




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 15 of 23




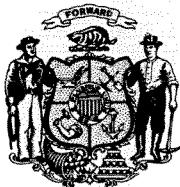
 The 2007 drafting file for LRB-1109/2

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.



State of Wisconsin
2007 - 2008 LEGISLATURE

Needed
by 12/12
at 5:00 pm
m 7/17

LRB-1109/11

ARG:wlj:rs

stats

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS:
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****NOTES.

Regen

1 AN ACT ~~to amend~~ 19.42 (12), 20.144 (1) (i), 20.923 (8), 21.72 (1) (a) 12., 25.186
2 (1) (a), 25.186 (1) (c), 25.186 (2) (a), 49.853 (1) (c) 6., 49.857 (1) (d) 12., 73.0301
3 (1) (d) 6., 183.1303, 226.14 (8), 227.54, 421.202 (8), 422.501 (2) (b) 7., 552.01 (6)
4 (c), 552.05 (2) (intro.), 560.036 (1) (fm) 2., 611.76 (11), 644.22, 893.66 (3), 946.79
5 (1) (a), 946.82 (4) and 972.085; and **to repeal and recreate** chapter 551 of the
6 statutes; **relating to:** repealing and recreating the Wisconsin Uniform
7 Securities Law, granting rule-making authority, and providing penalties.

Analysis by the Legislative Reference Bureau

In 1969, this state enacted the current Wisconsin Uniform Securities Law, effective January 1, 1970, based upon the Uniform Securities Act of 1956. The Wisconsin Uniform Securities Law has been repeatedly amended, in part to incorporate changes to federal law, including changes made by 1997 Act 316 to conform state law to the federal National Securities Markets Improvement Act of 1996 (NSMIA). In the NSMIA, Congress preempted certain elements of state authority to regulate securities so that, subject to certain exceptions, state laws and regulations requiring registration or qualification of a security or of a securities transaction cannot apply to federal covered securities. The NSMIA defined federal "covered security" to include: 1) securities that are listed or authorized to be listed or traded on the New York Stock Exchange, the American Stock Exchange, the

National Association of Securities Dealers Automated Quotation (NASDAQ) system, or a national securities exchange that has substantially similar listing requirements (exchange-listed securities); 2) securities of investment companies registered with the federal Securities and Exchange Commission (SEC), which are typically mutual funds; 3) securities offered or sold only to qualified purchasers, as defined by the SEC by rule; and 4) securities in certain other specified transactions. Congress also limited, in certain respects, state regulation of broker-dealers. Under the NSMIA, a state may not prohibit an agent for a registered broker-dealer in another state from effecting transactions with certain preexisting clients in the state if certain criteria are met. In the NSMIA, Congress made more significant changes with respect to investment advisers, preempting state registration, but not notice filing, of investment advisers that have assets under management in excess of \$25 million, that advise registered investment companies, that do not have a place of business in the state and have had fewer than six clients who are state residents in the preceding 12-month period, or that are otherwise registered with the SEC or exempt from the definition of investment adviser under federal law. After 1999, states cannot require registration of federal covered investment advisers that fail or refuse to pay state notice filing fees. The supervised persons of federal covered investment advisers are also to be regulated exclusively by the SEC, except that a state may register or qualify such an investment adviser representative who has a place of business within the state. The NSMIA also restricts, in part, the ability of a state to establish capital, custody, margin, financial responsibility, record keeping, bonding, or financial or operational requirements for broker-dealers and investment advisers. In the NSMIA, Congress further declared a policy of increasing federal and state cooperation in securities matters and instructed the SEC to cooperate, coordinate, and share information and to seek uniformity in federal and state regulatory standards, forms, and procedures.

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

Thirteen

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

Securities registration

Under current law, a person may not offer or sell any security in this state unless the security is registered with the Division of Securities in the Department of Financial Institutions (division), the security or transaction is exempt from registration, or the security is a federal covered security. In addition, a securities issuer or registrant, and certain control persons of the issuer or registrant, may not offer or sell registered securities in this state if the issuer or registrant is in violation of the state's securities laws. A "security" is defined broadly and includes any stock, note, bond, share in a business trust, investment contract, commodity futures contract, or limited partnership interest, as well as many other financial interests. A "security" also presumptively includes an interest in a limited liability company (LLC) if certain conditions are met, but does not include a fixed or variable insurance policy or annuity contract.

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

Under current law, certain securities are exempt from registration with the division, including: securities of the United States or a state or political subdivision of a state; securities of a bank or public utility; securities listed, or approved for listing, on a securities exchange designated by the division; securities of certain nonprofit organizations; certain commercial paper with a maturity of nine months or less; investment contracts related to certain employee benefit plans; common stock of a service corporation or cooperative; certain security options and commodity futures contracts; securities issued by a broker-dealer to its officers or employees; certain securities issued in connection with an insurance corporation conversion to

a mutual insurance corporation; and any security for which the division finds registration unnecessary for the protection of investors. In addition, even when a security is not exempt, a transaction involving the security may be exempt. Exempt securities transactions include the following: isolated nonissuer transactions; unsolicited nonissuer transactions through a broker-dealer; transactions between issuers and underwriters; nonissuer sales at a price reasonably related to the market price if the issuer is registered with the SEC or exempt from federal registration or if securities of the same class have been registered with the division within the preceding two years or registered with the SEC and certain other conditions are met; an offer or sale to the issuer, a bank or other financial institution, an insurer, a broker-dealer, an investment adviser or federal covered adviser, an investment company or pension or profit-sharing trust, state or federal or local government, or an accredited investor, as defined below (collectively "sophisticated investors"); certain transactions in debt secured by a mortgage and sold as a unit (mortgage-backed securities); an offer or sale of a preorganization subscription; an offer or sale of its securities by an issuer having its principal office in this state to not more than 25 persons, excluding sophisticated investors, if certain conditions are met; a transaction resulting from offers to not more than 25 persons in this state, excluding sophisticated investors, during a 12-month period, if certain conditions are met, regardless of the issuer's presence in this state; a transaction resulting from an offer to the issuer's existing security holders, if certain conditions are met; certain merger, reorganization, stock split, or stock dividend transactions; certain debt transactions of nonprofit organizations; certain offers, but not sales, of securities for which both federal and state registration statements have been filed; an offer or sale of securities made in reliance on the federal Regulation D, SEC Rule 505, exemption related to limited offerings not exceeding \$5,000,000, if certain conditions are met; and any other transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors. An "accredited investor," which is a type of sophisticated investor, is defined by federal and state law to include financial institutions, individuals with a specified minimum net worth or income, business entities with certain minimum assets, and corporate executives of a security's issuer.

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

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

number of changes to current law with respect to securities registration and exemptions, including the following:

1. The bill makes some modifications to the definition of "security." The bill expressly provides that a security may be uncertificated, that is, paperless. The bill modifies the definition of "security" with respect to an interest in an LLC and adds specific language related to interests in limited liability partnerships. The bill expressly includes viatical settlements of insurance contracts in the definition of "security." The bill expands the definition of "security" with respect to certain derivatives and includes language to clarify when an investment in a common enterprise is a security. The bill also excludes from the definition of "security" interests in pension plans subject to the Employee Retirement Income Security Act of 1974. The bill authorizes the division to exclude certain investment contracts from the definition of "security."

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

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

The bill modifies the exemption for certain mortgage-backed securities. The bill eliminates a transaction exemption related to nonprofit debt issues, so that nonprofit-related exemptions are entirely securities exemptions rather than transaction exemptions. The bill also eliminates the specific transaction exemption related to limited offerings under SEC Rule 505.

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

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

Registration of securities professionals

Under current law, unless exempt from licensing, a person may not transact business in this state as a broker-dealer or an agent unless the person is licensed as a broker-dealer or an agent, even if the person is also federally registered as such with the SEC. A "broker-dealer" is any person, whether an individual or an entity, engaged in the business of effecting transactions in securities for the account of others or for the person's own account, but does not include any of the following: an agent; an issuer; a bank, savings institution, or trust company, when effecting transactions for its own account or executing orders as an agent for a purchaser or seller; a personal representative, guardian, conservator, or pledgee; a person whose dealings in securities are limited to transactions in mortgage-backed securities; a person licensed as a real estate broker who has only isolated and incidental transactions in securities; the State of Wisconsin Investment Board (SWIB); or any other person designated by the division. An "agent" is an individual other than a broker-dealer who represents a broker-dealer or a securities issuer in effecting or attempting to effect transactions in securities, but does not include an individual who represents an issuer in effecting transactions in an exempt security, in effecting

most exempt transactions, or in effecting other transactions if no commission is paid for soliciting persons in this state. Current law provides a number of exemptions to the broker-dealer and agent licensing requirements, including exemptions for persons who effect transactions exclusively for sophisticated investors; persons who represent broker-dealers in effecting certain de minimus transactions for preexisting clients who were residents in the state where the agent is registered for at least 30 days in the previous one-year period; an agent acting exclusively for a securities issuer with respect to certain exempt transactions involving accredited investors; and persons who give group presentations at broker-dealer meetings or seminars where no solicitation, offer, or sale is made. A broker-dealer or issuer may not employ as an agent an individual who is not licensed or exempt from licensing. An agent generally may not represent more than one broker-dealer or issuer and may not simultaneously represent both a broker-dealer and an issuer. However, dual representation by an agent of issuers that are limited partnerships or investment companies is permissible if certain conditions are met.

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

Although federal covered advisers are excluded from the definition of "investment adviser" and state registration of federal covered advisers is preempted under the NSMIA, federal covered advisers are generally subject to notice filing requirements under current law. A federal covered adviser must comply with notice filing requirements to transact investment advisory business in this state unless the

federal covered adviser's only clients who are residents of this state are sophisticated investors or the federal covered adviser does not have a place of business in this state and, during the preceding 12-month period, has advised no more than five in-state clients who are not sophisticated investors.

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

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

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

Under current law, the division may prescribe standards of qualification with respect to training, experience, and knowledge of, and provide for examinations of, broker-dealers, agents, investment advisers, and investment adviser representatives. The division may also, subject to federal law, establish minimum net capital requirements for licensed broker-dealers and investment advisers and require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds. The division

must cooperate with other securities administrators and regulatory authorities to simplify and coordinate license application, notice filing, and renewal procedures. A licensed broker-dealer, agent, or investment adviser may not transact business in this state if it is in violation of the state's securities laws.

This bill, in adopting the USA 2002 with some modification, retains the general structure and content of current law with respect to securities professionals. Although the bill changes the terminology of regulation from "licensing" to "registration," the bill continues to require registration of entities and individuals in a similar manner, contains exemptions to registration, and retains similar administrative and supervisory authority by the division over these entities and individuals. However, the bill also includes a number of changes to current law with respect to securities professionals, including the following:

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

2. The bill also makes changes to the exemptions to broker-dealer registration. The bill eliminates the group presentation exemption under current law and changes the exemption for transactions exclusively for sophisticated investors. The bill creates several new exemptions to broker-dealer registration. Under the bill, a broker-dealer is exempt from registration if its only transactions effected in this state are with the following: the issuer of the securities involved in the transactions; a broker-dealer registered with the division or exempt from registration; institutional investors, as defined above; accredited investors, as defined above, but not including individuals; a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record; a bona fide preexisting customer whose principal place of residence is not in the state if the broker-dealer is registered with the SEC or with the state in which the customer maintains a principal place of residence; a bona fide preexisting customer whose principal place of residence is in this state if the broker-dealer was not present in this state when the customer relationship was established, if the broker-dealer is registered with the SEC or with the state in which the customer relationship was established and

the customer maintained his or her residence, and if, with certain exceptions, the broker-dealer files an application for registration within 45 days after the customer's first transaction in this state and no further transaction is effected more than 75 days later; or any other person exempted by the division. In addition, the division may permit a broker-dealer registered in a foreign jurisdiction that does not have a place of business in this state to effect certain transactions, including with individuals from the same jurisdiction who are temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States, and may permit an agent to effect these transactions for the broker-dealer.

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

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

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fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered or exempt from registration in the state in which the clients maintain principal places of residence; persons whose only clients in this state are clients exempted by the division; persons who do not have a place of business in this state and who have had, during the preceding 12 months, no more than five in-state clients in addition to the institutional investors, accredited investors, federal covered investment advisers, registered investment advisers or broker-dealers, or bona fide preexisting clients to which another exemption applies; and any other person exempted by the division.

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

6. Other than a change in terminology from "federal covered adviser" to "federal covered investment adviser," the bill makes no significant definitional change with respect to these advisers. The bill makes changes to the exemptions to notice filing for federal covered investment advisers. The bill changes the exemptions for federal covered investment advisers whose only clients in this state are sophisticated investors and for such advisers who do not have a place of business in this state and, during the preceding 12-month period, have had no more than five in-state clients who are not sophisticated investors. Under the bill, federal covered investment advisers that do not have a place of business in this state are exempt from notice filing if their only clients in this state are any of the following: federal covered investment advisers; investment advisers registered with the division; broker-dealers registered with the division; institutional investors; accredited

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investors other than individuals; bona fide preexisting clients whose principal places of residence are not in this state; or other clients specified by the division. Federal covered investment advisers that do not have a place of business in this state are also exempt from notice filing if they have had, during the preceding 12 months, no more than five in-state clients in addition to the institutional investors, accredited investors, federal covered investment advisers, registered investment advisers or broker-dealers, or bona fide preexisting clients to which another exemption applies. The division may also exempt from notice filing any other federal covered investment adviser.

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

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

Securities fraud, enforcement, and administration

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

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

assessments imposed by the division are appropriated for the division's investor education program.

Under current law, a person who violates the state's securities laws may be subject to criminal or civil liability or both. A person who willfully violates the state's securities laws, with certain exceptions, is guilty of a Class H felony, punishable by a maximum fine of \$10,000 or a maximum term of imprisonment of six years or both. The division may refer violations for criminal prosecution to the attorney general or a district attorney. A person who violates the state's securities laws by offering or selling a security by purchasing a security, or by willfully participating in market manipulation activity, may be civilly liable to, respectively, the purchaser or seller for specified damages, including interest and reasonable attorney fees, or equitable relief. Certain persons may also be held civilly liable for the violations of others. However, a civil action must be commenced within three years after the act or transaction constituting the violation, but this period of limitation may be extended under certain circumstances. A purchaser or seller also may not commence an action if, before suit is commenced, the purchaser or seller receives a written rescission offer providing specified information about the violation and offering to resolve liability for the violation.

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

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

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

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

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

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

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

The bill also varies from, or adopts optional language under, the USA 2002 in a number of respects. These variations, or the adoption of this optional language, are generally recommended by the WUSA Study Group to retain aspects of current law or current division rules with respect to certain matters, including: fee provisions for division filings; the division's investigative authority related to acting on broker-dealer and investment adviser registration applications; division authority related to grounds for discipline, censure, penalties, and negotiated settlements in disciplinary actions; continuing education requirements for registered persons; penalty provisions for criminal securities law violations; certain aspects of civil liability; administrative assessments by the division and the investor education and training program; the division's injunctive authority; confidential information and records of the division; judicial review of summarily issued orders of the division; and the state's jurisdiction with regard to offers not directed to or received in this state.

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

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

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

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

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

20.144 (1) (i) *Investor education and training fund.* The amounts in the schedule for educating residents of this state about securities and franchise investments as provided in ss. ~~551.605 (2)~~ 551.601 (4) and 553.605 (2) and for any other purpose specified in s. 551.601 (4). All moneys received from administrative assessments under ss. ~~551.605 (1)~~ 551.604 (4) and 553.605 (1) shall be credited to this appropriation. If the unencumbered balance in this appropriation account exceeds

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1 \$100,000 immediately before the end of any fiscal year, the excess shall lapse to the
2 general fund at the end of that fiscal year.

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

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

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

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

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

16 25.186 (1) (a) "Broker-dealer" has the meaning given in s. ~~551.02 (3)~~ 551.102
17 (4).

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

19 25.186 (1) (c) "Security" has the meaning given in s. ~~551.02 (13)~~ 551.102 (28).

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

21 25.186 (2) (a) Of the total funds that are expended by the board for securities
22 trading brokerage commissions in any fiscal year, the board shall pay at least 5% of
23 the total funds in securities trading brokerage commissions to broker-dealers that
24 are licensed registered under s. ~~551.31~~ 551.406, that are headquartered in this state
25 and whose principal business operations are located in this state.

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

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

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

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

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

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

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

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

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

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

SECTION 13. 227.54 of the statutes ^{is} amended to read:

227.54 Stay of proceedings. The institution of the proceeding for review shall not stay enforcement of the agency decision. The reviewing court may order a stay upon such terms as it deems proper, except as otherwise provided in ss. ^{49.17 (7) §} 196.43, 253.06 (7), and 448.02 (9) ~~and 551.62~~.

as affected by 2007 Wisconsin Act 20,

49.17 (7) §

253.06 (7), and 448.02 (9) and 551.62.

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

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

2 421.202 (8) Transactions in securities accounts or securities transactions by or
3 with a broker-dealer, as defined in s. ~~551.02 (3)~~, licensed 551.102 (4), registered
4 under ch. 551.

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

6 422.501 (2) (b) 7. A broker-dealer or agent licensed registered under s. ~~551.31~~
7 551.406 if the broker-dealer or agent is acting within the course and scope of that
8 license.

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

10 CHAPTER 551

11 WISCONSIN UNIFORM SECURITIES LAW

12 SUBCHAPTER I

13 GENERAL PROVISIONS

14 551.101 Short title. This chapter shall be known and may be cited as the
15 "Wisconsin Uniform Securities Law."

16 551.102 Definitions. In this Chapter, unless the context otherwise requires:

17 (1g) "Accredited investor" has the meaning given in Rule 501 (a) adopted under
18 the Securities Act of 1933 (17 CFR 230.501 (a)). *as defined*

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

19 (1m) "Administrator" means the administrator of the division of securities in
20 the department of financial institutions.

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

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

8 (3) "Bank" means any of the following:

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

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

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

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

20 (4) "Broker-dealer" means a person engaged in the business of effecting
21 transactions in securities for the account of others or for the person's own account.

22 The term does not include any of the following:

23 (a) An agent.

1 (b) An issuer.

2 (c) A bank or savings institution if its activities as a broker-dealer are limited

3 to those specified in subsections 3 (a) (4) (B) (i) to (vi), (viii) to (x), and (xi) if limited

4 to unsolicited transactions, 3 (a) (5) (B); and 3 (a) (5) (C) of the Securities Exchange

5 Act of 1934 (15 USC 78c (a) (4) and (5)), or a bank that satisfies the conditions

6 described in subsection 3 (a) (4) (E) of the Securities Exchange Act of 1934 (15 USC

7 Section 78c (a) (4)).

8 (d) An international banking institution.

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

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

10 (5) "Depository institution" means any of the following:

11 (a) A bank.

12 (b) A savings institution, trust company, credit union, or similar institution
13 that is organized or chartered under the laws of a state or of the United States,
14 authorized to receive deposits, and supervised and examined by an official or agency
15 of a state or the United States if its deposits or share accounts are insured to the
16 maximum amount authorized by statute by the Federal Deposit Insurance
17 Corporation, the National Credit Union Share Insurance Fund, or a successor
18 authorized by federal law. The term does not include any of the following:

19 1. An insurance company or other organization primarily engaged in the
20 business of insurance.

21 2. A Morris Plan bank.

22 3. An industrial loan company.

1 **(5m)** "Division of securities" or "division" means the division of securities in the
2 department of financial institutions.

7
 *****NOTE: I added this subsection.*

3 **(6)** "Federal covered investment adviser" means a person registered under the
4 Investment Advisers Act of 1940.

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

8 **(8)** "Filing" means the receipt under this chapter of a record by the
9 administrator or a designee of the administrator.

10 **(9)** "Fraud," "deceit," and "defraud" are not limited to common law deceit.

11 **(10)** "Guaranteed" means guaranteed as to payment of all principal and all
12 interest.

13 **(11)** "Institutional investor" means any of the following, whether acting for
14 itself or for others in a fiduciary capacity:

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

16 (b) An insurance company.

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

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

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

20 (f) An employee pension, profit-sharing, or benefit plan if the plan has total
21 assets in excess of \$10,000,000 or its investment decisions are made by a named
22 fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that
23 is a broker-dealer registered under the Securities Exchange Act of 1934, an
24 investment adviser registered or exempt from registration under the Investment

1 Advisers Act of 1940, an investment adviser registered under this chapter, a
2 depository institution, or an insurance company.

3 (g) A plan established and maintained by a state, a political subdivision of a
4 state, or an agency or instrumentality of a state or a political subdivision of a state
5 for the benefit of its employees, if the plan has total assets in excess of \$10,000,000
6 or its investment decisions are made by a duly designated public official or by a
7 named fiduciary, as defined in the Employee Retirement Income Security Act of
8 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934,
9 an investment adviser registered or exempt from registration under the Investment
10 Advisers Act of 1940, an investment adviser registered under this chapter, a
11 depository institution, or an insurance company.

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

17 (i) An organization described in section 501 (c) (3) of the Internal Revenue Code
18 (26 USC 501 (c) (3)), corporation, Massachusetts trust or similar business trust,
19 limited liability company, or partnership, not formed for the specific purpose of
20 acquiring the securities offered, with total assets in excess of \$10,000,000.

21 (j) A small business investment company licensed by the Small Business
22 Administration under section 301 (c) of the Small Business Investment Act of 1958
23 (15 USC 681 (c)) with total assets in excess of \$10,000,000.

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

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

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

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

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

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

7 ~~****NOTE: The introductory phrase "whether acting for itself or for others in a
fiduciary capacity" doesn't seem to exactly fit with par. (L).~~

14 (12) "Insurance company" means a company organized as an insurance
15 company whose primary business is writing insurance or reinsuring risks
16 underwritten by insurance companies and which is subject to supervision by the
17 insurance commissioner or a similar official or agency of a state.

18 (13) "Insured" means insured as to payment of all principal and all interest.

19 (14) "International banking institution" means an international financial
20 institution of which the United States is a member and whose securities are exempt
21 from registration under the Securities Act of 1933.

22 (15) "Investment adviser" means a person that, for compensation, engages in
23 the business of advising others, either directly or through publications, writings, or

1 electronic means, as to the value of securities or the advisability of investing in,
2 purchasing, or selling securities or that, for compensation and as a part of a regular
3 business, issues or promulgates analyses or reports concerning securities. The term
4 includes a financial planner or other person that, as an integral component of other
5 financially related services, provides investment advice regarding securities to
6 others for compensation as part of a business or that holds itself out as providing
7 investment advice regarding securities to others for compensation. The term does
8 not include any of the following:

9 (a) An investment adviser representative.

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

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

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

17 (e) A federal covered investment adviser.

18 (f) A bank or savings institution.

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

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

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

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

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

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

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

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

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

***NOTE: Because this subsection uses definitions that may be inconsistent with
the general definitions elsewhere provided in this section, I have added
"notwithstanding" language. Also, I believe par. (c) might be considered ambiguous in

terms of whether subs. 1. and 2. are intended to join together with the introductory clause or the "unless" clause. Therefore, I have made minor modifications to clarify that these subdivisions are read with the "unless" clause.

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

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

3 (17) "Issuer" means a person that issues or proposes to issue a security, subject
4 to the following:

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

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

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

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

1 (e) With respect to a viatical settlement investment that is not a fractional or
2 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
4 from a viatical settlement provider and then offers or sells viatical settlement
5 investments therein except that, under this paragraph, "issuer" does not include a
6 broker-dealer or agent ^{registered} licensed under ~~s. 551.406~~ ^{this chapter} and does not include the viator of
7 the insurance policy, certificate of insurance, or death benefit underlying the viatical
8 settlement investment.

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

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

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

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

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

19 (21) "Place of business" of a broker-dealer, an investment adviser, or a federal
20 covered investment adviser means any of the following:

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

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

8 **(22)** "Predecessor act" means ch. 551, 2005 stats.

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

15 **(24)** "Principal place of business" of a broker-dealer or an investment adviser
16 means the executive office of the broker-dealer or investment adviser from which the
17 officers, partners, or managers of the broker-dealer or investment adviser direct,
18 control, and coordinate the activities of the broker-dealer or investment adviser.

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

22 **(26)** "Sale" includes every contract of sale, contract to sell, or disposition of a
23 security or interest in a security for value, and "offer to sell" includes every attempt
24 or offer to dispose of, or solicitation of an offer to purchase, a security or interest in
25 a security for value. Both terms include all of the following:

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

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

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

9 (27) "Securities and Exchange Commission" means the United States
10 Securities and Exchange Commission.

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

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

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

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

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

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

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

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

23 1. Each holder of an interest, or class or series thereof, is actively engaged in
24 the management of the limited liability partnership or limited liability company.
25 However, evidence that partners or members vote or have the right to vote, or the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **551.103 References to federal statutes.** "Securities Act of 1933" (15 USC
18 77a et seq.), "Securities Exchange Act of 1934" (15 USC 78a et seq.), "Public Utility
19 Holding Company Act of 1935" (15 USC 79 et seq.), "Investment Company Act of
20 1940" (15 USC 80a-1 et seq.), "Investment Advisers Act of 1940" (15 USC 80b-1 et
21 seq.), "Employee Retirement Income Security Act of 1974" (29 USC 1001 et seq.),
22 "National Housing Act" (12 USC 1701 et seq.), "Commodity Exchange Act" (7 USC
23 1 et seq.), "Internal Revenue Code" (26 USC 1 et seq.), "Securities Investor Protection

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

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

6 **551.104 References to federal agencies.** A reference in this chapter to an
 7 agency or department of the United States is also a reference to a successor agency
 8 or department.

9 **551.105 Electronic records and signatures.** This chapter modifies, limits,
 10 and supersedes the federal Electronic Signatures in Global and National Commerce
 11 Act, but does not modify, limit, or supersede section 101 (c) of that act (15 USC 7001
 12 (c)) or authorize electronic delivery of any of the notices described in section 103 (b)
 13 of that act (15 USC 7003 (b)). This chapter authorizes the filing of records and
 14 signatures, when specified by provisions of this chapter or by a rule adopted or order
 15 issued under this chapter, in a manner consistent with section 104 (a) of that act (15
 16 USC 7004 (a)).

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

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SUBCHAPTER II
EXEMPTIONS FROM REGISTRATION
OF SECURITIES

551.201 Exempt securities. The following securities are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

(1) (a) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing but any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempt only as provided under par. (b).

(b) Unless subject to a letter of credit of a bank, savings bank, or savings and loan association as provided in this paragraph, a revenue obligation of an issuer specified under par. (a) that is payable from payments to be made in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise is exempt subject to rules adopted by the division of securities. A revenue obligation is exempt from any filing under the rules of the division if it is the subject of a guarantee or an irrevocable letter of credit from a depository institution in favor of holders of the revenue obligations providing for payment of all principal of the revenue obligations and all accrued and

1 unpaid interest to the date of an event of default on the revenue obligations, and the
2 letter of credit is accompanied by an opinion of counsel stating all of the following:

3 1. Either that payment of debt service will not constitute a preference under
4 federal bankruptcy law if a petition in bankruptcy with respect to the enterprise is
5 filed or that the guarantee or letter of credit will provide for reimbursement to
6 holders of the revenue obligations if they are required by order of a federal
7 bankruptcy court to disgorge as a preference any payment of a debt service.

8 2. That the enforceability of the guarantee or letter of credit would not be
9 materially affected by the filing of a petition under federal bankruptcy law with
10 respect to the enterprise or any person obligated to reimburse the depository
11 institution for payments made under the guarantee or letter of credit.

~~****NOTE: I find the rule-making language in par. (b) (intro.) confusing. Typically
the formula we use is to authorize the rule making and then, as necessary, specify what
the rule must contain. As I read the language in par. (b) (intro.), it seems rather inverted.~~

12 (2) A security issued, insured, or guaranteed by a foreign government with
13 which the United States maintains diplomatic relations, or any of its political
14 subdivisions, if the security is recognized as a valid obligation by the issuer, insurer,
15 or guarantor.

16 (3) A security issued by and representing or that will represent an interest in
17 or a direct obligation of, or be guaranteed by, any of the following:

18 (a) An international banking institution.

19 (b) A banking institution organized under the laws of the United States; a
20 member bank of the Federal Reserve System; or a depository institution a
21 substantial portion of the business of which consists or will consist of receiving
22 deposits or share accounts that are insured to the maximum amount authorized by
23 statute by the Federal Deposit Insurance Corporation, the National Credit Union

1 Share Insurance Fund, or a successor authorized by federal law or exercising
2 fiduciary powers that are similar to those permitted for national banks under the
3 authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722
4 (12 USC 92a).

5 (c) Any other depository institution, unless by rule or order the administrator
6 proceeds under s. 551.204.

7 (4) A security issued by and representing an interest in, or a debt of, or insured
8 or guaranteed by, an insurance company authorized to do business in this state.

9 (5) A security issued or guaranteed by a railroad, other common carrier, public
10 utility, or public utility holding company that is any of the following:

11 (a) Regulated in respect to its rates and charges by the United States or a state.

12 (b) Regulated in respect to the issuance or guarantee of the security by the
13 United States, a state, Canada, or a Canadian province or territory.

14 (c) A public utility holding company registered under the Public Utility Holding
15 Company Act of 1935 or a subsidiary of such a registered holding company within the
16 meaning of that act.

7 ****NOTE. 2005 Act 179 eliminated a number of state regulatory provisions related
to railroads, many of which were preempted by federal law.

17 (6) A federal covered security specified in section 18 (b) (1) of the Securities Act
18 of 1933 (15 USC 77r (b) (1)) or by rule adopted under that provision or a security listed
19 or approved for listing on another securities market specified by rule under this
20 chapter; a put or a call option contract; a warrant; a subscription right on or with
21 respect to such securities; or an option or similar derivative security on a security or
22 an index of securities or foreign currencies issued by a clearing agency registered
23 under the Securities Exchange Act of 1934 and listed or designated for trading on a

1 national securities exchange, a facility of a national securities exchange, or a facility
2 of a national securities association registered under the Securities Exchange Act of
3 1934 or an offer or sale of the underlying security in connection with the offer, sale,
4 or exercise of an option or other security that was exempt when the option or other
5 security was written or issued; or an option or a derivative security designated by the
6 Securities and Exchange Commission under section 9 (b) of the Securities Exchange
7 Act of 1934 (15 USC 78i (b)).

****NOTE: I removed a "dangling" comma from the phrase "1934 or an offer or sale of the underlying security" Please let me know if you believe this changes the meaning of the provision.

8 (7) A security issued by a person organized and operated exclusively for
9 religious, educational, benevolent, fraternal, charitable, social, athletic, or
10 reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no
11 part of the net earnings of which inures to the benefit of a private stockholder or other
12 person, or a security of a company that is excluded from the definition of an
13 investment company under section 3 (c) (10) (B) of the Investment Company Act of
14 1940 (15 USC 80a-3 (c) (10) (B)); except that with respect to the offer or sale of a note,
15 bond, debenture, or other evidence of indebtedness issued by such a person, a rule
16 may be adopted under this chapter limiting the availability of this exemption by
17 classifying securities, persons, and transactions, imposing different requirements
18 for different classes, specifying with respect to par. (b) the scope of the exemption and
19 the grounds for denial or suspension, and requiring an issuer to do any of the
20 following:

21 (a) To file a notice specifying the material terms of the proposed offer or sale
22 and copies of any proposed sales and advertising literature to be used and provide

1 that the exemption becomes effective if the administrator does not disallow the
2 exemption within the period established by the rule.

3 (b) To file a request for exemption authorization for which a rule under this
4 chapter may specify the scope of the exemption, the requirement of an offering
5 statement, the filing of sales and advertising literature, the filing of consent to
6 service of process complying with s. 551.611, and grounds for denial or suspension
7 of the exemption.

8 (c) To register under s. 551.304.

9 (8) A member's or owner's interest in, or a retention certificate or like security
10 given in lieu of a cash patronage dividend issued by, a cooperative organized and
11 operated as a nonprofit membership cooperative under the cooperative laws of a
12 state, but not a member's or owner's interest, retention certificate, or like security
13 sold to persons other than bona fide members of the cooperative.

14 (9) An equipment trust certificate with respect to equipment leased or
15 conditionally sold to a person, if any security issued by the person would be exempt
16 under this section or would be a federal covered security under section 18 (b) (1) of
17 the Securities Act of 1933 (15 USC 77r (b) (1)).

~~****NOTE: The list of exempt securities in this section omits several specific
exemptions applicable under current law, including one pertaining to service
corporations. I assume that, to the extent you intend these exemptions under current law
to continue to apply, the exemptions will be created by rule under s. 551.203, you believe
the exemption is adequately covered under other provisions of this section, or you believe
the specific exemption language under current law is unnecessary.~~

~~****NOTE: Is the exemption under s. 551.22 (10) of current law eliminated because
of the creation of s. 551.102 (28) (c) excluding ERISA plans from the definition of security?~~

18 **551.202 Exempt transactions.** The following transactions are exempt from
19 the requirements of ss. 551.301 to 551.306 and 551.504:

1 (1) An isolated nonissuer transaction, whether effected by or through a
2 broker-dealer or not.

3 (2) A nonissuer transaction by or through a broker-dealer registered or exempt
4 from registration under this chapter, and a resale transaction by a sponsor of a unit
5 investment trust registered under the Investment Company Act of 1940, in a
6 security of a class that has been outstanding in the hands of the public for at least
7 90 days if, at the date of the transaction, all of the following apply:

8 (a) The issuer of the security is engaged in business, the issuer is not in the
9 organizational stage or in bankruptcy or receivership, and the issuer is not a blank
10 check, blind pool, or shell company that has no specific business plan or purpose or
11 has indicated that its primary business plan is to engage in a merger or combination
12 of the business with, or an acquisition of, an unidentified person.

13 (b) The security is sold at a price reasonably related to its current market price.

14 (c) The security does not constitute the whole or part of an unsold allotment to,
15 or a subscription or participation by, the broker-dealer as an underwriter of the
16 security or a redistribution.

17 (d) A nationally recognized securities manual or its electronic equivalent
18 designated by rule adopted or order issued under this chapter or a record filed with
19 the Securities and Exchange Commission that is publicly available contains all of the
20 following:

21 1. A description of the business and operations of the issuer.

22 2. The names of the issuer's executive officers and the names of the issuer's
23 directors, if any.

24 3. An audited balance sheet of the issuer as of a date within 18 months before
25 the date of the transaction or, in the case of a reorganization or merger when the

1 parties to the reorganization or merger each had an audited balance sheet, a pro
2 forma balance sheet for the combined organization.

3 4. An audited income statement for each of the issuer's 2 immediately previous
4 fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the
5 case of a reorganization or merger when each party to the reorganization or merger
6 had audited income statements, a pro forma income statement.

7 (e) Any of the following requirements is met:

8 1. The issuer of the security has a class of equity securities listed on a national
9 securities exchange registered under section 6 of the Securities Exchange Act of 1934
10 or designated for trading on the National Association of Securities Dealers
11 Automated Quotation System.

12 2. The issuer of the security is a unit investment trust registered under the
13 Investment Company Act of 1940.

14 3. The issuer of the security, including its predecessors, has been engaged in
15 continuous business for at least 3 years.

16 4. The issuer of the security has total assets of at least \$2,000,000 based on an
17 audited balance sheet as of a date within 18 months before the date of the transaction
18 or, in the case of a reorganization or merger when the parties to the reorganization
19 or merger each had such an audited balance sheet, a pro forma balance sheet for the
20 combined organization.

21 (3) A nonissuer transaction by or through a broker-dealer registered or exempt
22 from registration under this chapter in a security of a foreign issuer that is a margin
23 security defined in regulations or rules adopted by the Board of Governors of the
24 Federal Reserve System.

1 (4) A nonissuer transaction by or through a broker-dealer registered or exempt
2 from registration under this chapter in an outstanding security if the guarantor of
3 the security files reports with the Securities and Exchange Commission under the
4 reporting requirements of section 13 or 15 (d) of the Securities Exchange Act of 1934
5 (15 USC 78m or 78o (d)).

6 (5) A nonissuer transaction by or through a broker-dealer registered or exempt
7 from registration under this chapter in a security to which any of the following
8 applies:

9 (a) The security is rated at the time of the transaction by a nationally
10 recognized statistical rating organization in one of its 4 highest rating categories.

11 (b) The security has a fixed maturity or a fixed interest or dividend, if all of the
12 following apply:

13 1. A default has not occurred during the current fiscal year or within the 3
14 previous fiscal years, or during the existence of the issuer and any predecessor if less
15 than 3 fiscal years, in the payment of principal, interest, or dividends on the security.

16 2. The issuer is engaged in business, is not in the organizational stage or in
17 bankruptcy or receivership, and is not and has not been within the previous 12
18 months a blank check, blind pool, or shell company that has no specific business plan
19 or purpose or has indicated that its primary business plan is to engage in a merger
20 or combination of the business with, or an acquisition of, an unidentified person.

21 (6) A nonissuer transaction by or through a broker-dealer registered or exempt
22 from registration under this chapter effecting an unsolicited order or offer to
23 purchase, but with respect to a nonissuer transaction involving a security that is not
24 a federal covered security the administrator may require by rule that the records of
25 the broker-dealer confirm that the order or offer to purchase was unsolicited.

1 (7) A nonissuer transaction executed by a bona fide pledgee without the
2 purpose of evading this chapter.

3 (8) A nonissuer transaction by a federal covered investment adviser with
4 investments under management in excess of \$100,000,000 acting in the exercise of
5 discretionary authority in a signed record for the account of others.

6 (9) A transaction in a security, whether or not the security or transaction is
7 otherwise exempt, in exchange for one or more bona fide outstanding securities,
8 claims, or property interests, or partly in such exchange and partly for cash, if the
9 terms and conditions of the issuance and exchange or the delivery and exchange and
10 the fairness of the terms and conditions have been approved by the administrator
11 after a hearing.

12 (10) A transaction between the issuer or other person on whose behalf the
13 offering is made and an underwriter, or among underwriters.

14 (11) A transaction in a note, bond, debenture, or other evidence of indebtedness
15 secured by a mortgage or other security agreement if all of the following apply:

16 (a) The note, bond, debenture, or other evidence of indebtedness is offered and
17 sold with the mortgage or other security agreement as a unit.

18 (b) A general solicitation or general advertisement of the transaction is not
19 made.

20 (c) A commission or other remuneration is not paid or given, directly or
21 indirectly, to a person not registered under this chapter as a broker-dealer or as an
22 agent.

23 (12) A transaction by an executor, administrator of an estate, sheriff, marshal,
24 receiver, trustee in bankruptcy, guardian, or conservator.

25 (13) A sale or offer to sell to any of the following:

1 (a) An institutional investor.

Insert from 17-17/18

in this state

2 (am) An accredited investor, provided that prior to ^{the} a sale ~~or offer to sell~~ to an
3 accredited investor described in Rule 501 (a) (5) or (6) adopted under the Securities
4 Act of 1933, the seller ~~or offeror~~ files a consent to service of process with the
5 administrator in the form required under s. 551.611. Failure to file the consent as
6 required is a cause for administrative action by the administrator under s. 551.604
7 but does not result in the loss of this exemption. This consent is not required to be
8 filed if any of the following apply:

9 1. The issuer of the securities to be ~~offered or~~ sold has its principal place of
10 business or a majority of its full-time employees located in this state.

11 2. The issuer ~~or offeror~~ of the securities files or has previously filed a consent
12 to service of process with the administrator.

13 3. The seller ~~or offeror~~ is a broker-dealer or agent of the issuer registered under
14 this chapter.

****NOTE: Since this provision is not part of the uniform act, I have slightly changed some of the language.

15 (b) A federal covered investment adviser.

16 (c) Any other person exempted by rule adopted or order issued under this
17 chapter.

18 (14) (a) Subject to par. (b), any transaction pursuant to an offer directed by the
19 offeror to not more than 25 persons in this state excluding those persons designated
20 in sub. (13) but including persons exempt under sub. (24), during any period of 12
21 consecutive months whether or not the offeror or any of the offerees is then present
22 in this state if all of the following apply:

1 1. No general solicitation or general advertising is made in connection with the
2 offer to sell or sale of the securities unless it has been permitted by the administrator.

3 2. No commission or other remuneration is paid or given, directly or indirectly,
4 to a person other than a broker-dealer registered under this chapter or an agent
5 registered under this chapter for soliciting any person in this State other than those
6 persons designated in sub. (13).

7 3. The offeror reasonably believes that all the purchasers in this state, other
8 than those designated in sub. (13), are purchasing for investment.

9 (b) The administrator may by rule or order, as to any security or transaction
10 or any type of security or transaction, withdraw or further condition this exemption,
11 or increase or decrease the number of offerees permitted, or waive the conditions in
12 par. (a), and may require reports of sales under this exemption.

13 (15) A transaction under an offer to existing security holders of the issuer,
14 including persons that at the date of the transaction are holders of convertible
15 securities, options, or warrants, if a commission or other remuneration, other than
16 a standby commission, is not paid or given, directly or indirectly, for soliciting a
17 security holder in this state and if, prior to any offer or sale of any security that is
18 not a federal covered security, the issuer files a notice specifying the terms of the offer,
19 all other information that the administrator by rule requires, and any additional
20 information reasonably related to the offering required to be filed by the
21 administrator within 10 days after the filing date of the notice, and the administrator
22 does not by order disallow the exemption within 10 days after the date of filing the
23 notice or, if additional information is required, within 10 days after the date of filing
24 that information.

1 **(16)** An offer to sell, but not a sale, of a security not exempt from registration
2 under the Securities Act of 1933 if all of the following apply:

3 (a) A registration or offering statement or similar record as required under the
4 Securities Act of 1933 has been filed, but is not effective, or the offer is made in
5 compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165).

6 (b) A stop order of which the offeror is aware has not been issued against the
7 offeror by the administrator or the Securities and Exchange Commission, and an
8 audit, inspection, or proceeding that is public and that may culminate in a stop order
9 is not known by the offeror to be pending.

10 **(17)** An offer to sell, but not a sale, of a security exempt from registration under
11 the Securities Act of 1933 if all of the following apply:

12 (a) A registration statement has been filed under this chapter, but is not
13 effective.

14 (b) A solicitation of interest is provided in a record to offerees in compliance
15 with a rule adopted by the administrator under this chapter.

16 (c) A stop order of which the offeror is aware has not been issued by the
17 administrator under this chapter and an audit, inspection, or proceeding that may
18 culminate in a stop order is not known by the offeror to be pending.

****NOTE: It is unclear to me why the "exempt from registration under the
Securities Act of 1933" language is included in the (intro.) provision here.

19 **(18)** A transaction involving the distribution of the securities of an issuer to the
20 security holders of another person in connection with a merger, consolidation,
21 exchange of securities, sale of assets, or other reorganization to which the issuer, or
22 its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

23 **(19)** A rescission offer, sale, or purchase under s. 551.511.

1 **(20)** An offer or sale of a security to a person not a resident of this state and not
2 present in this state if the offer or sale does not constitute a violation of the laws of
3 the state or foreign jurisdiction in which the offeree or purchaser is present and is
4 not part of an unlawful plan or scheme to evade this chapter.

5 **(21)** Employees' stock purchase, savings, option, profit-sharing, pension, or
6 similar employees' benefit plan, including any securities, plan interests, and
7 guarantees issued under a compensatory benefit plan or compensation contract,
8 contained in a record, established by the issuer, its parents, its majority-owned
9 subsidiaries, or the majority-owned subsidiaries of the issuer's parent, for the
10 participation of their employees including offers or sales of such securities to all of
11 the following:

12 (a) Directors; general partners; trustees, if the issuer is a business trust;
13 officers; consultants; and advisors.

14 (b) Family members who acquire such securities from those persons through
15 gifts or domestic relations orders.

16 (c) Former employees, directors, general partners, trustees, officers,
17 consultants, and advisors if those individuals were employed by or providing services
18 to the issuer when the securities were offered.

19 (d) Insurance agents who are exclusive insurance agents of the issuer, or the
20 issuer's subsidiaries or parents, or who derive more than 50 percent of their annual
21 income from those organizations.

22 **(22)** A transaction involving any of the following:

23 (a) A stock dividend or equivalent equity distribution, whether the corporation
24 or other business organization distributing the dividend or equivalent equity
25 distribution is the issuer or not, if nothing of value is given by stockholders or other

1 equity holders for the dividend or equivalent equity distribution other than the
2 surrender of a right to a cash or property dividend if each stockholder or other equity
3 holder may elect to take the dividend or equivalent equity distribution in cash,
4 property, or stock.

5 (b) An act incident to a judicially approved reorganization in which a security
6 is issued in exchange for one or more outstanding securities, claims, or property
7 interests, or partly in such exchange and partly for cash.

8 (c) The solicitation of tenders of securities by an offeror in a tender offer in
9 compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

10 **(23)** A nonissuer transaction in an outstanding security by or through a
11 broker-dealer registered or exempt from registration under this chapter, if the issuer
12 is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule
13 adopted or order issued under this chapter; has been subject to continuous reporting
14 requirements in the foreign jurisdiction for not less than 180 days before the
15 transaction; and the security is listed on the foreign jurisdiction's securities
16 exchange that has been designated by this subsection or by rule adopted or order
17 issued under this chapter, or is a security of the same issuer that is of senior or
18 substantially equal rank to the listed security or is a warrant or right to purchase
19 or subscribe to any of the foregoing. For purposes of this subsection, Canada,
20 together with its provinces and territories, is a designated foreign jurisdiction and
21 The Toronto Stock Exchange, Inc. and the TSX Venture Exchange, Inc. are
22 designated securities exchanges. After an administrative hearing in compliance
23 with ch. 227, the administrator, by rule adopted or order issued under this chapter,
24 may revoke the designation of a securities exchange under this subsection, if the

1 administrator finds that revocation is necessary or appropriate in the public interest
2 and for the protection of investors.

3 (24) Any offer or sale of its securities by an issuer, having its principal office
4 in this state, if the aggregate number of persons holding directly or indirectly all of
5 the issuer's securities, after the securities to be issued are sold, does not exceed 25,
6 exclusive of persons under sub. (13), if no commission or other remuneration is paid
7 or given directly or indirectly for soliciting any person in this state, except to
8 broker-dealers and agents licensed in this state, and if no advertising is published
9 unless it has been permitted by the division of securities.

10 (25) Any offer or sale of a preorganization subscription, if no commission or
11 other remuneration is paid or given directly or indirectly for soliciting any subscriber
12 in this state and no advertising is published or circulated unless it has been
13 permitted by the division of securities, and if the subscription is not binding and no
14 payment is made by any subscriber until the securities subscribed for may legally be
15 sold.

16 **551.203 Additional exemptions and waivers.** A rule adopted or order
17 issued under this chapter may exempt a security, transaction, or offer; a rule under
18 this chapter may exempt a class of securities, transactions, or offers from any or all
19 of the requirements of ss. 551.301 to 551.306 and 551.504; and an order under this
20 chapter may waive, in whole or in part, any or all of the conditions for an exemption
21 or offer under ss. 551.201 and 551.202.

22 **551.204 Denial, suspension, revocation, condition, or limitation of**
23 **exemptions; burden of proof; additional information. (1) ENFORCEMENT**
24 **RELATED POWERS.** Except with respect to a federal covered security or a transaction
25 involving a federal covered security, an order under this chapter may deny, suspend

1 application of, condition, limit, or revoke an exemption created under s. 551.201 or
2 551.202 or an exemption or waiver created under s. 551.203 with respect to a specific
3 security, transaction, or offer, except to the extent limited by the National Securities
4 Markets Improvement Act of 1996. An order under this section may be issued only
5 pursuant to the procedures in s. 551.306 (4) or s. 551.604 and only prospectively.

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

6 (2) KNOWLEDGE OF ORDER REQUIRED. A person does not violate s. 551.301,
7 551.303 to 551.306, 551.504, or 551.511 by an offer to sell, offer to purchase, sale, or
8 purchase effected after the entry of an order issued under this section if the person
9 did not know, and in the exercise of reasonable care could not have known, of the
10 order.

****NOTE: I have removed what was section 204 (c) added by the WI study group draft. This provision was not in the uniform act and is sufficiently covered under s. 551.503.

11 (3) ADDITIONAL INFORMATION REQUIRED. With respect to an exemption under s.
12 551.201 or 551.202 that is perfected if a notice or other information is filed with the
13 division of securities and the division does not disallow the exemption within a
14 specified period after the filing, the division may, within 10 days after the filing date
15 of the notice or other information, require that additional information reasonably
16 related to the offering be filed. If the division requires additional information, the
17 date by which the division may disallow the exemption is 10 days after the date of
18 filing that information.

19 SUBCHAPTER III

20 REGISTRATION OF SECURITIES AND

21 NOTICE FILING OF FEDERAL COVERED SECURITIES