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 This section can be repealed as  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 These sections can be repealed  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

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

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38 SECTION 1. DFI-Sec 1.02(5)(b) and (c) are amended to read:

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

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 electronically  
60 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, offering  
67 circular, or similar document meeting the requirements of subs. (2), (3), (4) and (5) shall be sent  
68 or given to each person to whom an offer is made by or for the account of the issuer or any other  
69 person on whose behalf the offering is made, or by any underwriter or broker-dealer who is  
70 offering part of an unsold allotment or subscription as a participant in the distribution. The  
71 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 passing,  
84 each examination in pars. (b) to (h) that relates to the applicant's proposed securities activities:

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

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

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

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

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

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

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

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

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

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

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

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

127 **DFI-Sec 7.01(2)(c)** Application for an opinion confirming a securities registration exemption or  
128 an exclusion from a definition.....\$500.

