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2**Clearinghouse Rule 09-056****PROPOSED ORDER OF THE STATE OF WISCONSIN,  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES  
ADOPTING RULES**

3 The Wisconsin Department of Financial Institutions, Division of Securities proposes an order to  
4 amend ss. DFI—Sec 1.02(5)(b) and (c); repeal ss. DFI—Sec 1.02(8), 2.01(9) and (10), 2.02(9)(b)  
5 and (m); amend ss. DFI—Sec 3.03(1); amend ss. DFI—Sec 4.01(3) and (4)(e) – (g), 5.01(4)(a)  
6 and (b), and 5.05(2)(a); create s. DFI—5.13(4); amend s. DFI—7.01(2)(title) and (c); and repeal  
7 ss. DFI—Sec 9.01(1)(b)10 and 13 relating to minor revisions to securities administrative code  
8 sections for conformity with Wisconsin securities statutes, filings and securities agent  
9 examination matters.

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**Analysis Prepared by the Department of Financial Institutions, Division of Securities**

Statute(s) interpreted: s. 551.615, Stats.

Statutory authority: ss. 551.406(5), 551.605(1), and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to ch. 551, Stats., the department regulates securities.

10 Summary of proposed rule: The objective of the rule is to amend ss. DFI—Sec 1.02(5)(b) and  
11 (c); repeal ss. DFI—Sec 1.02(8), 2.01(9) and (10), 2.02(9)(b) and (m); amend ss. DFI—Sec  
12 3.03(1); amend ss. DFI—Sec 4.01(3) and (4)(e) – (g), and 5.01(4)(a) and (b), and 5.05(2)(a);  
13 create s. DFI—5.13(4); amend s. DFI—7.01(2)(title) and (c); and repeal ss. DFI—Sec  
14 9.01(1)(b)10 and 13. The purpose of the rule is as follows: Section 1. These amendments are  
15 necessary to clarify that these apply to federally-covered advisors, their investment adviser  
16 representatives and state advisers, and also to correct cross references. Section 2. This section  
17 can be repealed as duplicative to the definition in s. 551.102(11)(m), Stats. Section 3. As a  
18 result of 2007 Wisconsin Act 196, these exemptions are no longer necessary. Section 4. These  
19 sections can be repealed because of the language and scope of the merger/reorganization and  
20 employee benefit plan registration exemptions resulting from 2007 Wisconsin Act 196. Section  
21 5. These amendments provide for an electronic filing alternative (to the existing hardcopy notice  
22 filing provision) for federal Regulation D/Rule 506 securities offerings that are or will be made  
23 in Wisconsin. Section 6. This amendment provides specific recognition of electronic prospectus  
24 delivery modes that comply with federal requirements on the subject. Section 7. The  
25 amendment to s. DFI—Sec 4.01(3) clarifies that if an applicant has received a waiver, he or she  
26 need not again take and pass such exams. The amendments to ss. DFI—Sec 4.01(4)(3) – (g)  
27 clarify that the even though the applicant may receive a waiver, it does not relieve the applicant  
28 from passing one of the state law exams. Section 8. Section DFI—Sec 5.01(4)(a) embodies two  
29 distinct waiver concepts that are best separated, and the amendment eliminates a conflict with

30 (b). Amending s. DFI—Sec 5.01(4)(b) preserves the minimum qualification standard envisioned  
31 by s. DFI-Sec 5.01(3). Section 9 corrects a citation. Section 10 is necessary to provide the  
32 exemption from registration for investment adviser representatives of noticed filed federal  
33 covered investment advisers in order to comply with the provisions of federal law. Section 11.  
34 Because of the change from “licensing” to “registration” for broker-dealer and investment  
35 adviser matters, these amendments help differentiate between “licensee” matters and registration  
36 of securities matters. Section 12. Form IAR (WI) is no longer necessary because renewals are  
37 handled via IARD, and form IAUSR(WI) will be discontinued as part of the application process.

Summary of and preliminary comparison with existing or proposed federal regulation: There are no newly-developed or proposed federal regulations addressed by this rule. However, Wisconsin Securities Law and rules are generally coordinated with corresponding federal requirements, pursuant to s. 551.615, Stats.

Comparison with rules in adjacent states: These rule chapters reflects the 2002 Uniform Securities Act which Iowa and Minnesota have adopted and written rules; Illinois and Michigan have not.

Summary of factual data and analytical methodologies: The division applied its own experience in its regulation of securities generally for the minor clarifications, corrections, revisions and examination matters addressed by the rule.

Analysis and supporting documentation used to determine effect on small business: The rule makes minor clarifications, corrections and revisions for conformity with existing statutes; imposes no additional substantive requirements; and reduces the same.

### **Agency Contact Persons**

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency’s internal processing of the proposed rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the proposed rule may also be obtained and reviewed at the Department of Financial Institution’s website, www.wdfi.org. Written comments must be received by the conclusion of the department’s hearing regarding the proposed rule.

For substantive questions on the rule, contact Randall Schumann, Attorney, Department of Financial Institutions, Division of Securities, P.O. Box 1768, Madison, WI 53701-1768, tel. (608) 266-3414, e-mail randall.schumann@wisconsin.gov.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Securities adopts the following:

39 **DFI-Sec 1.02(5)(b)** For purposes of ss. 551.403 (1), ~~and 551.404 (1)~~ and 551.405(1), Stats.,  
40 advising any person in this state through the United States mail, by telephone or by other means  
41 from outside or from within this state as to the value of securities, the advisability of investing in,  
42 purchasing or selling securities, or issuing analyses or reports concerning securities to any person  
43 in this state through the United States mail, by telephone or by other means; and

44 **DFI-Sec 1.02(5)(c)** Except as provided under s. DFI-Sec ~~5.12~~ 5.13, for purposes of ss. 551.401  
45 (1), 551.402 (1), 551.403 (1), ~~and 551.404 (1)~~ and 551.405(1), Stats., soliciting any person in this  
46 state through the United States mail, by telephone or by other means from outside or from within  
47 this state to become a customer, client or subscriber of the person on whose behalf the soliciting  
48 is performed.

49 SECTION 2. DFI-Sec 1.02(8) is repealed.

50 SECTION 3. DFI-Sec 2.01(9) and (10) are repealed.

51 SECTION 4. DFI-Sec 2.02(9)(b) and (m) are repealed.

52 SECTION 5. DFI-Sec 2.04(2) is amended to read:

53 (2) With respect to a federal covered security referred to in s. 551.302 (3), Stats., unless the  
54 security is registered or exempt from registration under ss. 551.201, 551.202, Stats., or rule or  
55 order under s. 551.203, Stats., the issuer or a person acting on behalf of the issuer shall ~~file~~ make  
56 a filing with the division meeting the requirements of paras. (a) or (b) below not later than 15  
57 days after the first sale of the security in this state, ~~and~~:

58 (a) A notice consisting of a photocopy of a completed Form D as prescribed by rule 503 of  
59 regulation D under the securities act of 1933, signed by the issuer that has been filed  
60 electronically with the U.S. securities and exchange commission, together with a \$200 fee.

61 (b) An electronic filing under the Electronic Filing of Form D (EFD) System developed by the  
62 North American Securities Administrators Association and operated by PNC Global Investment  
63 Servicing or its affiliate, that designates Wisconsin as a state in which the offering is or will be  
64 made, and allocates to Wisconsin a \$200 fee.

65 SECTION 6. DFI-Sec 3.03(1) is amended to read:

66 **DFI-Sec 3.03 Prospectus requirements.** (1) As a condition of registration, a prospectus,  
67 offering circular, or similar document meeting the requirements of subs. (2), (3), (4) and (5) shall  
68 be sent or given to each person to whom an offer is made by or for the account of the issuer or  
69 any other person on whose behalf the offering is made, or by any underwriter or broker-dealer  
70 who is offering part of an unsold allotment or subscription as a participant in the distribution.  
71 The document may be sent or given in hardcopy form, or may be provided in compliance with  
72 applicable federal requirements for electronic delivery of prospectuses. The document shall be  
73 sent or given either before or concurrently with the earlier of any of the following:

74 SECTION 7. DFI-Sec 4.01(3) and (4)(e) – (g) are amended to read:

75 **DFI-Sec 4.01(3)** Unless waived under sub. (4), each applicant for an initial registration as a  
76 broker-dealer or agent is required to take and pass within the two year period immediately  
77 preceding the "FILING DATE" of the application reflected on the records of the central  
78 registration depository, either the Series 63 Uniform Securities Agent State Law Examination or  
79 the Series 66 Uniform Combined State Law Examination, and take and pass within the two year  
80 period immediately preceding the "FILING DATE" of the application reflected on the records of  
81 the central registration depository, or receive a waiver from passing, one of the general securities  
82 business examinations in par. (a), unless the applicant's proposed securities activities will be  
83 restricted, in which case the applicant is required to take and pass, or receive a waiver from

84 passing, each examination in pars. (b) to (h) that relates to the applicant's proposed securities  
85 activities:

86 **DFI-Sec 4.01(4)(e)** The applicant is currently registered and in good standing with The  
87 Securities and Futures Authority of Great Britain and has passed the Series 17 Modified General  
88 Securities Representative Qualification Examination for United Kingdom Representatives, and  
89 either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform  
90 Combined State Law Examination, except that the applicant's activities may not include the offer  
91 and sale of municipal Securities unless the applicant passes the examination listed in sub. (3) (d).

92 **DFI-Sec 4.01(f)** The applicant is currently registered and in good standing as an agent with any  
93 Canadian stock exchange or with a securities regulator of any Canadian province or territory, or  
94 with the Investment Dealers Association of Canada and has passed either the Series 37 or Series  
95 38 Canada modules of the Series 7 general securities representative qualification examination,  
96 and either the Series 63 Uniform Securities Agent State Law Examination or the Series 66  
97 Uniform Combined State Law Examination, except that the applicant's activities may not include  
98 the offer and sale of municipal securities unless the applicant passes the examination listed in  
99 sub. (3) (d).

100 **DFI-Sec 4.01(g)** The applicant is currently registered and in good standing as an agent with any  
101 Japanese stock exchange or with any Japanese securities dealers association and has passed  
102 ~~either~~ the Series 47 Japan module of the Series 7 general securities representative qualification  
103 examination, and either the Series 63 Uniform Securities Agent State Law Examination or the  
104 Series 66 Uniform Combined State Law Examination, except that the applicant's activities may  
105 not include the offer and sale of municipal securities unless the applicant passes the examination  
106 listed in sub. (3) (d).

107 SECTION 8. DFI-Sec 5.01(4)(a) and (b) are amended to read:

108 **DFI-Sec 5.01(4)(a)** The applicant has taken and passed either the Series 65 Uniform Investment  
109 Adviser State Law Examination or both the Series 66 Uniform Combined State Law  
110 Examination and the Series 7 General Securities Representative Examination within 2 years prior  
111 to the date the application is filed with the division ~~or at any time if the applicant has been~~  
112 ~~registered as an investment adviser or investment adviser representative in another state within~~  
113 ~~the 2 years prior to the date the application is filed with the division if the other state where the~~  
114 ~~applicant is registered requires the examinations specified in sub. (3).~~

115 **DFI-Sec 5.01(4)(b)** The applicant has been registered as an investment adviser or registered as  
116 an investment adviser representative in any jurisdiction in the United States within 2 years prior  
117 to the date the application is filed if that jurisdiction required the examinations specified in sub.  
118 (3)(a).

119 SECTION 9. DFI-Sec 5.05(2)(a) is amended to read:

120 **DFI-Sec 5.05(2)(a)** Provides for compensation to the investment adviser on the basis of a share  
121 of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client  
122 other than a person specified in s. 551.403 (2), Stats., or s. DFI-Sec 5.13.

123 SECTION 10. DFI-Sec 5.13(4) is created to read:

124 **DFI-Sec 5.13(4)** A supervised person of a federal covered investment adviser notice filed in this  
125 state is exempt from the registration requirement in s. 551.404(1), Stats., if that supervised  
126 person has no place of business in this state.

127 SECTION 11. DFI-Sec 7.01(2)(title) and (c) are amended to read:

128 **DFI-Sec 7.01(2)** SECURITIES REGISTRATION EXEMPTION AND FEDERAL  
129 REGULATION D MATTERS.

