. LRB Note following 551.302(1)(b). The Division agrees with the LRB's language change on page 49, line 22, to read "'the' federal security" -- which conforms the Bill Draft language to the NCCUSL Uniform Act language.

Page 51. LRB Note following 551.302(4). The Division agrees with the LRB's language change of federal security" on page 51, line 1, to read "federal covered security" -- which will correct an error in the NCCUSL Uniform Act language.

Page 51. LRB Note following 551.302(5). DOS' reply to the LRB comment is that the subject of renewal of federal covered security filings for mutual funds is dealt with in subsection 551.614(1)(b) of the Fees and Expenses section where an annual-renewal-filing-with-sales-report procedure for mutual funds is set forth. [Such parallels current treatment in s. 551.52(1)(b).]

Page 52. LRB Note following 551.303(3)(a). The Division agrees that the cross-reference in the WI Advisory Group's draft of this paragraph properly corrects the erroneous cross-reference in the NCCUSL Uniform Act language [NCCUSL had distributed an errata notification of that error].

Page 59. LRB Note following 551.305(2). The Division's reply to the LRB comment is that the "as may be supplemented by rule" language (in lines 15 and 18 on page 59) needs to be retained because of the securities registration filing fee rule in DFI-Sec 7.01(1)(c) that allows the Division to charge "field examination fees" for securities registration applications where circumstances warrant. Such field examination fees are in addition to the regular securities registration filing fee. As a separate item, the comma after "supplemented" in lines 15 and 18 (that was in the WI Advisory Group's version) should be deleted for readability purposes.

Page 60. LRB Note following 551.305(5). The Division's comment is that the LRB's cross-reference in line 9 on page 60 to the Periodic Reports subsection on page 61 needs to refer to paragraph (8), not paragraph (9). The LRB Draft's numbering sequence after 551.305(5) does not reflect the deletion in the WI Advisory Group's Draft of the NCCUSL subsection relating to Escrow and Impoundment which results in changing the numbering sequence of 551.305(6) through (10).

Page 61. LRB Note following 551.305(10) [to be renumbered as (9) per above]. The Division's comment regarding the "as may be supplemented" language in line 17 on page 61 is the same as the Division's comment above relating to 551.305(2).

Page 62. LRB Note following 551.305(11) [to be renumbered as (10) per above]. DOS' reply to the LRB's question is that the Division does not need to have added to Section 551.305, the provision in current 551.27(13) regarding securities offerings by insurers.

Page 62. LRB Note following 551.306(1)(a). DOS' comment is that the cross-reference in line 8 on page 62 to the Periodic Reports subsection of 551.305(9) needs to be changed to refer to sub. (8) as discussed above relating to 551.305(5).

Pages 63-64. 551.306(3) to (6). DOS observes that because of the WI Advisory Group's recommendation to delete the NCCUSL Uniform Act section 306(b) [Enforcement of subsection (a)(7)] for the reason that Wisconsin is repealing the "merit review" provisions in subsections 306(a)(7)(B) and (C) to conform to current law, the numbering of subsections 551.306(3) to (6) on pages 63 & 64 needs to be changed to read 551.306(2) to (5).



Page 64. LRB Note following 551.307. DOS' comment is that the cross-reference in line 20 on page 64 to the Periodic Reports subsection of 551.305(9) needs to be changed to refer to sub. (8) as discussed above relating to 551.305(5).

Page 65. LRB Note following 551.401(2)(c) and (cm). DOS agrees with LRB's listing "institutional investors" in paragraph (c), separate from the entity-accredited-investor categories in paragraph (cm).

Page 66. LRB Note following 551.401(2)(e). DOS' comment is that the Division believes language in that paragraph should remain as is -- following the NCCUSL language -- for uniformity purposes.

Page 66. LRB Note following 551.401(2)(f)2.

WI Advisory Group's Subchapter IV Commentators propose that this section read as follow:

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

(hg) Any other person exempted by rule adopted or order issued under this 18 chapter.

The Division agrees with the editing change proposed by the WI Advisory Group's Subchapter IV Commentators in their 6/18/2007 Memorandum that would add the language "granted registration, or" after "administrator has" in line 13 on Page 66.

Page 66. 551.401(2)(h). DOS observes that the numbering for this paragraph in line 17 on Page 66 should be (g), as set forth in the WI Advisory Group's draft [reflecting the deletion of the NCCUSL version's subsection (b)(1)(G)].

Page 66. LRB Note following 551.401(2)(h). The Division agrees with the LRB's making 551.401 into 2 subunits -- (1) and (2).

**Comment**—Members of the WI Advisory Group proposed that this section read as follow:

(4) FOREIGN TRANSACTIONS. ~~A rule adopted or order issued under this chapter may permit any of the following:~~ (a) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, is exempt from the registration requirements of sub (1) if it effects or attempts to effect transactions in securities in this state with any of the following:

1. An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States.

2. An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.

3. An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(b) An agent who represents a broker-dealer that is exempt under this subsection to effect or attempt to effect transactions in securities in this state as permitted for a broker-dealer described in par. (a) is exempt from the registration requirement in s. 551.402(1).

The Division believes that the NCCUSL language for this subsection needs to remain as is, and should not be modified as recommended by the Subchapter IV Commentators in their 6/18/2007 Memorandum. The Subchapter IV Commentators' suggested language changes would have the unintended consequence of providing equivalent status and ability of broker-dealers registered in foreign jurisdictions to use the licensing exemption to the same extent as broker-dealers licensed in Canada. In contrast, the NCCUSL language -- like the NASAA Model language upon which the NCCUSL provision was based -- was intended for (non-Canadian) foreign broker-dealers only as enabling

language that additionally would require a showing to be made to the state administrator by any foreign jurisdiction seeking exempt status for its broker-dealers, that such foreign jurisdiction's regulatory scheme over its broker-dealers was equivalent to Canada's. Virtually all state jurisdictions (including Wisconsin) currently have acted by rule or order to grant license exemption status for broker-dealers registered in Canada that meet the regulatory requirements set forth in the NCCUSL language. Wisconsin issued an Order May 31, 2002 providing licensing exemption status for qualifying Canadian broker-dealers, and the Division intends that, following adoption of the 2002 NCCUSL Uniform Securities Act, the Division will act by rule to provide licensing exemption status for qualifying Canadian broker-dealers.

**Resolution**—All members of the Advisory Group who responded voted in favor of the Division's position. Accordingly, the NCUSL language for this subsection should be retained as is.

Page 68. 551.402(2)[renumber (i) as (j), and create a new (i)].

WI Advisory Group's Subchapter IV Commentators propose that this section read as follow:

(i) An individual who represents a broker-dealer and effects transactions in this state exclusively with customers listed under Sec. 551.401(2)(a) through (d) and (g).

(ij) Any other individual exempted by rule adopted or order issued under this chapter.

DOS agrees with the WI Advisory Group's Subchapter IV Commentators' recommendation in their 6/18/2007 Memorandum to add as another exemption-from-agent-licensure provision, language paralleling the existing agent licensing exemption in 551.31(1)(a), Stats., to read: (i) "An individual who represents a broker-dealer and effects transactions in this state exclusively with customers listed under sec. 551.401(2)(a) through (d) and (g)".

Page 69. LRB Note following 551.402(2)(d). DOS' reply to the LRB's comment is that although at one time during the WI Advisory Group's deliberations, it was intended that separate cross-references would be added to include (as 551.24) the current registration exemption in 551.23(10) as well as a cross-reference to a potential new registration exemption for viatical settlement investments, the Division has determined not to propose a registration exemption for viatical settlement investments. Consequently, the only added cross-reference in 551.402(1)(d) was to the securities registration exemption in 551.202(24).

Page 71. LRB Note following 551.403(2)(a)2. and 2m. DOS agrees with the LRB's revision which lists institutional investors and entity accredited investors in separate subdivisions -- paralleling equivalent revisions made previously to broker-dealer related provisions in 551.401(2)(c) and (cm).

Page 73. 551.404(2)(b).

WI Advisory Group's Subchapter IV Commentators' propose that this section read as follow:

(b) An individual who is employed by or associated with an investment adviser or a federal covered investment adviser and whose clients in the state are exclusively those clients listed in Sec. 551.403(2)(a)1. through 2m and 4.

(bc) Any other individual exempted by rule adopted or order issued under this chapter.

DOS agrees with the WI Advisory Group's Subchapter IV Commentators' recommendations in their 6/18/2007 Memorandum to renumber (b) as (c), and add as a new paragraph (b), a separate exemption from licensure as an investment adviser representative paralleling an equivalent exemption from securities agent licensure made above to 551.402(2)(i), and the current exemption from licensure in 551.31(3)(b), Stats..

Page 75. LRB Note following 551.405(2)(a)2m.

WI Advisory Group's Subchapter IV Commentators' propose that this section read as follow:

2m. Accredited investors as defined and listed in 17 CFR 230.501 (a) (1), (2), 2 (3), ~~or (7)~~ or (8) under Regulation D under the Securities Act of 1933.

DOS' reply to the LRB's comment is that the omission in the WI Advisory Group's Draft of the cross-reference to federal rule 501(a)(8) was inadvertent, and does need to be added -- per the recommendation of the WI Advisory Group's Subchapter IV Commentators' 6/18/2007 Memorandum.

Page 75. LRB Note following 551.405(4)(a). DOS' comment is that the "renewal" process set forth and applicable to federal covered advisers is, indeed, unique to federal covered advisers as contained in current 551.32(1m)(b), and is properly reflected in this paragraph of the LRB Bill Draft.

Page 76. LRB Note following 551.406(1). *No comments have been received -- therefore there are no objections to LRB Note.*

Page 77. LRB Note following 551.406(3). The Division agrees with the LRB's revisions regarding the automatic 30-day effective date, as well as the revision that effectiveness is the earlier of the dates in subs. (3)(a)1-3.

Page 77. LRB Note following 551.406(4). *No comments have been received – therefore there are no objections to LRB Note.*

Page 78. LRB Note following 551.406(6). The Division agrees with the LRB's recommendation to add a cross-reference to the related provision in 551.607(2)(e). Although the LRB Note states that a cross-reference was added to 551.406(6), it is not reflected in the LRB Draft. Would the cross-reference be added in line 4 on page 78?

Page 87. LRB Note following 551.412(3).

WI Advisory Group's Subchapter IV Commentators' propose that this section read as follow:

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

DOS' reply to the LRB's question is that cross-references to pars. (4)(o) to (r) do need to be added to the list of cross-references in line 5 on page 87 -- per the recommendation of the Subchapter IV commentators' in their Memorandum. No cross-reference to (4g) is needed (consistent with the recommendation of the WI Advisory Group's Subchapter IV Commentators as well).

Page 92. LRB Note following 551.412(4g)(a) 2 and 3. DOS' reply to the LRB's question is that no difference was intended by the use of "under this subchapter" in (a)2, and "under this section" in (a)3. Consequently, the terminology can be made consistent.

Page 93. LRB Note following 551.412(4g)(b). DOS' reply to the LRB's question whether the cross-reference to 551.406(6)(c) is correct, follows the Advisory Group's Subchapter IV Commentators' answer that the cross-reference should be to (6)(b) -- which deals with the situation of applicants without a Social Security number.

Page 96. LRB Note following 551.502(2). DOS' reply to the LRB's question is that the Division does not believe that a separate definition of "supervised person of a federal covered adviser" is needed. Rather, cross-references to the federal definition ["as defined in section 202(a)(25) of the Investment Advisers Act of 1940 (15 USC 80b-3a)"] can be used in lines 23 and 25 on page 95.

Page 99. LRB Note following 551.509(2)(c). *No comments have been received -- therefore there are no objections to LRB Note.*

Page 103. Division Comment to LRB regarding the numbering section 551.511 Rescission Offers. The Division believes the numbering sequence of the preceding Sections -- which leave off at 551.509 -- would result in this Section being numbered 551.510.

Page 104. LRB Note following 551.511[510](1)(c). The Division agrees that the cross-references inserted by the LRB in paragraphs (1)(a) to (c) are correct.

Page 105. LRB Note following 551.511[510](1)(e). The Division agrees with the LRB's modifications to the structure of sub. (1).

Page 106. LRB Note following 551.601(5). The Division agrees with the LRB's language change from the WI Advisory Group's version to have the provisions apply only to administrative assessments -- which corresponds to how current section 551.605(2) reads.

Page 108. LRB Note following 551.602(3)(intro.). The Division agrees with the LRB's substitution of the language "district attorney of the appropriate county, or appropriate federal authority" -- which are consistent with the WI Advisory Group's Comments to the subsection.

Page 109. LRB Note following 551.602(5). Use Immunity Procedure. DOS' reply to the LRB's comment is that language should be added corresponding to current 551.56(3)(b) which provides that use immunity is subject to s. 972.085 Stats. Separately, as particularized in the Division's comment regarding Section 25 of the LRB Draft dealing with s. 972.085 Stats., that Section 25 will need to be revised to retain the cross-reference to the Chapter 551 use immunity provision contained in this subsection.

Page 112. LRB Note following 551.604(4). The Division agrees with the LRB's adding the language "administrative assessment" to this subsection, consistent with the revision to s. 551.601(5) discussed above

Page 113. LRB Note following 551.604(7). *No comments have been received -- therefore there are no objections to LRB Note.*

Page 117. LRB Note following 551.607(2)(e). The Division agrees with the LRB's adding a cross-reference to s. 551.406(6)(a) which is applicable to the issue of public/open records access to Social Security numbers of registrants/licensees.

Page 121. LRB Note following 551.612 Severability Clause. DOS' reply to the LRB's comment is that because there is a "global" Wisconsin statutory severability provision in s. 990.001 Stats., together with the fact that current Chapter 551 does not have a separate severability provision, this provision in the NCCUSL Uniform Act can be deleted.

Pages 121-122. Division of Securities Comment to LRB: The above deletion of s. 551.612 will require a renumbering of 551.613 and 551.614.

Page 126. LRB Note following 551.614(5) Fees paid to state [515.613(5) Fees paid to state]. DOS agrees with the LRB's adding "by the Division" language in sub. (5). Also, the Division agrees with the LRB's recommendation to substitute updated language for the "paid into the state treasury" language from current 551.52(5), Wis. Stats.,

Page 126. Division of Securities Comment to LRB: Add as a new section, 551.614, Statutory Policy, the existing statutory section by the same title in current 551.67 Stats. That Section expressly recognizes the need to construe Chapter 551 to be uniform with other states enacting the Uniform Securities Act, and to coordinate with related federal regulation.

Page 126. LRB Note following 551.701 Effective Date. DOS agrees with the LRB's Comment that although the Uniform Act section is unnecessary, it may be useful to include it because it would allow readers to identify from the statutory text, when the recodification of Chapter 551 became effective.

Page 129. LRB Note following Section 25. sec. 972.085 Immunity; Use Standard. DOS' reply to the LRB's Comment is that, consistent with the change discussed above to 551.602(5) regarding use immunity, a cross-reference to Chapter 551 [specifically, the above section 551.602(5)] should be retained in s. 972.085 Stats.

\* \* \* \* \*



**A Few Facts About The...**

**UNIFORM SECURITIES ACT (2002)**

**PURPOSE:**

The Uniform Securities Act is a revision of earlier versions of the Uniform Securities Act from 1956 and 1985. The new uniform act gives state securities regulators broad powers to investigate, prosecute, and sanction individuals and firms that engage in securities transactions; it is also consistent with current federal law.

**ORIGIN:**

Completed by the Uniform Law Commissioners in 2002.

**ENDORSED BY:**

North American Securities Administrators Association  
Securities Industry Association  
New York Stock Exchange  
National Association of Securities Dealers  
Investment Counsel Association of America

**APPROVED BY:**

American Bar Association

**STATE ADOPTIONS:**

Hawaii	Oklahoma
Idaho	South Carolina
Indiana	South Dakota
Iowa	U.S. Virgin Islands
Kansas	Vermont
Maine	
Michigan	
Minnesota	
Missouri	

**2007 INTRODUCTIONS:**

District of Columbia  
Washington

For any further information regarding the Uniform Securities Act, please contact



**Gary, Aaron**

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**From:** Gary, Aaron  
**Sent:** Wednesday, December 05, 2007 10:47 AM  
**To:** Struck, Patricia D - DFI  
**Cc:** 'catherine.haberland@dfi.state.wi.us'; Cohen, David A - DFI; Van Buskirk, Leslie M - DFI; Schumann, Randall E - DFI  
**Subject:** RE: Uniform Securities Act

Hi Patty,

I'm following up on the e-mail below and on my telephone conversation with Catherine this morning.

Assuming that DFI would like to proceed with having the USA draft introduced this session, I will need some follow-up on items 2. and 3. below. Regarding item 2., I know that Reg R is now final (but won't take effect until Oct. 2008) and that there have been discussions with interested organizations on bank broker registration. Any feedback on the rest of the items below might be useful but is not essential to complete the draft.

If no final decision has been made on bank broker registration or any other item below, we can use what we have now and do a simple amendment to the bill later, after it is introduced. But unless I hear otherwise from you, I am assuming that DFI will want to complete the redraft of the bill to a "/1" and move toward introduction yet this month.

Finally, and as a follow up to the bank broker issue, do you want to provide for a specific effective date to coincide with your administrative schedule, such as Jan. 1, 2009 (as drafted the bill, if enacted, would probably become effective sometime in the summer of 08)?

For your convenience, I am also forwarding 1999 LRB-4126 related to viatical settlement investments.

As always, thank you very much for your assistance.

Aaron

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**From:** Gary, Aaron  
**Sent:** Wednesday, September 26, 2007 12:32 PM  
**To:** 'brooke.billick@artisanpartners.com'; catherine.haberland@dfi.state.wi.us; Cohen, David A - DFI; Van Buskirk, Leslie M - DFI; Struck, Patricia D - DFI; Schumann, Randall E - DFI  
**Subject:** RE: Uniform Securities Act

Greetings,

Thank you all for your thorough review and comments. I have incorporated most of the Summary Comments included in the Word document attached to the e-mail below into the new draft, which will be an introducible "/1" (unless I hear otherwise from you). There is some additional information I need to finish the redraft, and I have a few additional comments as well.

1. Do you think the definition of SRO (starting at p. 30, line 16) is satisfactory? Does it adequately cover the recent combination of NYSE and NASD to form FINRA?
2. Regarding Summary Comment for pp. 18-19, is there any other information and/or change you want on the bank broker-dealer exclusion? I'm not sure where the newly-mandated SEC/FedReserve rule is on this, but we can always do an amendment later after the new joint rule becomes final. (Also, I'd be happy to talk to WBA.) I

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just need to know whether to stick with the draft for now or whether a change should be made at the present time (and, if so, what).

3. Regarding Summary Comment for p. 31, viatical settlement investments: Can you provide me with the definition of "viatical settlement investment" that you would like to see in the draft (or give me the LRB # of the prior draft from which it is derived)? [I did find and review some prior drafts on the issue when I put together LRB-1109/P1, including one from 1999 (1999 LRB-4126), but I want to make sure I have the right one.]
4. Regarding Summary Comment for p. 78, in rereading this Comment and my embedded note, I realize that the term "that provision" in the embedded note is not clear. "That provision" meant s. 551.607 (2) (e), to which a change was made in the draft [see Summary Comment for p. 117], so I don't believe any additional change related to the Summary Comment for p. 78 is needed.
5. Regarding Summary Comment for p. 126 (fees), I have revised the draft to specify that the fees are deposited into the general fund and credited to the appropriation account under s. 20.144 (1) (g). Is this OK?
6. Regarding Summary Comment for p. 126 (adding text of current s. 551.67), do you want to qualify in any way the language "Uniform Securities Act" in current s. 551.67, since there is now more than one version? Perhaps "Uniform Securities Act of 2002" or "which enact the same or a similar version of the "Uniform Securities Act"?"
7. Numerous Summary Comments relate to numbering. When possible, I have tried to keep the Wisconsin statute numbering parallel to the uniform act numbering. In a few instances, I intentionally omitted subsection numbers or paragraph letters where a uniform act provision was dropped. This maintains the parallel numbering with the uniform act. In other instances, I have used alphas (such as subd. 2m.) to add provisions that are not part of the uniform act. Again, this allows parallel numbering with the uniform act and is further a cue for provisions that are unique to Wisconsin. Also, I could not use certain statutory numbers, such as s. 551.510 (same as 551.51), because our drafting protocol doesn't allow "re-use" of a statutory number recently repealed. Most of my embedded notes in LRB-1109/P1 relating to cross-references were to ensure that the cross-reference was in fact to the intended provision. I did not find any comment in the Summary Comments where the cross-reference in LRB-1109/P1 was not in fact to the intended provision. For the most part, numbering changes have not been made in the redraft of LRB-1109 into a "/1".

I understand this has been a group effort (and a herculean one at that!), but I am directing this e-mail primarily to DFI, and also to the advisory group chair, because of DFI's status as the official "requester" of the draft and the statutory holder of drafting privileges.

Aaron

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**From:** brooke.billick@artisanpartners.com [mailto:brooke.billick@artisanpartners.com]

**Sent:** Sunday, September 23, 2007 9:29 PM

**To:** Gary, Aaron

**Cc:** blombard@reinhardt.com; catherine.haberland@dfi.state.wi.us; cmweber@rwbaird.com; daneast@execpc.com; Cohen, David A - DFI; edward.fallone@marquette.edu; jebolt@access4less.net; JWestphal@wisbar.org; Van Buskirk, Leslie M - DFI; mrowe@ruder.com; mmcdonagh@mzmilw.com; Michelle.Clayton@nccusl.org; pam.krill@cunamutual.com; Struck, Patricia D - DFI; RJB@mtfn.com; Schumann, Randall E - DFI; RPC@quarles.com; RPMORRIS@quarles.com; sdguse@mbf-law.com; TNelson@foleylaw.com; WJS@quarles.com

**Subject:** Uniform Securities Act

Aaron,

Attached are the comments and responses from the Wisconsin Advisory Group and the Division of Securities relating to the Legislative Reference Bureau's preliminary draft of the Wisconsin Uniform Securities Act. These

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comments and responses are intended to address the questions or notes in the draft act.

A note of explanation is appropriate for the attached document. Last spring, the draft bill was forwarded to all of the members of the Wisconsin Advisory Group, including staff members of the Division of Securities. During the summer, comments were received from members of the Advisory Group regarding certain provisions of the draft, such as section 551.102(11)(L) and Section 551.401(4). Subsequent to these comments, the Division staff prepared a response addressing each of the questions raised by the LRB staff in the draft Act as well as the points raised by the Advisory Group members. I then circulated the Division's responses to the group for their review and comment and also solicited a vote on the points identified as reflecting a split of opinion.

The attached document represents the result of the various comments circulated. Included in this document are the Advisory Group's suggestions and the Division's comments. Where a split of opinion occurred, I have included the results of informal polling on the issue.

All of the members of the Wisconsin Advisory Group are being included on this email. My appreciation to all for their time, effort and participation in this project.

If you have any questions, please feel free to contact me.

Best regards, Brooke Billick

<<Summary of Consolidated Comments to LRB WI-USA Bill FINAL 9-2007.doc>>

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**Gary, Aaron**

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**From:** Gary, Aaron  
**Sent:** Wednesday, December 05, 2007 10:52 AM  
**To:** Struck, Patricia D - DFI  
**Cc:** 'catherine.haberland@dfi.state.wi.us'; Cohen, David A - DFI; Van Buskirk, Leslie M - DFI; Schumann, Randall E - DFI  
**Subject:** 1999 draft - viatical settlement investments  
**Attachments:** 99-4126/P2; 99-4126/P2dn

Here's the 1999 bill. Not sure if this is what you had in mind in the working group Summary Comments or not.

Aaron

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**Gary, Aaron**

**From:** Schumann, Randall [Randall.Schumann@dfi.state.wi.us]  
**Sent:** Friday, December 07, 2007 11:53 AM  
**To:** Gary, Aaron  
**Cc:** 'brooke.billick@artisanpartners.com'; Struck, Patricia D - DFI; Haberland, Catherine  
**Subject:** DOS Final Editing Replies To LRB Question Items re USAct Draft

Aaron:

Thanks for your follow-up message on Wednesday 12/5. As you know, we have been looking to finalize the issue involving the Wisconsin Bankers Association regarding your Item 2.

At this point, our Division position -- which has been discussed with, and is concurred in by, the State Bar Advisory Group's Chairperson Brooke Billick -- is that, in view of the final form of Regulation R as recently adopted by the SEC and the Federal Reserve, to delete the so-called "carve-out" language in lines 3 and 4 on Page 19, and substitute the "alternative" language for those lines contained in the Uniform Securities Act of 2002 Official Comments to Section 102(4)(C). [Basically, the language in those lines would read "... are limited to those specified in Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, or...."]

The following replies to your other comment items:

- used  
uniform act p. 23
- ✓ (1) Regarding Item 1, the Division believes that the current definition of SRO on Page 30, line 16, will adequately cover the recent merger of the NASD and NYSE Regulation to become FINRA.
  - ✓ (2) Regarding Item 3, the definition of "viatical settlement investment," the 1999 draft language you referenced was subsequently revised internally in 2001, such that the language should be changed to read:
 

551.102(32) "Viatical settlement investment" means the entire interest or any fractional or pool interest in a life insurance policy or certificate of insurance or in the death benefit thereunder that is the subject of a viatical settlement as defined in s. 632.68, Stats. "Viatical settlement investment" does not include any of the following:

    - (a) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to a viatical settlement provider pursuant to s. 632.68.
    - (b) the exercise of accelerated benefits pursuant to the life insurance policy or certificate and consistent with applicable law.
  - ✓ (3) Regarding Item 4, the Division understands and agrees that the separate section in 551.607(2)(e) on Page 117 -- to which you added a cross reference to 551.406(6)(a) -- eliminates the need for any additional change to 551.406(6)(a).
  - ✓ (4) Regarding Item 5, the Division agrees that the language in 551.613(5) on Page 126 relating to how the Division's general fees from registration, licensing and related filings must be deposited should be substituted with language referring to "the appropriation in sec. 20.144(1)(g)"

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which is for DFI's General Program Operations.

- ✓ (5) Regarding Item 6, the Division agrees that when adding (after 551.613) a new statutory section corresponding to current section 551.67 Statutory Policy, the new section should refer to the "Uniform Securities Act of 2002."
- ✓ (6) Regarding Item 7, the Division believes that the numbering methodologies used by the LRB throughout the Draft are very well-suited to the task, and do a good job in maximizing parallel numbering with the NCCUSL 2002 Uniform Securities Act model.

✓ Separately, in response to your question regarding specifying an effective date for the legislation, yes, we would want to provide for a delayed effective date of January 1, 2009 to enable necessary rule-making to take place after enactment of the new Act.

Also, <sup>11:00 AM</sup> as mentioned in our telephone discussion today, because a meeting has been scheduled for next Thursday 12/13 with Senator Sullivan, the Chairperson of DFI's Legislative Standing Committee in the Senate (Financial Institutions) to have him be a lead sponsor, if it is at all possible, it would be much appreciated if an introducible "/1" Bill Draft would be available by the time of that meeting.

We really appreciate all your assistance, and if you have questions regarding any of the above, please contact me either via e-mail or at my direct dial number 266-3414.

Randall Schumann

Legal Counsel for the Division of Securities