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Report From Agency**ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES
ADOPTING RULES**

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

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.

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 This section can be repealed as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 These sections can be repealed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

30 amendment eliminates a conflict with (b). Amending s. DFI—Sec 5.01(4)(b) preserves the
31 minimum qualification standard envisioned by s. DFI-Sec 5.01(3). Section 9 corrects a citation.
32 Section 10 is necessary to provide the exemption from registration for investment adviser
33 representatives of noticed filed federal covered investment advisers in order to comply with the
34 provisions of federal law. Section 11. Because of the change from “licensing” to “registration”
35 for broker-dealer and investment adviser matters, these amendments help differentiate between
36 “licensee” matters and registration of securities matters. Section 12. Form IAR (WI) is no longer
37 necessary because renewals are handled via IARD, and form IAUSR(WI) will be discontinued as
38 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.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: No comments were received.

Agency Contact Persons

To obtain a copy of the rule or fiscal estimate at no charge or for questions regarding the agency’s internal processing of the 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 rule may also be obtained and reviewed at the Department of Financial Institution’s website, www.wdfi.org.

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

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

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

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

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

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

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

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

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

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

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

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

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

76 **DFI-Sec 4.01(3)** Unless waived under sub. (4), each applicant for an initial registration as a
77 broker-dealer or agent is required to take and pass within the two year period immediately
78 preceding the "FILING DATE" of the application reflected on the records of the central
79 registration depository, either the Series 63 Uniform Securities Agent State Law Examination or
80 the Series 66 Uniform Combined State Law Examination, and take and pass within the two year
81 period immediately preceding the "FILING DATE" of the application reflected on the records of

82 the central registration depository, ~~one of~~ or receive a waiver from passing, the general securities
83 business examinations in par. (a), unless the applicant's proposed securities activities will be
84 restricted, in which case the applicant is required to take and pass, or receive a waiver from passing,
85 each examination in pars. (b) to (h) that relates to the applicant's proposed securities activities:

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

92 **DFI-Sec 4.01(4)(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, and
96 either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform
97 Combined State Law Examination, except that the applicant's activities may not include the offer
98 and sale of municipal securities unless the applicant passes the examination listed in sub. (3) (d).

99 **DFI-Sec 4.01(4)(g)** The applicant is currently registered and in good standing as an agent with any
100 Japanese stock exchange or with any Japanese securities dealers association and has passed ~~either~~
101 the Series 47 Japan module of the Series 7 general securities representative qualification
102 examination, and either the Series 63 Uniform Securities Agent State Law Examination or the
103 Series 66 Uniform Combined State Law Examination, except that the applicant's activities may

104 not include the offer and sale of municipal securities unless the applicant passes the examination
105 listed in sub. (3) (d).

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

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

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

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

118 **DFI-Sec 5.05(2)(a)** Provides for compensation to the investment adviser on the basis of a share
119 of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client
120 other than a person specified in s. 551.403 (2), Stats., or s. DFI-Sec ~~5.12~~ 5.13.

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

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

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

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

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

130 SECTION 12. DFI-Sec 9.01(1)(b)10. and 13. are repealed.

131 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: October 30, 2009

Agency: _____

Patricia Struck, Administrator
Department of Financial Institutions
Division of Securities