

Clearinghouse Rule 25-045

**PROPOSED ORDER OF THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS,  
DIVISION OF SECURITIES  
CREATING RULES**

The Wisconsin Department of Financial Institutions – Division of Securities, proposes an order to repeal ss. DFI-Sec 1.02 (12), (14) (intro.), 2.02 (9) (n) 2., 2.029 (1), (2), (4), (5), and (6), 3.03 (4) (a) to (q), 4.01 (3) (e), (f), and (g), (4) (c), 4.05 (9) (b), 4.06 (1) (c) 2., 5.01 (3) (b), 5.05 (8) (b) 1., 5.10 (3), 5.12, 6.05 (2), 7.01 (5) (d), and (8) (a) and (c), 35.01 (3), and 35.04; to renumber ss. DFI-Sec 1.02 (1) (a), (2), (3), (5), (7), (9), (13), (14) (b), (18), (19) and (2), 2.02 (9) (n) 6., 4.01 (3) (h), 5.035 (1) (intro.), (a), (b), and (c), and (d) to (g), (3) (a) (intro.), (a) 1. (intro.) and 2., (b), and (c), (4) (c) and (d), 5.06 (17) (b) to (e), (19) (g), and (25) (a) to (e), and 6.05 (1) (a) to (e); to renumber and amend ss. DFI-Sec 1.02 (1) (b), (4), (10), (11), (14) (a), (c), (d), 2.01 (4) (a) and (b), (5) (a) and (b), 2.02 (9) (n) 5. and 7., 2.027 (1) (e) and (f), 3.01 (intro.), 4.05 (8) (h) and (i), and (9) (a), 4.06 (1) (c) 1., 5.01 (3) (a), (4) (intro.), 5.035 (4) (a) and (b), 5.06 (13), (17) (a), and (25) (intro.), 31.01 (1), (7); to amend DFI-Sec 1.02 (1) (intro.), 2.01 (1) (a) and (3), 2.01 (5) (intro.), 2.02 (1), (2), (5), (7), (9) (intro.), (a), (c), (d), (g), (h), (i), (k), (L) (intro.), and (n) (intro.), 1., 8., and 9., (o), 2.027 (1) (intro.), (a) to (d), and (2), 2.028 (intro.), (1) (a), (4), (7) (a) and (b), and (8) (intro), (a) and (b), 2.029 (title) and (3) (a), 2.03, 2.04 (1) and (2) (intro.) and (b), 3.01 (1) (a) and (2), 3.02 (1), 3.03 (1) (a) to (c), (2) (a) to (g), (3), (4) (intro.) and **NOTE**, and (5), 3.04, 3.05 (3), 3.07, 4.01 (1) (a), (2) (a), (b), and (c), (3) (intro.), (4) (intro.), (b) (intro.), and 2., (e), and (f), (5), (7), and Note, (3), (4) (intro.) and (a), (7) (c), and (8), 4.05 (3), (4), (7), (8) (intro.), (a), (b), (c) (intro.), 1. (intro.), and 2., (d) to (f), (g) (intro.), (j), (k) (intro.), 1., and 2., and (L), (10), and (11) (intro.) and (b), 4.06 (1) (intro.), (a), (b), (d) to (u), (2) (intro.), and (b) to (g), 4.10 (1) (intro.), 5.01 (1) (intro.) and (a), (2) (f) 2. 3., (4) (a) 1. and 2., (b), and (d), (5), 5.02 (2) (a) and (b), 5.03 (1) (L), (n), and (p) 1. and 2., (2) (c), (3), and (5), 5.035 (title), (2) (a), (b) 1. (intro.), (c), (d), (e) (intro.) and 2. a., and (f), 5.04 (2), 5.05 (1), (2) (intro.) and (b), (3), (4), (5), (7), (8) (a), (e) 1. and 3., (11) (intro.), (a), (b), (c), (d) (intro.), (12) (intro.), and (13), 5.06 (intro.), (2), (3), (4), (5), (9), (10), (16) (intro.) and (a), and (19) (intro.) and (b) (intro.), 5.07 (2) (b), 5.10 (1), 5.13 (1) (intro.) and (2) (intro.) and (a), 6.01,

6.02, 6.03, 6.05 (1) (intro.), 7.01 (3) (c) 1. and 2., (d) 1. and 2., and (6) (h), 7.02 (1) (c), 7.05 (2) (a), (b) and (c), 7.06 (1) (intro.) and (a), 8.01 (intro.) and (1), 8.02, 8.04, 8.05 (2), 8.06, 8.07, 10.02 (5) (b) (intro.) and (6), 11.03 (2), 31.01 (2) (intro.), (a), (b), (d), and (e) (intro.) and 1., (4) (intro.) and (d), (5), (6), and (8), 32.03, 32.05 (1) (intro.) (a) 1. and 2. (c) 1. and 2., and (d), 32.06, 32.09, 34.01, and 35.01 (3); to repeal and recreate ss. DFI-Sec 5.01 (4) (f) and 9.01 and **Note**; and to create ss. DFI-Sec 1.02 (5e), 2.01 (6) (a) (intro.) and (b), 2.023 (title) and (intro.), 2.05 (title), 4.01 (1) (c), (3m), and (4) (g), 4.05 (8m) (c), 4.06 (3), 4.09 (3), 4.11, 5.01 (8), 5.06 (25) and (26), 5.09 (3), 6.05 (1) (ae) and (am), and (2e) (intro.) and (f), and 35.01 (1) (intro.), of the Wisconsin Administrative Code, relating to extending the validity of qualification exams if certain conditions are met, creating a registration exemption for certain merger and acquisition brokers, correcting cross-references, eliminating obsolete provisions, correcting errors, and modifying the structure of existing rules in nonsubstantive ways to improve clarity and meet current drafting standards .

The scope statement for this rule was approved by the Governor on April 3, 2025, and published in *Administrative Register* No. 832A1 on April 7, 2025. The scope statement was approved by the Administrator of the Division of Securities on June 3, 2025.

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## ANALYSIS

### 1. Statutes interpreted:

Sections 551.401 (2) (h), 551.411 (8), 551.605 (1), 227.14 (1), and 227.29 (1) of the Wisconsin Statutes.

### 2. Statutory authority:

Sections 551.401 (2) (h), 551.411 (8), 551.605 (1), 227.14 (1), and 227.29 (1) of the Wisconsin Statutes.

### 3. Explanation of agency authority:

Pursuant to Wis. Stats., s. 551.401 (2) (h), the Division Administrator is empowered to create new exemptions to the broker-dealer requirements by rule.

Pursuant to Wis. Stats., s. 551.411 (8), the Division Administrator is further authorized to adopt rules that require continuing education for investment adviser representatives.

Wis. Stats., s. 551.605 (1) grants the Division Administrator the authority to adopt any “rules necessary or appropriate to carry out” chapter 551.

Wis. Stats., s. 227.14 (1), requires agencies drafting administrative rules to “adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. [227.15 \(7\)](#),” while Wis. Stat. s. 227.29 (1) directs agencies to address rules that are unauthorized, obsolete or unnecessary, or duplicative of, superseded by, or in conflict with other applicable state or federal law.

#### **4. Related statutes or rules:**

Wisconsin law requires the Division Administrator to ensure that a rule adopted or amended or an order issued or amended, under Wis. Stats., ch. 551, is not only “necessary or appropriate in the public interest or for the protection of investors”, but serves “to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures. See Wis. Stats., ss. 551.605 (2) and 551.608.

Parts of the proposed rule are based on this requirement to achieve uniformity in two ways: First, by implementing a program of the North American Securities Administrators Association (NASAA), the Exam Validity Extension Program (EVEP) and second, by implementing a NASAA model rule which creates new exemption from registration requirements for broker-dealers and agents under Wis. Stats., ss. 551.401 (1) and 551.402 (1). Approximately 25 states have adopted provisions that are based on or similar to the NASAA model rule.

## **5. Plain language analysis:**

The Division of Securities, a division of the Department of Financial Institutions, seeks to amend certain rules it administers in three respects.

First, it seeks amendments in order to implement the North American Securities Administrators Association (NASAA) Exam Validity Extension Program (EVEP), which offers an opportunity for registered representatives and investment adviser representatives to extend the validity of their NASAA professional qualification exams for a period of up to five years by opting in to the program, paying an annual fee, and maintaining certain continuing education requirements. The examinations to which EVEP applies include the Series 63 Uniform Securities Agent State Law Examination and the Series 65 Uniform Investment Adviser Law Examination. It should be noted that the Series 66 Uniform Combined State Law Examination qualifies individuals in two capacities, as a representative of both a broker-dealer and an investment adviser. To extend both credits of the Series 66 exam, an individual must enroll both Series 63 and Series 65 credits, if applicable.

Second, the rule creates a new exemption from the registration requirements for broker-dealers and agents under Wis. Stats. ss. 551.401 (1) and 551.402 (1) for certain merger and acquisition brokers, based on a model rule prepared by NASAA related to merger and acquisition brokers. The NASAA model rule was recently updated in May 2024. Under the proposed rule, the exemption generally applies to a merger and acquisition broker, defined as a broker, and any associated person, who effects securities transactions solely in connection with the transfer of ownership of an eligible privately held company, subject to several conditions and limitations. To be considered a merger and acquisition broker under the rule, the individual must reasonably believe that upon the conclusion of the transaction, any person acquiring securities or assets of the eligible company will, alone or acting with others, control and be active in the management of the company and engage in activities such as electing executive officers, approving the annual budget, and serving as an executive or executive manager of the company.

Third, the Division proposes non-substantive revisions to its rules to keep up to date with current law and modern drafting practices, including:

- a. Eliminating obsolete rules, references, and cross-references identified by staff or in the rules report required under Wis. Stat., s. 227.29 (1) (c); correcting erroneous or changed cross-references; and updating references to state, national, and international organizations to refer to them by the proper name.
  
- b. Modifying the structure of existing rules in nonsubstantive ways to ensure that the rules are drafted to be substantially in the form and style used by the legislative reference bureau (LRB), and consistent with the manual prepared by the bureau and the legislative council staff, as provided in Wis. Stat., ss. 227.14 (1) and 227.15 (7).
  
- c. Improving clarity by reorganizing various definitions, and fixing stylistic problems, to address incorrect alphabetization, formatting, and punctuation issues that do not follow current LRB drafting standards, and relocating rules improperly listed as “definitions” to more appropriate locations in the rules.

## **6. Summary of, and comparison with, existing or proposed federal regulation:**

There are several federal laws that apply to those individuals and firms affected by the proposed rule, such as broker-dealers, agents, investment advisers, investment adviser representatives, federal covered investment advisers, and securities firms. Those federal laws include the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. The federal laws, Wisconsin’s securities laws (see Wis. Stats., chs. 551 to 553), and the administrative rules work together to protect consumers and regulate the securities industry, and those individuals described in this item who work in that industry.

Regarding EVEP, federal law does not regulate the registration of individuals and the examinations that qualify them for registration with state securities regulators.

It is therefore important for state regulations to address the validity of the qualification examinations that individuals must maintain for their registration applications.

Federal law does include a registration exemption for merger and acquisition brokers which became effective in March 2023 after an amendment to subsection 15(b)(13) of the Securities Exchange Act (and previously existed under an SEC no-action letter). NASAA then amended its existing model rule to achieve uniformity with federal law. Without that uniformity, state law would require securities registration for brokerage activities that are exempt under federal law, thus frustrating this state's obligation to "effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments", as provided in Wis. Stat. s. 551.608 (1).

## **7. Comparison with rules in adjacent states:**

The neighboring states of Illinois, Iowa, and Michigan have all adopted a similar rule, based on the NASAA model rule. See Ill. Admin. Code title 14, subtitle A, ch. 1, part 130, Subpart H, § 130.830; Iowa Admin. Code, ch. 50, Div. II, § 191-50.10 (502); Mich. Admin. Code R. 451.4.2

Minnesota has not adopted a similar rule, but it is the Division's understanding that Minnesota plans on incorporating by reference the recent amendments to the federal Securities Exchange Act, which was the impetus for NASAA to adopt the amendments to the model rule.

## **8. Summary of factual data and analytical methodologies:**

The proposed changes are based on the experience of DFI staff in administering the securities statutes and administrative code provisions under its jurisdiction, pursuant to state law and rules, and federal law contained in acts such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940.

The Division's staff has had multiple discussions with NASAA and colleagues in other states, as well as representatives of industry, regarding EVEP and the exemption of merger and acquisition brokers from the registration requirements.

These discussions are predicated on the goals of increasing uniformity with other states, protecting consumers, and simplifying the regulatory procedures for industry.

The revisions foster compliance with existing statutory policies requiring the elimination of obsolete or unauthorized rules, correction of cross-reference errors, elimination of conflicts with current statutes, and modification of existing rules to ensure consistency with current drafting conventions.

**9. Analysis and supporting documents used to determine effect on small business:**

Small businesses are at most minimally affected by these revisions, as described in item # 10.

**10. Anticipated costs incurred by private sector:**

The rule's estimated economic and fiscal impact on securities firms and investment advisers is expected to be negligible because the changes contained in the rule do not require these firms or individuals to assume any new duties or obligations, significantly change existing practices, or incur new costs.

**11. Effect on small business:**

Small businesses are at most minimally affected by these revisions.

**12. Agency contact person:**

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**13. Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date and time of the public hearing will be published in the Wisconsin Administrative Register.

By mail: Marc Shovers, Assistant Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By delivery: Marc Shovers, Assistant Chief Legal Counsel, Department of Financial Institutions, 4822 Madison Yards Way, North Tower, Madison, WI 53703.

By e-mail: [DFIComments@dfi.wisconsin.gov](mailto:DFIComments@dfi.wisconsin.gov)

Via the department's website: <https://dfi.wi.gov/Pages/About/ProposedRules.aspx>

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**TEXT OF RULE**

**SECTION 1.** DFI-Sec 1.02 (1) (intro.) is amended to read:

DFI-Sec 1.02 (1) (intro.) ~~With respect to advertising as referenced~~ "As the term "Advertising" is used in s. 551.202 (24) and (25), Stats., and s. DFI-Sec 2.01 (4) and (5), the following definitions shall apply in association with the use of that term:

**SECTION 2.** DFI-Sec 1.02 (1) (a) is renumbered DFI-Sec 1.02 (1) (b).

**SECTION 3.** DFI-Sec 1.02 (1) (b) is renumbered DFI-Sec 1.02 (1) (a), and, as renumbered, is amended to read:

1.02 (1) (a) "Circulation" means advertising mailed, delivered, or communicated in substantially similar form to more than 10 persons in this state (exclusive of persons designated under s. [551.102 \(11\)](#), Stats.), except that the distribution of written offering materials in the form of a confidential memorandum or other offering or disclosure document in connection with an offering exempt from registration under s. [551.202 \(13\) \(a\)](#), [\(am\)](#) and [\(24\)](#), Stats., or s. ~~DFI-Sec 2.029~~ shall not be deemed circulation; ~~and~~ .

**SECTION 4.** DFI-Sec 1.02 (2) is renumbered DFI-Sec 1.02 (3).

**SECTION 5.** DFI-Sec 1.02 (3) is renumbered DFI-Sec 1.02 (6).

**SECTION 6.** DFI-Sec 1.02 (4) is renumbered DFI-Sec 7.07 (intro.), and, as renumbered, is amended to read:

**DFI-Sec 7.07** ~~An~~ **Sales, offers to sell.** To the extent that the security holders of an issuer are concerned, an "offer to sell", within the meaning of as that term is used in s. 551.102 (26), Stats., is involved, so far as the security holders of an issuer are concerned, if there is submitted to the vote of the security holders vote on a proposal, plan, or agreement for any of the following:

- (1) A reclassification of securities of such issuer which involves the substitution or exchange of a security for another security;
- (2) A statutory merger or consolidation in which securities of the issuer will become or be exchanged for securities of any other issuer;
- (3) A transfer of assets of the issuer to another person in consideration of the issuance of securities of the other person or any of its affiliates; ~~or~~.

**SECTION 7.** DFI-Sec 1.02 (5) is renumbered DFI-Sec 1.02 (10).

**SECTION 8.** DFI-Sec 1.02 (5e) is created to read:

1.02 (5e) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

**SECTION 9.** DFI-Sec 1.02 (7) is renumbered DFI-Sec 1.02 (2), and, DFI-Sec 1.02 (2) (a), as renumbered, is amended to read:

DFI-Sec 1.02 (2) (a) For purposes of ch. DFI–Sec 4, “branch office” has the same meaning as rule ~~3010(g)(2)~~ 3110(f)(2)(A) of the Financial Industry Regulatory Authority.

**SECTION 10.** DFI-Sec 1.02 (9) is renumbered DFI-Sec 1.02 (7).

**SECTION 11.** DFI-Sec 1.02 (10) is renumbered DFI-Sec 5.14, and, as renumbered, is amended to read:

DFI-Sec 5.14 **Investment advisers, investment adviser representatives.** For purposes of s. 551.102 (15) (b) and (c), Stats., a person's activities that come within the definition of “investment adviser” are not “performed solely incidental” either to the practice of his or her profession or the conduct of his or her business if the person holds himself or herself out generally to the public as being a financial or investment planner, consultant, adviser, or similar designation by means of advertisements, cards, signs, circulars, social media, websites, letterheads, or similar means.

**SECTION 12.** DFI-Sec 1.02 (11) is renumbered DFI-Sec 2.05 (1), and DFI-Sec 2.05 (1) (intro.) and (a), as renumbered, are amended to read:

DFI-Sec 2.05 (1) For purposes of determining availability of the registration exemption of s. 551.201 (1) (a), Stats., in connection with the offer or sale of a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or other instrumentality of any of the foregoing, a “nongovernmental industrial or commercial enterprise” is not present if all of the following apply:

(a) The source, under a lease, sale, or loan arrangement, for payment of principal and interest on the revenue obligation, is a duly organized and existing not-for-profit corporation under applicable state law and is an organization described in section 501 (c) (3) of the internal revenue code which qualifies for exemption from federal taxation under section 501 (a) of the internal revenue code; ~~and~~ .

**SECTION 13.** DFI-Sec 1.02 (12) is repealed.

**SECTION 14.** DFI-Sec 1.02 (13) is renumbered DFI-Sec 2.05 (2).

**SECTION 15.** DFI-Sec 1.02 (14) (intro.) is repealed.

**SECTION 16.** DFI-Sec 1.02 (14) (a) is renumbered DFI-Sec 1.02 (4m), and, as renumbered, is amended to read:

DFI-Sec 1.02 (4m) ~~Client~~ For purposes of the definition of “investment adviser” in s. 551.102 (15), Stats., and “investment adviser representative” in s. 551.102 (16), Stats., “client”, as that term is used in s. 551.102 (16), Stats., has the meaning given in rule section 203(b)(3)1 under the Investment Advisers Act of 1940, except that “client” does not include persons that are not residents of the United States.

**SECTION 17.** DFI-Sec 1.02 (14) (b) is renumbered DFI-Sec 1.02 (9m) and 1.02 (9m) (intro.), as renumbered, is amended to read;

DFI-Sec 1.02 (9m) (intro.) ~~“Supervised~~ For purposes of the definition of “investment adviser” in s. 551.102 (15), Stats., and “investment adviser representative” in s. 551.102 (16), Stats., “Supervised person” means any of the following:

**SECTION 18.** DFI-Sec 1.02 (14) (c) is renumbered DFI-Sec 1.02 (9s), and, as renumbered, is amended to read:

1.02 (9s) ~~“Third~~ For purposes of the definition of “investment adviser” in s. 551.102 (15), Stats., and “investment adviser representative” in s. 551.102 (16), Stats., “third party solicitor” means a person soliciting others to become clients on behalf of a registered investment adviser or a federal covered investment adviser who is neither a partner, officer, director, or employee of the adviser, nor a supervised person of that adviser.

**SECTION 19.** DFI-Sec 1.02 (14) (d) is renumbered DFI-Sec 1.02 (5m), and, as renumbered, is amended to read:

1.02 (5m) ~~“Investment~~ For purposes of the definition of “investment adviser” in s. 551.102 (15), Stats., and “investment adviser representative” in s. 551.102 (16), Stats., “investment adviser representative” as defined in s. 551.102 (16), Stats., does not include a supervised person of an investment adviser or federal covered investment adviser that does not have more than 5 natural persons as clients in the United States who are not excepted persons.

**SECTION 20.** DFI-Sec 1.02 (18) is renumbered DFI-Sec 1.02 (9).

**SECTION 21.** DFI-Sec 1.02 (19) is renumbered DFI-Sec 1.02 (11).

**SECTION 22.** DFI-Sec 1.02 (20) is renumbered DFI-Sec 1.02 (5).

**SECTION 23.** DFI-Sec 2.01 (1) (a) and (3) are amended to read:

DFI-Sec (1) (a) 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 exempted under s. [551.201 \(1\)](#), Stats., if any of the following ~~are met~~ conditions apply:

1. The enterprise is a public utility described under s. [551.201 \(5\)](#), Stats., having securities registered under section 12 of the ~~securities exchange act~~ Securities Exchange Act of 1934, or is a wholly-owned subsidiary of one or more of such utilities.

2. Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale, or loan arrangement, are covered securities under section 18(b)(1) of the ~~securities act~~ Securities Act of 1933 or are exempt under s. [551.201 \(6\)](#), Stats.

3. A notice of the proposed offering is filed with the division prior to the offering, including a trust indenture meeting the requirements of s. [DFI-Sec 3.04](#), an official statement, or a prospectus meeting the requirements of s. [DFI-Sec 3.03](#) that contains financial statements for the enterprise and additional information as the division may require, and the division does not by order deny the exemption within 10 days of the date the notice is filed.

(3) The Chicago stock exchange is designated as a national securities exchange qualifying for registration exemption status under s. [551.201 \(6\)](#), Stats., but only with respect to Tier 1 securities listed on that exchange, provided that proposed rule changes with respect to its Tier 1 securities are approved by the U.S. securities and exchange commission, and provided that a Memorandum of Understanding is entered into and is in force and effect between the NYSE Chicago stock exchange and the ~~north american securities administrators, inc.~~ North American Securities Administrators Association, Inc. The designation is subject to the authority of the division to revoke the designation by order based upon a determination that the forecast exchange's requirements for listing or maintenance for Tier 1 securities as contained in the Memorandum of Understanding and as published in the Commerce Clearing House NASAA Reports, have been so changed or

insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The division also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the division under this paragraph shall be in accordance with the provisions of the Memorandum of Understanding relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

**SECTION 24.** DFI-Sec 2.01 (4) (a) is renumbered DFI-Sec 2.01 (4) (a) 1., 2., and 3., and, as renumbered, is amended to read:

DFI-Sec 2.01 (4) (a) The exemption for the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by a person or issuer listed in s. [551.201 \(7\) \(intro.\)](#), Stats., that is a domestic, Wisconsin corporation to persons other than its members is available for use if the issuer or a registered broker-dealer files a notice of the proposed issuance with the division prior to the offering, including: all of the following:

1. A trust indenture meeting the requirements of s. [DFI-Sec 3.04](#), under which the evidence of debt is proposed to be issued;~~a~~

2. A prospectus describing the issuer, the trust indenture, and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. [DFI-Sec 3.03 \(1\)](#);~~and such~~

3. Any additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days.

**SECTION 25.** DFI-Sec 2.01 (4) (b) is amended to read:

DFI-Sec s. 2.01 (4) (b) The exemption for the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by a person or issuer listed in s. [551.201 \(7\) \(intro.\)](#), Stats., that is a domestic, Wisconsin corporation, is available for use without the need for a filing with the division if the securities are sold exclusively to its members. A person does not become a "member" for purposes of this subdivision solely by reason of the purchase of the issuer's securities.

**SECTION 26.** DFI-Sec 2.01 (5) (intro.) is amended to read:

DFI-Sec 2.01 (5) (intro.) ~~The Subject to sub. (6), an exemption for the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by a person or issuer listed in s. 551.201 (7) (intro.), Stats., that is not a domestic, Wisconsin corporation, is available for use if the issuer or a registered broker-dealer files a notice of the proposed issuance with the division prior to the offering, identifying the security and the basis of its qualification under par. (a) or (b) sub. (6) (a) 1. and 2., or (a) 3. and 4. and includes all of the following:~~

~~a (a) A trust indenture meeting the requirements of s. DFI-Sec 3.04, under which the evidence of debt is proposed to be issued; a .~~

~~(b) A prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. DFI-Sec 3.03 (1); and such.~~

~~(c) Any additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days. The security qualifies under this exemption if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation; and the security qualifies under either of the following:.~~

**SECTION 27.** DFI-Sec 2.01 (5) (a) and (b) are renumbered DFI-Sec 2.01 (6) (a) 1., 2., 3., and 4., and, as renumbered, are amended to read:

DFI-Sec 2.01 (6) (a) 1. The issuer and its predecessors have not been in existence for 3 years, and the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings which is or will become a first lien at or prior to the issuance of such evidences of debt, or provisions satisfactory to the division are made for impounding the proceeds from their sale until ~~such~~ a first lien is established, and the total amount of ~~such~~ the securities does not exceed 50% of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

2. A signed or conformed opinion of counsel for the issuer or other evidence satisfactory to the division ~~shall be~~ is provided with respect to the validity and rank of the lien of the mortgage or deed of trust, and evidence

satisfactory to the division shall be provided that the total amount of the securities proposed to be offered does not exceed 50% of the then fair market value of the land and buildings included in the mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

~~(b)~~ 1. 3. The issuer or its predecessors have had an excess of revenues over expenses, excluding interest expense, provision for depreciation and extraordinary items, for each of the 2 fiscal years next preceding ~~such~~ the offer or sale, or average net revenues for the last 3 fiscal years next preceding ~~such~~ the offer or sale, of not less than 1-1/2 times the aggregate annual interest requirements on the issue of securities to be sold under this subsection and all securities of equal or prior rank to be outstanding immediately after ~~such~~ the sale.

~~2.~~ 4. A balance sheet of the issuer as of the end of the last fiscal year preceding the date of filing, and statements of income and changes in financial position and an analysis of surplus of the issuer ~~shall be~~ have been filed for each of its 3 immediately preceding fiscal years meeting the requirements of s. [DFI-Sec 7.06](#).

**SECTION 28.** DFI-Sec 2.01 (6) (a) (intro.) and (b) is created to read:

DFI-Sec 2.01 (6) (a) (intro.) A security qualifies under the exemption described in sub. (5) if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation, and the security qualifies under either subds. 1. and 2. or subds. 3. and 4., as follows:

(b) The division may issue an order denying or revoking an exemption that is otherwise available under sub. (5) within 10 days of the division's receipt of a notice filed under sub. (5).

**SECTION 29.** DFI-Sec 2.02 (1) is amended to read:

DFI-Sec 2.02 (1) An "isolated nonissuer transaction" within the meaning of s. [551.202 \(1\)](#), Stats., means all of the following:

(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; ~~but, except that~~ if the sale is effected through a broker-dealer, the transaction is deemed isolated only if it

is one of not more than 5 such transactions effected by or through the broker-dealer in this state during the prior 12 months;~~and.~~

(b) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers' transactions in accordance with section 4 (4) of the Securities Act of 1933 and rule 144 thereunder;~~;~~ or pursuant to any other transaction not effected through a broker-dealer and not involving a distribution if the sale, including any other sales by the person of securities of the same class during the prior 12 months, does not exceed 1% of the outstanding shares or units of that class.

**SECTION 30.** DFI-Sec 2.02 (2) is amended to read:

DFI-Sec 2.02 (2) ~~In~~ With regard to a transaction between a broker-dealer and a purchaser of a security, in any nonissuer transaction effected by or through a registered broker-dealer under s. 551.202 (6), Stats., pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the purchaser a written acknowledgment that the purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. This exemption includes only transactions between a broker-dealer and a purchaser of a security.

**SECTION 31.** DFI-Sec 2.02 (5) is amended to read:

DFI-Sec 2.02 (5) ~~With~~ Subject to par. (d), with respect to an offer or sale of a security exempted under s. 551.202 (14) or (24), Stats.:

(a) Offerees or persons holding directly or indirectly all the issuer's securities include all joint or common owners and all beneficial owners of its securities, and all beneficial owners of any corporation, partnership, association, or trust holding any of the issuer's securities and organized in connection with the offer or sale of the securities, provided that any relative or spouse, or any relative of the spouse, taking or holding the securities in joint or common tenancy with and having the same home as the offeree or person, shall not be deemed a separate offeree or person;~~;~~

(b) Issuers affiliated by reason of direct or indirect control or persons affiliated by reason of direct or indirect control of any issuer are deemed to be a single issuer or person;~~;~~ but use of an exemption for the offer and sale

of securities by such affiliated issuer or person ~~shall~~ may not be denied on account of ~~such the affiliation provided if~~ the offer and sale are not part of a common business purpose or plan of offering, or if upon the filing of an application the division so orders. A "common business purpose or plan of offering" is presumed where the offer or sale of securities is not separate and distinct from another offer and sale of securities with respect ~~(i)~~ the application of proceeds, ~~(ii)~~ the physical proximity of real property or other assets, or ~~(iii)~~ the financial affairs of the business; .

(d) The exemption for any offer or sale under s. [551.202 \(14\)](#), Stats., is withdrawn with respect to any of the following:

1. ~~Except as provided in this subdivision, any~~ Any offer or sale of interests in an entity that is or will be primarily engaged in oil, gas or mining activities, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds \$100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the division, including any prospectus, circular, or other material to be delivered to offerees, and other information as the division may require, and the division does not by order withdraw, deny or revoke the exemption within 10 days. This ~~paragraph~~ subdivision is not applicable to any offer or sale made by a broker-dealer registered in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control; .

2. Any offering of securities if the issuer, any of its officers, directors, general partners, controlling persons, or affiliates thereof are or would be disqualified ~~from use of the registration exemption in s. [DFI-Sec 2.029](#)~~ as a result of any of the causes specified in s. [DFI-Sec 2.029 \(3\) \(a\) 1. to 4.](#), except for any person ~~or persons~~ subject to a disqualification who meets the conditions for waiver in s. [DFI-Sec 2.029 \(3\) \(b\) 1.](#), or for any person who receives a waiver by the division upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be withdrawn.

**SECTION 32.** DFI-Sec 2.02 (7) is amended to read:

DFI-Sec 2.02 (7) (a) “Stock dividend or equivalent equity distribution” ~~within the meaning of , as those terms are used in~~ s. [551.202 \(22\)](#), Stats., does not include any action by the corporation which has or may have the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class;

(b) “Stock dividend” ~~within the meaning of , as that term is used in~~ s. [551.202 \(22\)](#), Stats., includes the issuance of shares under a dividend reinvestment plan in which the election by a shareholder to participate in the plan is voluntary and such election may be rescinded at any time upon notice to the issuer.

**SECTION 33.** DFI-Sec 2.02 (9) (intro.), (a), (c), (d), (g), (h), (i), (k), (L) (intro.), and (n) (intro.) and 1. are amended to read:

DFI-Sec 2.02 (9) (intro.) The following transactions are exempted as described under s. [551.203](#), Stats., ~~without limiting the division's authority thereunder:~~

(a) ~~An exemption under this subsection is available for any~~ Any isolated issuer transaction relating to redeemable securities of an investment company registered under the investment company act of 1940, effected through a registered broker-dealer pursuant to an unsolicited order or offer to purchase, provided that the broker-dealer obtains from the purchaser a written acknowledgment that the purchase was unsolicited or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith confirms that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. A transaction is presumed to be “isolated” if it is one of not more than 3 such transactions during the prior 12 months.

(c) Any transaction pursuant to an offer to existing security holders of the issuer, and to not more than 25 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 preceding the offer pursuant to s. [551.202 \(14\)](#) and [\(24\)](#), Stats., excluding persons listed in s. [551.202 \(13\)](#), Stats., and rules ~~there under thereunder~~, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any

security holder in this state; and if the issuer files with the division prior to the offering a notice specifying the terms of the offer, including any prospectus, circular, or other material to be delivered to offerees in connection with the transaction and such other information as the division may require, and the division does not by order disallow the exemption within 10 days.

(d) For purposes of the registration exemption in s. [551.202 \(2\)](#), Stats., any ~~Standard & Poor's~~ OTCQX Best Market, OTCQB Venture Market, Mergent, or Fitch securities manual, or their electronic equivalent, that contains, in whatever format, the information specified in s. [551.202 \(2\) \(d\) 1.](#) to [4.](#), Stats., is designated as a "nationally recognized securities manual" under s. [551.202 \(2\) \(d\)](#), Stats.

(g) Any offer by a registered broker-dealer pursuant to a preliminary prospectus, ~~provided~~ if all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. [551.303](#) or [551.304](#), Stats., or a notice filed under s. [551.201 \(1\)](#) or [\(7\)](#), or [551.202 \(15\)](#), Stats.;
2. The preliminary prospectus has been filed with the U.S. securities and exchange commission or the division for a period of 10 days, and the division does not by order deny the exemption; ~~and~~ .
3. Before the securities referred to in subd. [1.](#) may legally be sold, no customer funds ~~are~~ may be received, and no customer ~~signs~~ may sign any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

(h) Any transaction, ~~in~~ other than the initial public offering, involving any government security, ~~other than a revenue obligation and other than a security issued or guaranteed by the United States, or any agency or corporate instrumentality of the United States,~~ where the government security is of investment quality rating as determined by the ~~office of the~~ division of banking ~~for the state of Wisconsin~~ or by the U.S. comptroller of the currency by virtue of credit worthiness, ~~or any transaction involving any~~

government security dated prior to the effective date of this paragraph except that this paragraph does not apply to any of the following:

1. A government security that is a revenue obligation.

2. A government security issued by the United States or any agency or corporate instrumentality of the United States.

(i) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. [DFI-Sec 2.027](#), or [2.028](#) or [2.029](#).

(k) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the division. ~~In order to~~ To be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the division either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places, and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application required by the division, the division shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, ~~but are not limited to,~~ gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their business plans and products, or their financing or investment capital needs or proposals.

(L) (intro.) ~~An exemption under this subsection is available for any~~ Any transaction by the sponsor of a unit investment trust involving the resale of a share of beneficial interest in the trust that meets all of the following conditions:

Any offer or sale of a security by an issuer in a transaction that meets each of the following requirements based on the North American Securities Administrators Association Model Accredited Investor Exemption, subject

to DFI-Sec 2.023, and except for an issuer who is an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person:

1. Sales of ~~the~~ securities ~~shall be~~ that are made only to persons who are accredited investors as defined in 17 CFR 230.501(a), or who the issuer reasonably believes are accredited investors.

**SECTION 34.** DFI-Sec 2.02 (9) (n) 2. is repealed.

**SECTION 35.** DFI-Sec 2.02 (9) (n) 5. is renumbered DFI-Sec 2.023 (1), and, as renumbered, is amended to read:

DFI-Sec 2.023 (1) A general announcement of ~~the~~ a proposed offering described in DFI-Sec 2.02 (9) (n) may be made by any means, ~~which~~ and shall include each of the following information items only, except as provided in ~~subd. 6.~~ sub. (2), and unless additional information is specifically permitted by the division:

(a) The name, address, and telephone number of the issuer of the securities;

(b) The name, a brief description and price, if known, of any security to be issued;

(c) A brief description of the business of the issuer in 25 words or ~~less~~; or fewer.

(d) The type, number and aggregate amount of securities being offered;

(e) The name, address and telephone number of the person to contact for additional information; ~~and.~~

(f) A statement disclosing that sales will only be made to accredited investors, that no money or other consideration is being solicited or will be accepted by way of this general announcement, and that the securities have not been registered with or approved by any state securities agency or the U.S. securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

**SECTION 36.** DFI-Sec 2.02 (9) (n) 6. is renumbered DFI-Sec 2.023 (2) and (2) (intro.) and (a), as renumbered, are amended to read:

DFI-Sec 2.023 (2) (intro.) The issuer, in connection with an offer, may provide information in addition to the general announcement under ~~subd. 5.~~ sub. (1), if the information meets ~~either~~ one of the following requirements of this subdivision:

(a) The information is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; ~~or~~ .

**SECTION 37.** DFI-Sec 2.02 (9) (n) 7. is renumbered DFI-Sec 2.023 (3), and, as renumbered, is amended to read:

DFI-Sec 2.023 (3) No telephone solicitation ~~shall~~ may be permitted unless, prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

**SECTION 38.** DFI-Sec 2.02 (9) (n) 8. is amended to read:

DFI-Sec 2.02 (9) (n) 8. ~~Dissemination of the~~ The general announcement of the proposed offering is disseminated to ~~persons who are not~~ any person, without regard to whether the person is an accredited investors ~~shall not disqualify the issuer from claiming the exemption under this rule~~ investor.

**SECTION 39.** DFI-Sec 2.02 (9) (n) 9. is amended to read:

DFI-Sec 2.02 (9) (n) 9. ~~The issuer shall file with the division within~~ Within 15 days after the first sale in this state in reliance on this exemption, the issuer files with the division a copy of the general announcement, a consent to service of process, ~~a the fee of \$200~~ described under DFI-Sec s. 7.01 (2) (d), and a completed Form AI as prescribed in s. ~~DFI-Sec 9.01 (1) (e)~~ 9.01 for use of this exemption.

**SECTION 40.** DFI-Sec 2.02 (9) (o) is amended to read:

DFI-Sec 2.02 (9) (o) Pursuant to s. 551.203, Stats., and subject to the fee under DFI-Sec s. 7.01 (2) (d) a transactional securities registration exemption is available for the sale of any outstanding security by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer at a price reasonably related to the current market price if the issuer or an applicant files with the division prior to the offering a notice of the proposed sale, ~~including~~ and includes all of the following, and the exemption, unless disallowed by order

of the division within 10 days, is effective so long as the information required to be furnished is kept current:

~~the~~ 1. The prospectus used in the most recent offering of the securities proposed to be sold;~~;~~a .

2. A copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect;~~;~~any .

3. Any information specified in ss. [DFI-Sec 3.02](#) and [3.03](#), and not contained in the filed prospectus;~~;~~the.

4. The trust indenture, if any, under which the securities proposed to be sold are issued;~~;~~the information.

5. Information, if any, concerning the public market for the security;~~;~~a.

6. A balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing and statements of income and changes in financial position and analysis of surplus for such fiscal year meeting the requirements of s. [DFI-Sec 7.06](#);~~;~~an .

7. An undertaking to file with the division within 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purpose) after the end of each fiscal year of the issuer comparable financial statements of the issuer for each such fiscal year;~~;~~and an.

8. An undertaking to furnish the division with a written report within 30 days after the happening of any material event affecting the issuer or the securities proposed to be sold. ~~The exemption, unless disallowed by order of the division within 10 days, is effective so long as the information required to be furnished is kept current.~~

**SECTION 41.** DFI-Sec 2.023 (title) and (intro.) are created to read:

**DFI-Sec 2.023 Conditions related to a sale or offering of certain securities.**

(intro.) A transaction described in DFI-Sec s. 2.02 (9) (n) is subject to the following provisions:

**SECTION 42.** DFI-Sec 2.027 (1) (intro.) and (a) to (d) are amended to read:

DFI-Sec 2.027 (1) (intro.) A transaction exemption is available under s. [551.203](#), Stats., for an offer, but not a sale, of a security made by or on behalf of an issuer pursuant to delivery of a written document ~~or~~, use of a newspaper publication ~~or~~, scripted media broadcast, or electronic communication containing the information prescribed in the form in s. [DFI-Sec 9.01 \(1\) \(c\)](#), for the sole purpose of soliciting an indication of interest from prospective purchasers in receiving a prospectus, private placement memorandum, or equivalent disclosure document for the security, if all of the following conditions are satisfied, ~~except to the extent that~~ subject to sub. [\(2\)](#) ~~is applicable~~.

(a) The issuer intends that sales of the security be ~~either~~ any of the following:

1. Registered under ch. [551](#), Stats.; ~~or~~ .
2. Exempt from registration under ~~an available exemption in any subsection of s. 551.202, Stats., or any exemption rule under s. 551.203, Stats.~~

(b) Not later than the date of the initial solicitation of interest made under this section, the offeror ~~shall file~~ files with the division a completed solicitation of interest form as prescribed in s. [DFI-Sec 9.01 \(1\) \(c\) ch. 9.01](#), together with any other materials to be used to conduct solicitations of interest, ~~including, but not limited to,~~ the script of any broadcast to be made and a copy of any notice to be published. Material amendments to the solicitation of interest form or to any related materials used to conduct solicitations shall be filed with the division not later than the date of their first use. Any written document or electronic communication under this subsection may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address, and telephone number of the prospective purchaser.

(c) The text of any published notice or script for broadcast, and any printed material delivered in any solicitation of interest under this section, ~~shall begin~~ begins with the disclosures and information required in, and in the format of, the solicitation of interest form specified in s. [DFI-Sec 9.01 \(1\) \(c\)](#).

(d) The offeror does not know, and in the exercise of reasonable care could not know, that any of the issuer's officers, directors, general partners, controlling persons, or affiliates thereof are or would be disqualified from use of the registration exemption in s. [DFI-Sec 2.029](#) as a result of any of the causes specified in s. [DFI-Sec 2.029 \(3\) \(a\) 1. to 4.](#) except for any person or persons subject to a disqualification who meets the conditions for waiver in s. [DFI-Sec 2.029 \(3\) \(b\) 1.](#)

**SECTION 43.** DFI-Sec 2.027 (1) (e) and (f) are renumbered DFI-Sec 2.027 (2) (c) and (d), and, as renumbered, are amended to read:

DFI-Sec 2.027 (2) (c) ~~Solicitations~~ (intro.) The issuer may not make solicitations of interest pursuant to this section shall not be made after the filing of either a:

1. After a registration statement is filed under ch. [551](#), Stats., ~~the filing of .~~
2. After materials required for a claim of registration exemption are filed under s. [551.202](#) or [551.203](#), Stats., ~~or use of.~~
3. By using any available self-executing exemption under s. [551.202](#) or [551.203](#), Stats.

(d) Sales of the securities that are the subject of solicitations of interest under this section ~~shall~~ may not be made until 20 calendar days after the last delivery of a written solicitation of interest document or, a radio or television solicitation broadcast, or other media solicitation publication.

**SECTION 44.** DFI-Sec 2.027 (2) is amended to read:

DFI-Sec 2.027 (2) (a) ~~A~~ An offeror's failure to comply with any of the conditions in sub. (1) will not result in the loss of the securities registration exemption under this section for any offer to a particular individual or entity if the offeror demonstrates each all of the following are met apply:

1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity; ~~and .~~
2. The failure to comply was insignificant with respect to the offering as a whole; ~~and .~~
3. A good faith and reasonable attempt was made to comply with the conditions in sub. (1) (a) to (f) (d).

(b) Where an exemption is established only through reliance upon this subsection, the failure to comply with the conditions in sub. ~~(1) (a)~~ to ~~(f) (d)~~ shall constitute a basis for action that may be taken by the division under s. 551.603, Stats., and shall constitute a basis for action that may be taken by the division under s. 551.204, Stats., to deny or revoke the exemption as to a specific security or transaction.

**SECTION 45.** DFI-Sec 2.028 (intro.), (1) (a), (4), (7) (a) and (b), and (8) (intro), (a) and (b) are amended to read:

DFI-Sec 2.028 (intro.) ~~If all of the following conditions are met, other than any condition or conditions waived by the division upon a showing of good cause, a~~ A transaction registration exemption is available under s. 551.203, Stats., to an issuer having, both before and upon completion of the offering, its principal office and a majority of the full-time employees located in this state, for any offer or sale for cash of the equity securities of an issuer having, both before and upon completion of the offering, its principal office and a majority of the full-time employees located in this state if all of the following conditions are met, other than any condition waived by the division upon a showing of good cause:

(1) (a) Persons described in s. 551.102 (11), Stats., ~~and rules thereunder~~, and in s. 551.202 (13) (am), Stats.;

(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed \$5,000,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502 (a) of Regulation D under the ~~securities act~~ Securities Act of 1933.

(7) (a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form, except that the financial statements may be either audited or reviewed; ~~or~~.

(b) For offerings by any type of issuer, an offering document that complies with the disclosure requirements of rule 502 (b) (2) of Regulation D under the ~~securities act~~ Securities Act of 1933.

(8) (intro.) The issuer or applicant files with the division all of the following:

(a) The offering document to be used in connection with the offer and sale of the securities, not later than the date of the first use of the document in this state, together with a fee of \$200; ~~and~~ specified in DFI-Sec 7.01 (2) (d).

(b) A letter specifying how the requirements for use of this exemption contained in the introduction and in subs. (1) to (7) are met or will be met; ~~and~~ .

**SECTION 46.** DFI-Sec 2.029 (title) is amended to read:

DFI-Sec 2.029 (title) ~~Federal regulation D rule 505 exemption by filing~~ Bad actor disqualification.

**SECTION 47.** DFI-Sec 2.029 (1), (2), (4), (5), and (6) are repealed.

**SECTION 48.** DFI-Sec 2.029 (3) (a)

DFI-Sec 2.029 (3) (a) Unless the cause for disqualification is waived under par. (b) 2., no exemption ~~under sub. (4)~~ is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following applies to any of the persons described in 17 CFR 230.262 (a), (b), or (c):

1. The person has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates thereof, pursuant to any state's law within 5 years before the filing of a notice required ~~under sub. (4)~~ by the division denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

2. The person has been convicted of any felony or misdemeanor in connection with the offer, sale, or purchase of any security or franchise, or any felony involving fraud or deceit, including ~~but not limited to~~ forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. The person is subject to an effective administrative order or judgment entered by a state securities administrator within 5 years before the filing of a notice required ~~under sub. (4)~~ by the division, which prohibits, denies or revokes the use of any exemption from securities registration, which

prohibits the transaction of business by the person as a broker-dealer or agent, or which is based on fraud, deceit, an untrue statement of a material fact or an omission to state a material fact.

4. The person is subject to any order, judgment or decree of any court entered within 5 years before the filing of a notice required under sub. (4), temporarily, preliminarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

**SECTION 49.** DFI-Sec 2.03 is amended to read:

DFI-Sec 2.03 (1) If a notice is required to be filed in order to seek to claim registration exemption status pursuant to s. [551.201](#), or [551.202](#), Stats., or rule or order under s. [551.203](#), Stats., the notice shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by under s. [DFI-Sec 7.01 \(2\) \(d\)](#), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the division prior to the effective date of an exemption, in connection with the examination of any notice filed pursuant to s. [551.201](#), or [551.202](#), Stats., or rule or order under s. [551.203](#), Stats., the notice is not deemed filed until the information so required is filed with the division.

(3) An order of the division disallowing an exemption with respect to a specified security or transaction pursuant to s. [551.201](#), or [551.202](#), Stats., or rule or order under s. [551.203](#), Stats., has the same effect as an order denying or revoking an exemption pursuant to s. [551.204](#), Stats.

**SECTION 50.** DFI-Sec 2.04 (1) and (2) (intro.) and (b) are amended to read:

DFI-Sec 2.04 (1) (a) With respect to a federal covered security ~~referred to~~ described in s. [551.302 \(1\) \(a\)](#), Stats., unless the security is registered or exempt from registration under s. [551.201](#), or [551.202](#), Stats., or rule or order under s. [551.203](#), Stats., the issuer or a person acting on behalf of the issuer shall file with the division not later than the initial offer of the security in this state, a consent to service of process signed by the issuer and the

notice filing fee prescribed under s. ~~DFI-Sec 7.01 (2) (d)~~ 551.614, Stats. If a completed Form NF as prescribed in s. ~~DFI-Sec 9.01 (1) (d)~~ 9.01 is included with the consent to service of process and the notice filing fee, the issuer need not also include with the filing copies of any documents that are part of the registration statement filed under the ~~securities act~~ Securities Act of 1933, although the division may at a later time require the filing of a copy of any document that is part of the registration statement filed under the ~~securities act~~ Securities Act of 1933.

(b) After the initial offer in this state of a federal covered security ~~referred to~~ described in s. ~~551.302 (1) (a)~~, Stats., if the issuer files an amendment to its registration statement with the U.S. securities and exchange commission under the securities act of 1933 that relates either to a name change of the issuer, or to a change in the designation of the federal covered security, the issuer or a person acting on behalf of the issuer shall file with the division concurrent with the federal filing, ~~a fee of \$200~~ the fee prescribed under s. DFI-Sec 7.01 (2) (d), which shall be accompanied by a copy of each amendment-related document filed with the U.S. securities and exchange commission unless the issuer files with the division a completed Form NF as prescribed in s. ~~DFI-Sec 9.01 (1) (d)~~ ch. 9.01. The division may at a later time require the filing of a copy of any document relating to the amendment filed under the securities act of 1933.

(c) A unit investment trust or closed-end investment company may extend the offering of its securities beyond a one-year period pursuant to s. ~~551.302 (1) (c)~~, Stats., by filing a notice of extension not less than 30 days prior to the end of one year from the date of filing of the initial notice with the division, or an extension notice filed under this paragraph, whichever is most recent. A notice shall consist of a copy of an updated Form NF as prescribed in s. ~~DFI-Sec 9.01 (1) (d)~~ ch. 9.01, together with ~~a fee of \$200~~ the fee prescribed under s. DFI-Sec 7.01 (2) (d), and at the option of the filing party, a cover letter identifying the most recent prior filing status with the division for the issuer's securities.

(2) (intro.) With respect to a federal covered security ~~referred to~~ described in s. ~~551.302 (3)~~, Stats., unless the security is registered or exempt from registration under s. ~~551.201~~, or ~~551.202~~, Stats., or rule or order under s. ~~551.203~~, Stats., the issuer or a person acting on behalf of the issuer shall

~~make a filing~~ file with the division not later than 15 days after the first sale of the security in this state that meets the requirements of either of the following:

(b) An electronic filing under the Electronic Filing of Form D (EFD) System developed by the North American Securities Administrators Association ~~and operated by PNC Global Investment Servicing or its affiliate~~, that designates Wisconsin as a state in which the offering is or will be made, and allocates to Wisconsin a ~~\$200 fee~~ the fee prescribed under s. DFI-Sec 7.01 (2) (d) .

**SECTION 51.** DFI-Sec 2.05 (title) is created to read:

DFI-Sec 2.05 (title) **Availability of registration exemption.**

**SECTION 51.** DFI-Sec 3.01 (intro.) is renumbered DFI-Sec 3.01 (1) (intro.), and, as renumbered, is amended to read:

DFI-Sec 3.01 (1) (intro.) A registration statement under s. 551.303, Stats., shall be submitted on Form U-1, shall contain the following information, and shall be accompanied by all the following documents in addition to the information specified in ss. 551.303 (2) and 551.305, Stats.:

**SECTION 52.** DFI-Sec 3.01 (1) (a) and (2) are amended to read:

DFI-Sec 3.01 (1) (a) If the security to be registered is a note, bond, debenture, or other evidence of indebtedness, a trust indenture meeting the requirements of s. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown; ~~and~~,

(2) In any offering for which a registration statement on U.S. securities and exchange commission Form F-7, F-8, ~~F-9~~ or F-10 has been filed by coordination with the division, the requirement in s. 551.303 (3) (b), Stats., that a registration statement be on file with the division for at least ~~10~~ 20 days is reduced to a requirement that the registration statement be on file with the division for at least 7 days.

**SECTION 53.** DFI-Sec 3.02 (1) is amended to read:

DFI-Sec 3.02 (1) ~~A~~ Subject to sub. (2), a registration statement under s. 551.304 (2), Stats., shall be submitted on Form U-1, shall contain the information prescribed in ss. 551.304 (2) and 551.305, Stats., and if the

security to be registered is a note, bond, debenture, or other evidence of indebtedness, a trust indenture meeting the requirements of s. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown.

**SECTION 54.** DFI-Sec 3.03 (1) (a) to (c), (2) (a) to (g), (3), and (4) (intro.) are amended to read:

DFI-Sec 3.03 (1) (a) Any written offer made to the person, ~~otherwise~~ other than by means of public advertisement;\_

(b) Confirmation of any sale to the person;\_

(c) Payment pursuant to any sale to the person;\_~~or~~;

(2) (a) Name and location of issuer and its type of organization;\_

(b) Designation of securities offered ;\_

(c) Per share or unit and aggregate public offering price, underwriting or selling commissions, and discounts and net proceeds to offeror;\_

(d) Name of managing underwriter or broker-dealer or statement that the securities are being offered by the issuer;\_

(e) A statement describing the anticipated secondary market for the securities being offered, including the identity of anticipated market makers;\_

(f) Date of prospectus;\_

(g) If the offering is the subject of a registration statement under the securities act of 1933, the following statements in bold-face type:

**THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.;**

(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements under the securities act of 1933 that

receives full review by the U.S. securities and exchange commission, shall not be subject to disclosure adequacy review or comment by the division. If the offering is being made pursuant to use of either Regulation A or Rule 504 of Regulation D under the securities act of 1933 or Rule 147 under section 3 (a) (11) of the securities act of 1933, the form U-7 disclosure document as adopted ~~in amended form on September 28, 1999~~ by the North American Securities Administrators Association, Inc. may be used.

(4) ~~(intro.)~~ The disclosure-related provisions of the ~~following~~ guidelines or statements of policy of the North American Securities Administrators Association or other state securities organization ~~listed~~, may be used by the division for purposes of reviewing the adequacy of disclosure in the prospectus filed with the registration application: .

**SECTION 55.** DFI-Sec 3.03 (4) (a) to (q) are repealed.

**SECTION 56.** DFI-Sec 3.03 (4) **Note** is amended to read:

DFI-Sec 3.03 (4) **Note:** All of the NASAA Guidelines are ~~published in CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the legislative reference bureau~~ available for review on the NASAA website at [www.nasaa.org](http://www.nasaa.org).

**SECTION 57.** DFI-Sec 3.03 (5) is amended to read:

DFI-Sec 3.03 (5) Unless otherwise permitted by the division, the body of the prospectus and all notes to financial statements and other included tabular data ~~included therein~~ shall be in ~~roman or gothic~~ type at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in ~~roman or gothic~~ type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

**SECTION 58.** DFI-Sec 3.04 is amended to read:

DFI-Sec 3.04 Trust indentures required under ch. 551, Stats., and chs. DFI-Sec 1 to 9, shall meet the requirements of the ~~trust indenture act~~ Trust Indenture Act of 1939, whether or not exempt under that act, unless the division otherwise permits or requires.

**SECTION 59.** DFI-Sec 3.05 (3) is amended to read:

DFI-Sec 3.05 (3) The division may institute a proceeding under s. [551.306](#), Stats., and may issue a stop order suspending or revoking the effectiveness of any registration statement filed under s. [551.303](#) or [551.304](#), Stats., at any time during the period that the registration statement is effective and within one year thereafter.

**SECTION 60.** DFI-Sec 3.07 is amended to read:

DFI-Sec 3.07 (1) Application for an extension of the offering period of a registration statement, except one relating to securities of a finance company ~~registered~~ licensed under s. [138.09](#), Stats., shall be filed in the form prescribed by the division not less than 30 days prior to the end of one year from the effective date of the registration statement or an extended period of effectiveness for the registration statement, whichever is most recent. The application shall be accompanied by a prospectus updated in accordance with s. [DFI-Sec 3.03 \(6\)](#), a balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of s. [DFI-Sec 7.06](#), provided that if the date of any of the above financial statements is more than 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent, or charitable purposes) prior to the date of the extension of the registration statement, the statements shall be updated (which may be done without audit) to within the 120-day or 180-day requirement above. If no order specifying a different effectiveness period is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the division determines.

(2) A registration statement relating to securities of a finance company ~~registered~~ ~~[licensed]~~ licensed under s. [138.09](#), Stats., is deemed to include an application for the continuous offering of the securities. The offering period of the registration statement is automatically extended until it is permitted to be withdrawn or the division issues a stop order suspending or revoking its effectiveness pursuant to s. [551.306](#), Stats., if the issuer files with the division not less than annually during the offering period, within 120 days of

the end of its fiscal year, a prospectus updated in accordance with s. [DFI-Sec 3.03 \(6\)](#), a balance sheet of the issuer as of the end of the fiscal year, and a statement of income and change in financial position and analysis of surplus of the issuer for the fiscal year meeting the requirements of s. [DFI-Sec 7.06](#).

**Note:** The correct word is shown in brackets.

**SECTION 61.** DFI-Sec 4.01 (1) (a) is amended to read:

DFI-Sec 4.01 (1) (a) (intro.) Applications for initial and renewal registrations of broker-dealers and agents, as well as amendments, reports, notices, related filings, and fees, shall be filed with all of the following:

1. The division on forms prescribed by the division in s. [DFI-Sec 9.01 \(1\)](#); ~~or 9.~~
2. The central registration depository of the ~~financial industry regulatory authority~~ Financial Industry Regulatory Authority as developed under contract with the North American ~~securities administrators association~~ Securities Administrators Association, on forms established for the central registration depository.

**SECTION 62.** DFI-Sec 4.01 (1) (c) is created to read:

DFI-Sec 4.01 (1) (c) A broker-dealer may not register with the division, or continue to be registered with the division, unless the broker-dealer is registered with the Financial Industry Regulatory Authority and maintains that registration.

**SECTION 63.** DFI-Sec 4.01 (2) (a), (b), and (c) and (3) (intro.) are amended to read:

DFI-Sec 4.01 (2) (a) Except as provided in par. (b), an “application” for purposes of s. [551.406 \(1\)](#), Stats., means all information required by the form prescribed under ~~sub. (1)~~ s. 551.406 (1), Stats., together with any additional information required by the division.

(b) An application for initial registration or for renewal of a registration as a broker-dealer registered with the ~~financial industry regulatory authority~~ Financial Industry Regulatory Authority includes the payment of the Wisconsin broker-dealer registration fee and, in the case of an initial application, the examination fee prescribed by s. [DFI-Sec 7.01 \(3\) \(a\)](#), to the central registration depository of the ~~financial industry regulatory authority~~ Financial Industry Regulatory Authority. An application for initial registration as a broker-dealer under this paragraph shall be deemed filed under s. [551.406 \(1\)](#), Stats., on the date the application is transferred

from "NO STATUS" to "PENDING" on the records of the central registration depository. An application for renewal of a registration as a broker-dealer under this paragraph shall be deemed filed under s. 551.406 (1), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

(c) An "application" for initial registration or for renewal of a registration as a securities agent for a broker-dealer registered with the ~~financial industry regulatory authority~~ Financial Industry Regulatory Authority includes the payment of Wisconsin agent registration fees to the central registration depository. An application for initial registration as an agent under this paragraph shall be deemed "filed" under s. 551.406 (1), Stats., on the date when the application is designated ready for approval on the records of the central registration depository. An application for renewal of a registration as an agent under this paragraph shall be deemed "filed" under s. 551.406 (1), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

(3) (intro.) Unless waived under sub. (4) and subject to sub. (3) (m), each applicant for an initial registration as a broker-dealer or agent is required to take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository, either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination, and take and pass within the that same two year period ~~immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository~~, or receive a waiver from passing, ~~the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to take and pass, or receive a waiver from passing, each examination in pars. (b) to (h) one of the FINRA representative level examinations listed in this subsection that relates to the applicant's proposed securities activities:~~

**SECTION 64.** DFI-Sec 4.01 (3) (e), (f), and (g) are repealed.

**SECTION 65.** DFI-Sec 4.01 (3) (h) is renumbered DFI-Sec 4.01 (3) (dm).

**SECTION 66.** DFI-Sec 4.01 (3m) is created to be:

DFI-Sec 4.01 (3m) Each applicant for an initial registration as a broker-dealer or agent is required to pass or receive credit for the FINRA Securities Industry Essentials examination.

**SECTION 67.** DFI-Sec 4.01 (4) (intro.), (b) (intro.), and 2. are amended to read:

DFI-Sec 4.01 (4) (intro.) The examination requirement in sub. ~~(3)~~ is waived for any applicant who meets ~~the criteria set forth in any one of the paragraphs in this subsection~~ following criteria:

(b) (intro.) The applicant has been registered within 2 years prior to the date the application is filed in this state, as an agent ~~or as a broker-dealer~~ under the securities law of another state and the following applicable conditions are met:

2. In the case of examinations required by sub. ~~(3) (a) to (e)~~, the applicant has been registered with the ~~financial industry regulatory authority~~ Financial Industry Regulatory Authority to engage in the type of business for which the applicant is applying for registration within 2 years prior to the date of filing of the application for registration.

**SECTION 68.** DFI-Sec 4.01 (4) (c) is repealed.

**SECTION 69.** DFI-Sec 4.01 (4) (e) and (f) are amended to read:

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

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

**SECTION 70.** DFI-Sec 4.01 (4) (g) is created to read:

DFI-Sec 4.01 (4) (g) The applicant has not been registered as an agent in any state for more than two years but less than five years and has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and the applicant's appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program. The applicant shall be deemed in compliance with the examination requirements of sub. (3) if the applicant elected to participate in the NASAA Examination Validity Extension Program within two years of their agent registration termination and the applicant was registered as an agent in at least one state for at least one year immediately preceding the agent registration termination.

**SECTION 71.** DFI-Sec 4.01 (5), (7) and NOTE, and (8) (intro.), (a), (c), and (d) are amended to read:

DFI-Sec 4.01 (5) Any application for registration which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete, and the division may issue an order denying the registration or entering a record to the central registration depository that the application was abandoned.

(7) A securities agent registration is effective to authorize the ~~licensee~~ ~~[registrant]~~ registrant to effectuate transactions only in the types of categories of securities that the ~~licensee~~ ~~[registrant]~~ registrant has been qualified to sell by passing the examinations specified in sub. (3).

~~Note: The correct word is shown in brackets.~~

(8) (intro.) For an agent to simultaneously represent in this state more than one broker-dealer pursuant to s. 551.402 (5), Stats., or an issuer pursuant to s. 551.402 (6), Stats., the agent shall meet the following requirements ~~shall be met~~, in addition to the regular agent registration requirements:

(a) Each broker-dealer or issuer that the agent represents shall sign on a form designated by the division in s. ~~DFI-Sec 9.01 (1) (b)~~ DFI-Sec 9, a written grant of permission to the agent to represent the other employers. The written grant of permission shall include the identity of all other securities employment affiliations of the agent and contain a listing of all restrictions on the agent's securities activities imposed by the agent's employers.

(c) The agent shall file the manually signed original of the form under par. (a) ~~shall be filed~~ with the division together with a written application, which may be in

letter form, on behalf of the agent to simultaneously represent more than one broker-dealer or issuer. The division ~~shall~~ must approve the application in writing prior to the agent's transacting securities business while simultaneously representing more than one broker-dealer or issuer.

(d) ~~Written~~ An agent shall provide to each securities customer of the agent written disclosure ~~shall be provided~~ regarding the agent's simultaneous representation of more than one broker-dealer or issuer, including the information in par. (a), ~~to each securities customer of the agent~~ not later than the date of receipt of the confirmation for the first securities transaction for the account of the customer by the agent after dual registration is approved by the division.

**SECTION 72.** DFI-Sec 4.02 (2) and (4) are amended to read:

DFI-Sec 4.02 (2) The aggregate indebtedness of each broker-dealer to all other persons ~~shall~~ may not exceed the levels prescribed under rule 15c3-1 of the ~~securities exchange act~~ Securities Exchange Act of 1934.

(4) The division may by order exempt any broker-dealer from the provisions of this subsection, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the division finds the provisions are not necessary in to protect the public interest or for the protection of investors.

**SECTION 73.** DFI-Sec 4.03 (2), (4), (5), and (6) are amended to read:

DFI-Sec 4.03 (2) Every registered broker-dealer shall preserve the records required under sub. (1) according to the schedule provided in rule 17a-4 under the ~~securities exchange act~~ Securities Exchange Act of 1934 in compliance with the requirements of the ~~U.S. securities and exchange commission~~ Securities and Exchange Commission concerning preservation ~~and microfilming~~ of records ~~or other means of by electronic or other means of records retention of records.~~

(4) Every registered broker-dealer shall preserve the branch office records required under sub. (3) according to the schedule provided in rule 17a-4(k) under the ~~securities exchange act~~ Securities Exchange Act of 1934 in compliance with the requirements of the ~~U.S. securities and exchange commission~~ Securities and Exchange Commission concerning preservation ~~and microfilming~~ of records by electronic or other means of records retention of records.

(5) This section does not require a registered broker-dealer to make and keep such records of transactions cleared for the ~~licensee~~ ~~[registrant]~~ registrant by another broker-dealer as are customarily made and kept by the clearing broker-dealer.

(6) The division may by order exempt any broker-dealer from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the division finds the ~~issuance of the order application or enforcement of all or part of such requirements~~ is not necessary or appropriate ~~in~~ to the public interest or for the protection of investors.

**SECTION 74.** DFI-Sec 4.04 (3), (4) (intro.) and (a), (7) (c), and (8) are amended to read:

DFI-Sec 4.04 (3) ~~Except as provided in subs. (2) and (8), each~~ Each broker-dealer shall file with the division any notice of change of control or change of name, as well as any material change in the information included in the broker-dealer's most recent application for registration, in an amendment to Form BD filed with the central registration depository within 30 days of the date of the change.

(4) (intro.) Every broker-dealer shall file with the division all the following reports concerning its net capital and aggregate indebtedness:

(a) Immediate electronic or written notice whenever the net capital of the broker-dealer is less than is required under s. DFI-Sec 4.02 (1), specifying the respective amounts of its net capital and aggregate indebtedness on the date of the notice;

(7) (c) The notification required to be provided to the division under par. (a) or (b) shall be made electronically on Form BR via the central registration depository ~~by broker-dealers eligible to file electronically, and shall be made directly with the division by broker-dealers that are not eligible to file electronically with the central registration depository.~~

(8) ~~Each~~ Annually, each broker-dealer shall file a branch office renewal notice ~~annually with~~ with the central registration depository ~~by broker-dealers eligible to file electronically, and shall be made directly with the division by broker-dealers that are not eligible to file electronically with the central registration depository.~~

**SECTION 75.** DFI-Sec 4.05 (3), (4), (7), (8) (intro.), (a), (b), (c) (intro.), 1. (intro.), and 2., (d) to (f), and (g) (intro.) are amended to read:

DFI-Sec 4.05 (3) A broker-dealer ~~shall~~ may not enter into any contract with a customer if the contract contains any condition, stipulation, or provision binding

the customer to waive any rights under ch. 551, Stats., or any rule or order thereunder. Any such condition, stipulation, or provision is void.

(4) No broker-dealer ~~shall~~ may permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment, or otherwise, that would cause its net capital or its aggregate indebtedness to violate s. DFI-Sec 4.02 (1) or (2), without prior written approval of the division.

(7) No broker-dealer may associate with a bank, savings institution, trust company, savings and loan association, or credit union by contract, agreement or other means for the purpose of that entity publishing or circulating advertising promoting the services offered by the broker-dealer or assisting or providing information to persons to establish an account with the broker-dealer unless one of the following applies:

(a) The promotional or account-establishing functions are performed by persons registered as securities agents representing the broker-dealer; ~~or~~ .

(b) The promotional or account-establishing functions are performed by persons who are supervised by one of at least 2 persons at the bank, savings institution, trust company, savings and loan association, or credit union who are officers, branch or assistant branch managers, or other employees occupying a similar office or performing similar functions at each location where promotional or account-opening functions are performed, and the supervisors are registered as securities agents representing the broker-dealer.

(8) (intro.) No broker-dealer ~~shall~~ may conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with all of the following requirements:

(a) The broker-dealer services ~~shall be~~ are conducted, wherever practical, in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its broker-dealer services. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or

materials ~~shall be~~ are displayed in the designated area other than those relating to the securities services.

(b) 1. Networking and brokerage affiliate arrangements ~~shall be~~ are governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements.

2. Networking and brokerage affiliate arrangements ~~shall~~ provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts securities services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its securities services.

3. The broker-dealer ~~shall ensure~~ ensures that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties. For purposes of this paragraph, "networking arrangement" and "brokerage affiliate arrangement" mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts securities services on the premises of a financial institution where retail deposits are taken.

(c) (intro.) At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer ~~shall comply with~~ does all of the following-:

1. (intro.) ~~Disclose~~ Discloses to the customer, orally and in writing, all of the following information about the securities products purchased or sold in a transaction with the broker-dealer:

2. ~~Make~~ Makes reasonable efforts to obtain from each customer during the account-opening process, a written acknowledgment of the disclosures required by subd. 1.

(d) If securities services include any written or oral representations concerning insurance coverage, other than FDIC or similar insurance coverage, ~~then the~~ the broker-dealer provides clear and accurate, written or oral explanations of the coverage ~~shall also be provided~~ to the customers when the representations are first made.

(e) ~~Recommendations~~ Subject to sub. (8m) (c), recommendations by a broker-dealer concerning any non-deposit investment product with a name similar to that

of the financial institution ~~shall~~ occur only pursuant to a sales program designed to minimize the risk of customer confusion.

(f) All confirmations and account statements ~~shall~~ indicate clearly that the broker-dealer services are provided by the broker-dealer.

(g) (intro.) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, ~~shall~~ disclose using the following language or using the shorter, logo format language in ~~par. (h), the information in each sub. (8m) (a), all of the following subdivision paragraphs~~ information about the securities products purchased or sold in a transaction with the broker-dealer:

**SECTION 76.** DFI-Sec 4.05 (8) (h) and (i) are renumbered DFI-Sec 4.05 (8m) (a) and (b), and pars. (a) (intro.) and (b) (intro.), as renumbered, are amended to read:

DFI-Sec 4.05 (8m) (a) (intro.) The following shorter, logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine screens, billboards, signs, posters and brochures, to comply with the requirements of ~~par. (g) sub. (8) (g)~~, provided that the disclosures are displayed in a conspicuous manner:

(b) (intro.) Provided that the omission of the disclosures required by ~~par. (g) sub. (8) (g)~~ would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures in ~~par. (g) sub. (8) (g)~~ shall not be not required with respect to messages contained in any of the following:

**SECTION 77.** DFI-Sec 4.05 (8) (j), (k) (intro.), 1., and 2., and (L) are amended to read:

DFI-Sec 4.05 (8) (j) The broker-dealer ~~shall promptly notify~~ notifies the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

(k) (intro.) The broker-dealer ~~shall establish~~ establishes written supervisory procedures and a system for applying the procedures. The procedures shall comply with sub. (2) and shall be designed to accomplish certain supervisory functions, including ~~but not limited to~~ the following:

1. Prevention and detection of violations of ch. 551, Stats., and any applicable rules and orders thereunder; .

2. Establishment of a system under which the broker-dealer approves prior to use copies of all advertising used by the financial institution relating to the securities services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.501 and 551.504, Stats.; and .

(L) ~~Notify~~ Notifies the division at the time of filing the notice of opening or change of address of a branch office as required in s. DFI-Sec 4.04 (7), that the office is located on the premises of a financial institution in this state, which notification shall include the identity of the institution.

**SECTION 78.** DFI-Sec 4.05 (8m) (c) is created to read:

4.05 (8m) (c) With regard to the sales program described in sub. (8) (e), any marketing and advertising activities of the third-party broker-dealer shall comply initially and continuously with all of the following requirements:

1. The activities must be designed to ensure that the customer understands the difference between the broker-dealer and the financial institution and the difference between the securities offered by the broker-dealer and the depository products offered by the financial institution.

2. The broker-dealer may not market any security in a manner which suggests that it is insured by the Federal Deposit Insurance Corporation (“FDIC”) or National Credit Union Administration (“NCUA”) or guaranteed or endorsed by the financial institution.

3. All advertising for securities transactions or services must be conducted in the name of the third-party broker-dealer and the “doing business as” name for the broker-dealer and in accordance with FINRA advertising rules.

4. All marketing and advertising material is required to display the name of the third-party broker-dealer and must do so prominently in font size and color when compared to the doing business as name and the name of the financial institution.

**SECTION 79.** DFI-Sec 4.05 (9) (a) is renumbered DFI-Sec 4.05 (9), and, as renumbered, is amended to read:

DFI-Sec 4.05 (9) ~~(a) Except as provided in par. (b), each~~ Each registered broker-dealer engaged in a general securities business that ceases to do business at a

principal or branch office located in Wisconsin shall mail to each Wisconsin customer with an account at the office at least 14 days before the cessation of business at the office a written notification that ~~shall contain~~ contains all the following information:

- ~~1. (a)~~ The date on which the office will cease to do business;<sup>2</sup>
- ~~2. (b)~~ A description of the procedure a customer may follow to maintain the customer's account with the broker-dealer, transfer the account to another broker-dealer, or have securities and funds held by the broker-dealer delivered to the customer;<sup>2</sup>
- ~~3. (c)~~ The name and telephone number of a person representing the broker-dealer who may be contacted without expense to the customer to answer questions regarding items in subd. ~~2.~~<sup>2</sup> ~~and~~<sup>2</sup>
4. (d) Any additional information that is necessary ~~under the circumstances~~ to clarify the information prescribed in this paragraph.

**SECTION 80.** DFI-Sec 4.05 (9) (b) is repealed.

**SECTION 81.** DFI-Sec 4.05 (10) and (11) (intro.) and (b) are amended to read:

DFI-Sec 4.05 (10) ~~Each~~ At the time of opening an account, each broker-dealer shall disclose in writing to customers ~~at the time of opening an account,~~ any custody fees, service fees, or maintenance fees that may be charged to the customer and the basis upon which the charges are determined. Customers shall receive written notice at least 45 days prior to the imposition of any new custody, service, maintenance, or similar fees, or any changes to existing fees of that nature.

(11) (intro.) No broker-dealer or agent, in connection with a telephone or electronic solicitation, ~~shall~~ may:

(b) Telephone any person in this state between the hours of 9:00 PM and ~~8:00~~ 9:00 AM local time at the called person's location without that individual's prior consent.

**SECTION 82.** DFI-Sec 4.06 (1) (intro.), (a), and (b) are amended to read:

DFI-Sec 4.06 (1) (intro.) The following practices are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by a broker-dealer under s. 551.412 (4) (m), Stats., without limiting those terms to the practices specified ~~herein~~ in this subsection:

(a) Causing any unreasonable delay in the transmitting of customer orders for execution, the delivery of securities purchased by any of its customers, the payment upon request of free credit balances reflecting completed transactions of any of its customers, or the transfer of a customer's account securities positions and balances to another broker-dealer; .

(b) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account; .

**SECTION 83.** DFI-Sec 4.06 (1) (c) 1. is renumbered DFI-Sec 4.06 (1) (c), and, as renumbered, is amended to read:

DFI-Sec 4.06 (1) (c) Recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other information known by the broker-dealer; For purposes of making purchase recommendations to a customer with respect to direct participation program securities, the following investor financial income and net worth suitability standards do not preclude the use of any other information, including the criteria in this paragraph, to establish suitability or lack of suitability in specific instances:

1. The customer has an annual gross income of at least \$70,000 and a net worth of at least \$70,000 exclusive of the customer's principal residence and its furnishing and personal use automobiles.

2. The customer has a net worth of at least \$250,000, exclusive of the customer's principal residence and its furnishings and personal use automobiles.

**SECTION 84.** DFI-Sec 4.06 (1) (c) 2. is repealed.

**SECTION 85.** DFI-Sec 4.06 (1) (d) to (u) are amended to read:

DFI-Sec 4.06 (1) (d) Executing a transaction on behalf of a customer without authority to do so, except that use by a broker-dealer of a negative response letter in conformity with rule ~~2510(d)(2) of the financial industry regulatory authority~~ 3260(D)(2) of the Financial Industry Regulatory Authority is not a violation of this rule; .

- (e) Executing a transaction for the account of a customer upon instructions from a 3rd party without first having obtained written 3rd party authorization from the customer;
- (f) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders pursuant to rule ~~2510(d)(1)~~ 3260(d) of the ~~financial industry regulatory authority~~; Financial Industry Regulatory Authority.
- (g) Extending, arranging for, or participating in arranging for credit to a customer in violation of the ~~securities exchange act~~ Securities Exchange Act of 1934 or the regulations of the federal reserve board;
- (h) Executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;
- (i) Failing to segregate customers' free securities or securities in safe-keeping;
- (j) Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the ~~U.S. securities and exchange commission~~; Securities and Exchange Commission.
- (k) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;
- (L) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down;
- (m) Entering into a transaction for its own account with a customer in which a commission is charged;
- (n) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;
- (o) Executing orders for ~~the a customer's purchase by a customer~~ of securities not registered under s. 551.303 or 551.304, Stats., unless the securities are exempted under s. 551.201, Stats., or the transaction is exempted under s. 551.202, Stats.;
- (p) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services

offered, the qualifications of the person offering the services, and the method of compensation for the services;

(q) Violating any rule of any securities exchange, self-regulatory organization, or national securities association of which it is a member with respect to any customer, transaction, or business in this state;

(r) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(s) Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not registered under ch. 551, Stats., unless the customer is a person described in s. 551.401 (2), Stats., or s. DFI-Sec 4.10;

(t) Recommending to a customer that the customer engage the services of an investment adviser, broker-dealer, or agent not registered under ch. 551, Stats., unless the customer is a person described in s. 551.401 (2) (h) or 551.402 (2) (i), Stats., or s. DFI-Sec 4.10;

(u) Failing to accurately describe or disclose in advertising or other materials used in connection with the promotion or transaction of securities business in this state, the identity of the broker-dealer or the issuer. For purposes of this paragraph, "other materials" includes, ~~but is not limited to,~~ business cards, business stationery and display signs.

**SECTION 86.** DFI-Sec 4.06 (2) (intro.), and (b) to (g) are amended to read:

DFI-Sec 4.06 (2) (intro.) The following practices are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under s. 551.412 (4) (m), Stats., without limiting those terms to the practices specified in this subsection:

(b) ~~Acting~~ Misappropriating money or securities, or acting as a custodian for money, securities, or an executed stock power of a customer;

(c) Effecting any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transaction;

(d) Effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the agent represents;

(e) Sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;

(f) Dividing or otherwise splitting commissions, profits, or other compensation receivable in connection with the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; ~~and.~~

(g) Failing to accurately describe or disclose in advertising or other materials used in connection with the promotion or transaction of securities business in this state, the identity of an agent's employing broker-dealer or issuer or the nature of the agent's securities services offered. For purposes of this paragraph, "other materials" include, ~~but are not limited to,~~ business cards, business stationery and display signs.

**SECTION 87.** DFI-Sec 4.06 (3) is created to read:

DFI-Sec 4.06 (3) In addition to the conduct specified in subs. (1) and (2), engaging in other unlawful conduct including forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices, may also be grounds for denial, suspension, or revocation, of registration.

**SECTION 88.** DFI-Sec 4.09 (3) is created to read:

DFI-Sec 4.09 (3) The division may deny an application or suspend or revoke the registration of a broker-dealer or agent, if the applicant or registrant is not of good business repute or conducts business in violation of such rules and regulations prescribed by the division to protect investors, customers, or prospective customers.

**SECTION 89.** DFI-Sec 4.10 (1) (intro.) is amended to read:

DFI-Sec 4.10 (1) (intro.) For purposes of ss. [551.401 \(2\) \(h\)](#) and [551.402 \(2\) \(i\)](#), Stats., a broker-dealer or agent is exempt from the registration requirement if the broker-dealer's or agent's only transactions effected in this state are with any of the following:

**SECTION 90.** DFI-Sec 4.11 is created to read:

**DFI-Sec 4.11 Registration exemption for certain merger and acquisition brokers.**

(1) DEFINITIONS. In this section:

(a) "Business combination related shell company" means a shell company that is formed by an entity that is not a shell company for one of the following purposes:

1. Solely for the purpose of changing the corporate domicile of that entity solely within the United States.

2. Solely for the purpose of completing a business combination transaction, as that term is defined in 17 CFR 230.165 (f), among one or more entities other than the company itself, none of which is a shell company.

(b) "Control" means the power to direct the management or policies of a company, directly or indirectly, whether through ownership of securities, by contract, or otherwise, subject to sub. (2) (b).

(c) "Eligible privately held company" means a privately held company that meets all of the following conditions:

1. The company does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under 15 U.S.C. 78o (d).

2. In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged, with respect to the securities transaction, the company meets either or both of the following conditions as determined in accordance with the historical financial accounting records of the company:

a. The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

b. The gross revenues of the company are less than \$250,000,000.

(d) "Merger and acquisition broker", subject to sub. (3), means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible

privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company.

(e) "Shell company" means a company that at the time of a transaction with an eligible privately held company has no or nominal operations and has one of the following:

1. No or nominal assets.
2. Assets consisting solely of cash and cash equivalents.
3. Assets consisting of any amount of cash and cash equivalents and nominal other assets.

(2) GENERAL PROVISIONS. (a) For purposes of ss. [551.401 \(2\) \(h\)](#) and [551.402 \(2\) \(i\)](#), Stats., and except as provided in subs. (3) and (4), a merger and acquisitions broker shall be exempt from registration under ss. 551.401 (1) and 551.402 (1).

(b) In determining whether an entity has control of a company there is a presumption of control if, upon completion of a transaction the buyer, or group of buyers, has contributed 25 percent or more of the capital or has the right to do one of the following:

1. Vote 25 percent or more of a class of voting securities.
2. Sell or direct the sale of 25 percent or more of a class of voting securities.
3. In the case of a partnership or limited liability company, receive upon dissolution 25 percent or more of the capital.

(3) CONDITIONS FOR A MERGER AND ACQUISITION BROKER. To be considered a merger and acquisition broker, the individual must reasonably believe all of the following:

(a) Upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert with others will, directly or indirectly, do all of the following:

1. Control and be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company.

2. Be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company and, with the assets of the eligible privately held company, engage in activities including one or more of the following:

a. Electing executive officers.

b. Approving the annual budget.

c. Serving as an executive or other executive manager.

d. Carrying out other activities which the Division may, by rule or order, determine to be in the public interest.

(b) If any person is offered securities in exchange for securities or assets of the eligible privately held company, the person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(4) EXCLUSIONS. The exemption under sub. (2) does not apply if a merger and acquisition broker does any of the following:

(a) Receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction, either directly or indirectly, in connection with the transfer of ownership of an eligible privately held company.

(b) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o (d).

(c) Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company.

(d) Directly provides financing related to the transfer of ownership of an eligible privately held company or, indirectly, through any of its affiliates.

(e) Assists any party obtain financing from an unaffiliated third party without doing all of the following:

1. Complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T, as shown by 12 C.F.R. 220 *et seq.*
2. Disclosing in writing to every party the amount of compensation the merger and acquisition broker will receive for such assistance.

(f) Represents both the buyer and the seller in the same transaction without providing to, or obtaining from, all parties to the transaction:

1. Clear written disclosure of all the parties that the broker represents.
2. Written consent from both parties to the joint representation.

(g) Facilitates a transaction, with a group of buyers formed with the assistance of the merger and acquisition broker, to acquire the eligible privately held company.

(h) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of buyers.

(i) Binds a party to a transfer of ownership of an eligible privately held company.

(5) DISQUALIFICATIONS. A merger and acquisition broker is not exempt from registration under sub. (1) if the broker, and any officer, director, member, manager, partner, or employee of the broker, does any of the following or if any of the following apply:

(a) Has been barred by the commission, any state, or any self-regulatory organization from association with another broker or dealer.

(b) Is suspended from association with a broker or dealer.

(6) CONSTRUCTION. Nothing in this section limits the division from exempting any person from any provision of this chapter or any regulation promulgated under this chapter.

(7) INFLATION ADJUSTMENT. (a) *General provisions.* On the first day of the 60th month beginning after the effective date of this rule [revisor inserts date], and

every 5 years thereafter, the dollar amounts in sub. (1) (c) 2. shall be increased by the division as follows:

1. Determine the annual employment cost index, or any successor index, as determined by the federal Bureau of Labor Statistics, for private sector civilians for the 12-month period ending on December 31, 2020.
2. Rebase that index to 100 by dividing the index value of subd. 1 by the December 2020 index value.
3. Divide the annual employment cost index, or any successor index, as determined by the federal Bureau of Labor Statistics, for private sector civilians for the 12-month period ending on December 31 of the year before the year in which the adjustment is being made, by index described in subd. 1.
4. Multiply the dollar amounts described in par. (a) (intro.) by the quotient obtained under subd. 3.

(b) *Rounding*. Each amount that is revised under this subsection shall be rounded to the nearest multiple of \$100,000 if the revised amount is not a multiple of \$100,000 or, if the revised amount is a multiple of \$50,000, such an amount shall be increased to the next higher multiple of \$100,000. Every 5 years, as described in par. (a), the division shall adjust the changes in dollar amounts required under this subsection and incorporate the changes into the income tax forms and instructions.

**SECTION 91.** DFI-Sec 5.01 (1) (intro.) and (a), (2) (f) 2. 3. are amended to read:

DFI-Sec 5.01 (1) (intro.) Applications for initial and renewal registration -of investment adviser and investment adviser representatives, as well as amendments, reports, notices, related filings and fees, shall be filed with all of the following:

(a) The division on forms prescribed by the division in s. DFI-Sec 9.01 (1); ~~or~~ .

(2) (f) 2. For purposes of s. ~~551.406 (3) (b)~~ 551.406 (1) (b), Stats., a written request for additional information is not limited to the applicant or the applicant's employing investment adviser, but may include other requests of third-party sources relevant to the application.

3. Before taking action on an application, the division may designate an employee to make an examination of the books, records and affairs of the applicant at the applicant's expense.

**SECTION 92.** DFI-Sec 5.01 (3) (a) is renumbered (3) and (3) (intro.), (a), and (b), as renumbered, are amended to read

DFI-Sec 5.01 (3) (intro.) Unless waived under sub. (4), each applicant for an initial registration as an ~~investment adviser or as an~~ investment adviser representative shall take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository, ~~the post-1999 version of the examination specified in subd. 1., or the post-1999 version of the Series 66 examination specified in subd. 2.~~ one of the following:

(a) The post-1999 version of the Series 65 Uniform Investment Adviser Law Examination.

(b) The Series 7 General Securities Representative Examination as well as the post-1999 version of the Series 66 Uniform Combined State Law Examination. An applicant must also pass or receive credit for the FINRA Securities Industry Essentials examination .

**SECTION 93.** DFI-Sec 5.01 (3) (b) is repealed.

**SECTION 94.** DFI-Sec 5.01 (4) (intro.) is amended to read:

DFI-Sec 5.01 (4) (intro.) The division shall waive the examination requirement in sub. (3) ~~shall be waived~~ for any applicant who meets any at least one of the following ~~criteria~~:

**SECTION 95.** DFI-Sec 5.01 (4) (a) 1. and 2., are renumbered 5.01 (4) (a) and (am) and, as renumbered, are amended to read:

DFI-Sec 5.01 (4) (a) The applicant has taken and passed either the post-1999 version of the Series 65 Uniform Investment Adviser State Law Examination, or both the post-1999 version of the Series 66 Uniform Combined State Law Examination and the Series 7 General Securities Representative Examination, with credit for the FINRA SIE examination, within 2 years prior to the date the application is filed with the division; ~~or .~~

(am) The applicant has been registered as an agent of a broker-dealer within two years prior to the date the application is filed, based on having passed the post-1999 version of the Series 66 examination and the Series 7 examination, with credit for the FINRA SIE examination.

**SECTION 96.** DFI-Sec 5.01 (4) (b) and (d) are amended to read:

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

(d) The applicant provides the division with proof that he or she ~~currently holds one~~ has been awarded any of the following ~~professional~~ designations and at the time of filing an application ~~is current and~~ currently holds the designation and is in good standing ~~with the granting authority~~:

1. Certified Financial Planner (CFP) ~~issued~~ awarded by the Certified Financial Planner Board of Standards, Inc.
2. Chartered Financial Consultant (ChFC) awarded by the American College, ~~Bryn Mawr, Pennsylvania~~ of Financial Services.
3. Personal Financial Specialist (PFS) ~~administered~~ awarded by the American Institute of Certified Public Accountants.
4. Chartered Financial Analyst (CFA) ~~granted~~ awarded by the ~~Association for Investment Management and Research~~ CFA Institute.
5. ~~Chartered Investment Counselor (CIC) granted by the Investment Adviser Association~~ Certified Investment Management Analyst (CIMA) awarded by the Investments & Wealth Institute.

**SECTION 97.** DFI-Sec 5.01 (4) (f) is repealed and recreated to read:

DFI-Sec 5.01 (4) (f) The individual has not been registered as an investment adviser representative in any state for more than two years but less than five years, has elected to participate in the Exam Validity Extension Program (EVEP), and complies with all of the following requirements:

1. The individual previously took and passed the examination for which they seek to maintain validity under this rule.
2. The individual was registered as an investment adviser representative for at least one year immediately preceding the termination of the investment adviser representative registration.

3. The individual was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while registered as an investment adviser representative or at any period after termination of the registration.
4. The individual elected to participate in the EVEP within two years from the effective date of the termination of the investment adviser representative registration.
5. The individual did not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration became ineffective.
6. As provided in and subject to DFI-Sec ch. 11, the individual completes annually on or before the close of each calendar year in which the individual participates in the EVEP for Investment Adviser Representatives (IAR) all of the following:
  - a. Six credits of IAR CE Ethics and Professional Responsibility Content offered by an authorized provider, including at least three credits covering the topic of ethics.
  - b. Six credits of IAR CE Products and Practice Content offered by an authorized provider.
7. As provided in and subject to DFI-Sec ch. 11, an individual who participates in EVEP shall complete the requirements described in subd. 6. for each calendar year that elapses after the individual's investment adviser representative registration became ineffective regardless of when the individual elects to participate in EVEP.
8. An individual who complies with the FINRA Maintaining Qualifications Program under FINRA Rule 1240(c) shall be considered in compliance with subd. 6. b.

**SECTION 98.** DFI-Sec 5.01 (5) is amended to read:

DFI-Sec 5.01 (5) Prior to issuance of a registration as an investment adviser, at least one employee located at the principal office of the investment adviser must be designated in the registration application on the form prescribed in s. DFI-Sec 9.01 (1) and filed with the division to act in a supervisory capacity and be registered as an investment adviser representative for the investment adviser, and must satisfy the examination requirement in sub. (3) unless the examination is waived under sub. (4).

**SECTION 99.** DFI-Sec 5.01 (8) is created to read:

DFI-Sec 5.01 (8) The division may deny an application for registration as an investment adviser or investment adviser representative if the applicant is not of good business repute or conducts business in violation of any rules or regulations that the division prescribes for the protection of investors, customers, or prospective customers.

**SECTION 100.** DFI-Sec 5.02 (2) (a) and (b) is amended to read:

DFI-Sec 5.02 (2) (a) Investment advisers having custody solely as a result of a direct fee deduction, as described in s. ~~DFI-Sec 5.035 (4) (a) 2.~~ DFI-Sec 5.035 (1e) (a) 2., who comply with all of the conditions in s. ~~DFI-Sec 5.035 (1) (f)~~ DFI-Sec 5.035 (1m) (c), and who make and maintain the records required in s. ~~DFI-Sec 5.035 (3) (b)~~ DFI-Sec 5.035 (3e), shall not be required to comply with the net worth requirement in this subsection.

(b) Investment advisers having custody solely as a result of advising pooled investment vehicles, as defined in s. ~~DFI-Sec 5.035 (4) (a) 3.~~ DFI-Sec 5.035 (1e) (a) 3., who comply with all of the conditions in s. ~~DFI-Sec 5.035 (1) (g)~~ DFI-Sec 5.035 (1m) (d) or (2) (c) and who create and maintain the records required in s. ~~DFI-Sec 5.035 (3) (e)~~ DFI-Sec 5.035 (3m), shall not be required to comply with the net worth requirement in this subsection.

**SECTION 101.** DFI-Sec 5.03 (1) (L), (n), and (p) 1. and 2., (2) (c), (3), and (5) is amended to read:

DFI-Sec 5.03 (1) (L) A file containing any advertisement (as defined within the meaning of section 206 (4)-1. of the ~~investment advisers act~~ Investment Advisers Act of 1940) used in connection with the offering of the investment advisory services in this state.

(n) A record that complies with Rule 204-2 (a) (12) under section 204 of the ~~investment advisers act~~ Investment Advisers Act of 1940 containing information for all securities transactions effected for the account of the investment adviser or any of its employees subject to that rule, including the title and amount of the security involved, the date and nature of the transaction, the execution price, and information regarding client transactions in the same security.

(p) 1. A copy of each brochure and supplement and each amendment or revision to the brochure or supplement, given or sent to any client or prospective client of the investment adviser as required by s. [DFI-Sec 5.05 \(8\)](#); .

2. A summary of material changes that are required by Part 2 of Form ADV, but are not contained in the brochure or supplement; ~~and~~ .

(2) (c) Written information concerning a client's net worth, annual income and other financial information, investment objectives and experience and such other information necessary and relied upon by the investment adviser to determine the suitability of any investment recommendation or investment advice to the client. The written information shall be updated on a regular basis when the investment adviser receives information from the client that results in material changes to the client's annual income, net worth, investment objectives or other changes to information affecting the investment adviser's ability to make suitable recommendations for the client as required under s. [DFI-Sec 5.06 \(4\)](#).

(3) Every registered investment adviser shall preserve for a period of not less than 5 years, the first 2 years in an easily accessible place, all records required under subs. [\(1\)](#) and [\(2\)](#) except that records respecting an account required under sub. [\(1\)](#) [\(i\)](#), [\(j\)](#) and [\(k\)](#) shall be preserved by the investment adviser for a period of not less than 5 years from the end of the first fiscal year during which the last entry was made on such record and records required under sub. [\(1\)](#) [\(a\)](#) shall be preserved by the investment adviser for a period of not less than 3 years after withdrawal or expiration of its registration in this state. The record may be retained ~~by computer~~ electronically if a printed copy of the record can be prepared immediately upon request. ~~In the event a record has been preserved for 2 years as required in this subsection, a microfilm copy may be substituted for the remainder of the required period.~~

(5) The records required in sub. [\(4\)](#) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place. Upon closing of the branch office, the records shall be transferred to the home office for the duration of the required retention period. The record may be retained ~~by computer~~ electronically if a printed copy of the record can be prepared immediately upon request. ~~If a record has been preserved for the first year of the 3-year period required in this subsection, a microfilm copy may be substituted for the remainder of the required retention period.~~

**SECTION 102.** DFI-Sec 5.035 (title) is amended to read:

DFI-Sec 5.035 (title) **Investment ~~advisors~~ advisers with custody**.

**SECTION 103.** DFI-Sec 5.035 (1) (intro.), (a), (b), and (c) are renumbered DFI-Sec (4e) (intro.), (a), (b), and (c) and, DFI-Sec (4e) (intro.) and (c), as renumbered, are amended to read:

DFI-Sec 5.035 (4e) (intro.) Except as provided in sub. (2) (a) to (e), and subject to the definitions in ~~sub. (4) sub. (1e)~~, it ~~shall be~~ is a prohibited business practice for an investment adviser registered, or required to be registered, to have custody of client funds or securities unless the investment adviser complies with all of the following:

(c) When an investment adviser opens an account with a qualified custodian on a client's behalf, either under the client's name or under the investment adviser's name as agent, the investment adviser ~~shall notify~~ notifies the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

**SECTION 104.** DFI-Sec 5.035 (1) (d), (e), (f), and (g) are renumbered DFI-Sec 5.035 (1m) (a), (b), (c), and (d) and DFI-Sec 5.035 (1m) (a) 2. (intro.), a., and b., and 3., (b), (c) (intro.), 2., and 4., and (d) (intro.), 1., 2. (intro.), and 4., as renumbered, are amended to read:

DFI-Sec 5.035 (1m) (a) 2. (intro.) If client funds or securities are held by the adviser, all of the following apply:

a. The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; ~~and~~ .

b. The investment adviser shall engage an independent certified public accountant to verify all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year. The accountant shall file a copy of the special examination report with the division within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; ~~and~~ .

3. If the investment adviser is a general partner of a limited partnership, is a managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under par. ~~(d)~~ (a) 1. or 2. a., shall be sent to each limited partner, member or other beneficial owner or their independent representative.

(b) If a client does not receive account statements and notices directly from the adviser or custodian, the investment adviser shall obtain from the client a written designation of an independent representative to receive, on the client's behalf, notices and account statements as required under ~~pars. (e) and (d)~~ subs. (1m) (a) and (4e) (c).

(c) (intro.) An adviser who has custody as defined in sub. ~~(4) (a)~~ (1e) (a) as a result of having fees directly deducted from client accounts, as described in sub. ~~(4) (a) 2.~~ (1e) (a) 2., shall comply with all of the following:

2. (intro.) Except as provided in subd. 4., each time a fee is directly deducted from a client account, the adviser shall concurrently do ~~both of~~ all the following:

a. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; ~~and~~ .

b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee, except that the division may authorize other methods of client notification.

4. An investment adviser having custody as described in sub. ~~(4) (a) 2.~~ (1e) (a) 2. and who complies with the safekeeping requirements in ~~pars. (a) through (f)~~ subs. (1m) (a) to (d) and (4e) (a) to (c), is not required to meet the financial requirements for custodial advisers prescribed in s. DFI-Sec 5.02 (2).

(d) (intro.) An investment adviser, including an adviser acting as a trustee, who has custody as described in sub. ~~(4) (a) 3.~~ (1e) (a) 3. and who does not meet the exception provided under sub. (2) (c) shall comply with each of the following:

1. The investment adviser shall hire an independent party as defined in sub. ~~(4) (b)~~ (1e) (b) to review all fees, expenses and capital withdrawals from the pooled accounts.

2. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal, and the

method of calculation so that the independent party can do ~~both~~ all of the following:

4. An investment adviser having custody as described in sub. ~~(4)(a)3.~~ (1e)(a)3. and who complies with the safekeeping requirements in ~~pars. (a) through (e) subs. (4e)(a) to (c) and (1m)(a) and (b) and,~~ together with the requirements in ~~par. (g) this paragraph,~~ will not be required to meet the financial requirements for custodial advisers prescribed in s. DFI-Sec 5.02 (2).

**SECTION 105.** DFI-Sec 5.035 (2) (a), (b) 1. (intro.), (c), (d), (e) (intro.) and 2. a., and (f) is amended to read:

DFI-Sec 5.035 (2) (a) With respect to shares of an open-end investment company as defined in section 5 (a) (1) of the ~~investment company act~~ Investment Company Act of 1940, an investment adviser may use the investment company's transfer agent in lieu of a qualified custodian for purposes of complying with ~~sub. (1) subs. (1m) and (4e).~~

(b) 1. (intro.) An investment adviser is not required to comply with ~~sub. (1) subs. (1m) and (4e)~~ with respect to securities that meet all of the following requirements:

(c) An investment adviser is not required to comply with ~~par. (d) sub. (1m)(a)~~ with respect to the account of a limited partnership, limited liability company, or another type of pooled investment vehicle that is subject to audit at least annually and distributes annually its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners, members, or other beneficial owners, within 120 days of the end of its fiscal year. The investment adviser shall notify the division on Form ADV that the investment adviser intends to comply with the audit safeguards described above.

(d) An investment adviser is not required to comply with ~~sub. (1) subs. (1m) and (4e)~~ with respect to the account of an investment company registered under the ~~investment company act~~ Investment Company Act of 1940.

(e) (intro.) An investment adviser is not required to comply with the safekeeping requirements of ~~sub. (1) subs. (1m) and (4e)~~ or the net worth requirements of s. DFI-Sec 5.02 (2) if the investment adviser has custody solely because the investment adviser is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

2. a. The investment adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of ~~sub. (1)~~ subs. (1m) and (4e) and the reasons why the investment adviser will not be complying with those requirements.

(f) Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in sub. ~~(4)(e)~~ (1e) (d) shall first obtain approval from the division and shall comply with all of the applicable safekeeping provisions under ~~sub. (1)~~ subs. (1m) and (4e), including taking responsibility for those requirements that are designated to be performed by a qualified custodian.

**SECTION 106.** DFI-Sec 5.035 (3) (a) (intro.) is renumbered DFI-Sec 5.035 (3) (intro.).

**SECTION 107.** DFI-Sec 5.035 (3) (a) 1. (intro.) is renumbered DFI-Sec 5.035 (3) (a).

**SECTION 108.** DFI-Sec 5.035 (3) (a) 2. is renumbered DFI-Sec 5.035 (3) (b) and DFI-Sec 5.035 (3) (b) (intro.) and 1., as renumbered, are amended to read:

DFI-SECTION 5.035 (3) (b) (intro.) If an investment adviser obtains possession of securities that are acquired from an issuer in a transaction or series of transactions not involving any public offering that qualify for the exception from custody under sub. (2) (b), the adviser shall keep all the following records:

1. A record showing the issuer or current transfer agent's name, address, telephone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; ~~and.~~

**SECTION 109.** DFI-Sec 5.035 (3) (b) is renumbered DFI-Sec 5.035 (3e) and DFI-Sec 5.035 (3e) (intro.) and (a), as renumbered, are amended to read:

DFI-Sec 5.035 (3e) (intro.) Each registered investment adviser whose principal office is in this state who has custody or possession of securities or funds of any client shall maintain and keep current all the following books and records in addition to those required under ~~sub. (1)~~ subs. (1m) and (4e):

(a) A copy of all documents required in sub. ~~(1)(f)~~ (1m) (c) if the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

**SECTION 110.** DFI-Sec 5.035 (3) (c) is renumbered DFI-Sec 5.035 (3m) and DFI-Sec 5.035 (3m) (intro.) and (3m) (a) and (c), as renumbered, are amended to read:

DFI-Sec 5.035 (3m) If an investment adviser has custody because it advises a pooled investment vehicle, as defined in sub. ~~(4)(a) 3.~~ (1e) (a) 3., the adviser shall also keep all the following records:

(a) True, accurate and current account statements;

(c) If the adviser complies with sub. ~~(1)(g) (1m) (d)~~, the investment adviser shall make and maintain all the following records:

**SECTION 111.** DFI-Sec 5.035 (4) (a) is renumbered DFI-Sec 5.035 (1e) (a) and DFI-Sec 5.035 (1e) (a) (intro.), 1., and 2., as renumbered, are amended to read:

(1e) (a) (intro.) “Custody”<sub>2</sub> for purposes of this section, means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them, or having the ability to appropriate them in ~~the following contexts, without limitation~~ certain contexts, including any of the following:

1. Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them, except that receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if they are forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under sub. ~~(3) (a)~~;

2. Any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; ~~and~~ .

**SECTION 112.** DFI-Sec 5.035 (4) (b) is renumbered DFI-Sec 5.035 (1e) (b) and DFI-Sec 5.035 (1e) (b) (intro.) and 1., as renumbered, are amended to read:

(b) (intro.) “Independent party” for purposes of sub. ~~(1)(g) (1m) (d)~~, means a person that meets all of the following:

1. The person is engaged by the investment adviser to act as an intermediary for the payment of fees, expenses, and capital withdrawals from a pooled investment.

**SECTION 113.** DFI-Sec 5.035 (4) (c) is renumbered DFI-Sec 5.035 (1e) (d) and DFI-Sec 5.035 (1e) (d) (intro.) and 2., as renumbered, are amended to read:

(d) (intro.) “Qualified custodian” for purposes of ~~sub. (1)~~ subs. (1m) and (4e), includes a broker-dealer registered under ch. 551, Stats., or any of the following independent institutions or entities:

2. A registered futures commission merchant registered under ~~section 4f(a) of the commodity exchange act~~ 7 USC § 6f, holding the client assets in client accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery or options thereon.

**SECTION 114.** DFI-Sec 5.035 (4) (d) is renumbered DFI-Sec 5.035 (1e) (c) and DFI-Sec 5.035 (1e) (c) (intro.), as renumbered, is amended to read:

DFI-Sec 5.035 (1e) (c) “Independent representative” for purposes of this section means a person ~~that satisfies the requirements in each~~ to whom all of the following ~~paragraphs~~ apply:

**SECTION 115.** DFI-Sec 5.04 (2), (3), (5) (b), and (6) (intro.) and (a) are amended to read:

DFI-Sec 5.04 (2) Each investment adviser shall file with the division a all of the following:

(a) A copy of any complaint related to its business, transactions, or operations in this state, naming the investment adviser or any of its partners, officers or investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the investment adviser; ~~a.~~

(b) A copy of any answer or reply to the complaint filed by the investment adviser within 10 days of the date the answer or reply is filed; ~~and a.~~

(c) A copy of any decision, order, or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) ~~(a)~~ (intro.) Except as provided in subs. (2) and (4), each investment adviser shall ~~file~~ do all of the following:

(a) File with the division any notice of change of control or change of name, as well as any material change in the information included in the investment adviser's most recent application for registration, in an amendment to Form ADV filed with the division within 30 days of the date of the change.

(b) ~~Each investment adviser shall file~~ File a complete, updated Form ADV with the investment adviser registration depository within 90 days of the end of its fiscal year.

(c) ~~Each investment adviser representative and his or her employing investment adviser or federal covered investment adviser shall~~ Along with the investment adviser representative's employing investment adviser or federal covered investment adviser, update information contained in an investment adviser representative's application by filing an amendment to Form U-4 with the central registration depository within 30 days of the date of the event that requires filing of the amendment.

(5) (b) Each investment adviser shall notify the division in writing ~~at least~~ not later than 14 days after the closing in this state of any branch office as defined in s. DFI-Sec 1.02 (7), and the notice shall specify the effective date of the closing.

(6) (intro.) Each investment adviser shall file a branch office renewal notice annually ~~under par. (a) or (b), as applicable.~~ using one of the following methods:

(a) Through the investment adviser registration depository for registered investment advisers; <sub>2</sub>

**SECTION 116.** DFI-Sec 5.05 (1), (2) (intro.) and (b), (3), (4), (5), (7), (8), (11) (intro.), (a), (b), (c), (d) (intro.), (12) (intro.), and (13) are amended to read:

DFI-Sec 5.05 (1) Each investment adviser shall establish, maintain, and enforce written supervisory procedures and a system for applying the procedures, which may reasonably be expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall be tailored to the investment adviser's business model, taking into account the size of the firm, types of services provided, and the number of locations from which the investment adviser operates. The procedures shall include the designation and registration of a number of supervisory employees that is reasonable in relation to the number of its registered investment adviser representatives, offices, and activities in this state. The investment adviser shall also do all of the following:

(a) At least annually, review the adequacy of the policies and procedures established under this section and the effectiveness of their implementation.

(b) Designate a supervisory person as the chief compliance officer responsible for administering the investment adviser's policies and procedures.

(2) (intro.) ~~An~~ Except as provided in sub. (3), an investment adviser shall ~~may~~ not enter, extend, or renew any investment advisory contract if the contract:

(b) Fails to provide, in substance, that no assignment of the contract may be made without the consent of the client; ~~or,~~

(3) ~~Subsection~~ The prohibition in sub. (2) (a) shall not prohibit ~~does not apply to an~~ investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in sub. (2) (b) includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. As used in sub. (2), "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than persons specified under s. [551.403 \(2\)](#), Stats., or s. ~~DFI-Sec 5.12~~ [5.13](#).

(4) An investment adviser ~~shall~~ may not enter any contract with a client if the contract contains any condition, stipulation, or provision binding the client to waive any rights under ch. [551](#), Stats., or any rule or order thereunder. Any such condition, stipulation, or provision is void.

(7) Every registered investment adviser shall employ at its principal office or designated office of supervision in accordance with s. [DFI-Sec 5.03 \(1\)](#), at least one person designated in writing on the form prescribed in s. [DFI-Sec 9.01 \(1\) \(b\)](#) and filed with the division to act in a supervisory capacity who is registered as an investment adviser representative in this state and has satisfied the ~~supervisory~~ examination requirement in s. [DFI-Sec 5.01 \(5\)](#). If a registered investment adviser

is not in compliance with the requirements of this paragraph, it has 45 days from the first date of noncompliance to meet the requirements of this paragraph.

(8) (a) ~~Unless otherwise~~ Except as provided in this subsection, each investment adviser, or investment advisor representative, who will provide advisory services shall furnish to each client and prospective client a the current firm brochure and ~~one or more~~ the current version of any relevant supplements as required by this subsection. The brochure and any required supplement shall contain all information required by Part 2 of Form ADV and such other information as the division may require.

**SECTION 117.** DFI-Sec 5.05 (8) (b) 1. is repealed.

**SECTION 118.** DFI-Sec 5.05 (8) (e) 1. and 3., (11) (intro.), (a), (b), (c), (d) (intro.), (12) (intro.), and (13) are amended to read:

DFI-Sec 5.05 (8) (e) 1. Each investment adviser that is a sponsor of a wrap fee program shall furnish to a client or prospective client in lieu of the brochure required in par. ~~(b)~~ (a), a wrap fee brochure containing all information required by Form ADV. All information in a wrap fee brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

3. A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to furnish under par. ~~(b)~~ (a).

(11) (intro.) Each investment adviser which by contract, agreement or other means provides investment advisory services on the premises of a financial institution that is not registered as an investment adviser shall do all of the following:

(a) Perform the investment advisory services within a specific area on the premises of the financial institution designated by agreement between the investment adviser and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the investment advisory services; .

(b) Prominently display the identity of the registered investment adviser in the area on the premises of the financial institution designated under par. ~~(a)~~; .

(c) 1. Disclose the identity of the registered investment adviser in, without limitation because of enumeration, all advertising, correspondence, business, including in at least all of the following areas:

a. Advertising.

b. Business cards, promotional .

c. Promotional materials and records relating to the investment adviser's services provided on the premises of the financial institution.

2. Materials described in this paragraph may not display the financial institution's name or logotype in a manner that would mislead clients as to the financial institution's role in connection with the investment advisory services being offered by the investment adviser. For purposes of this paragraph, if the investment adviser's name is no less prominent in the materials than the name of the financial institution in the size, style or color of type or in the placement or by use of logotypes, the materials are presumed to be not misleading.

(d) Establish written supervisory procedures and a system for applying the procedures. The procedures shall comply with s. DFI-Sec 5.05 (1) and shall be designed to accomplish certain supervisory functions, including ~~but not limited to~~ at least all of the following:

(12) No investment adviser or its investment adviser representative, in connection with a telephone or electronic solicitation, ~~shall~~ may:

(13) Each investment adviser shall provide clients with a written notification or invoice ~~of itemizing~~ fees due for investment advisory services. The notification or invoice shall specify the time period covered by the fee for ongoing ~~supervisory or investment~~ management services or shall detail the services rendered for preparation of financial plans or analyses. Itemization of the fee for investment services includes the formula used to calculate the fee, the amount of assets under management on which the fee is based, and the time period covered by the fee.

**SECTION 119.** DFI-Sec 5.06 (intro.), (2), (3), (4), (5), (9), and (10) are amended to read:

DFI-Sec 5.06 (intro.) Except as otherwise provided in ~~sub. (13), the following are deemed~~ DFI-Sec 5.065 (1), "dishonest or unethical business practices" or "taking unfair advantage of a client" by an investment adviser or an investment adviser representative under s. 551.412 (4) (m), Stats., ~~without limiting those terms to the practices specified in this section~~ are deemed to include the following:

(2) Placing an order to purchase or sell a security for the account of a client upon instructions of a third party without first having obtained written third party trading authorization from the client; .

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources and character of the account; .

(4) Recommending to a client the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser; .

(5) Placing an order to purchase or sell a security for the account of a client without authority to do so; .

(9) Placing an order for a client, or recommending that the client place an order, to purchase or sell a security through a broker-dealer or agent not registered under ch. [551](#), Stats., unless the client is a person described in s. [551.403 \(2\) \(a\)](#), Stats., or s. [DFI-Sec 5.12 5.13](#).

(10) Recommending to a client that the client engage the services of a broker-dealer, agent or investment adviser not registered under ch. [551](#), Stats., unless the client is a person described in s. [551.403 \(2\) \(a\)](#), Stats., or s. [DFI-Sec 5.12 5.13](#).

**SECTION 120.** DFI-Sec 5.06 (13) is renumbered DFI-Sec 5.065 (1) and, as renumbered, is amended to read:

DFI-Sec 5.065 **Application of prohibitions, distribution of materials, definitions.** (1) ~~The subsections of this section shall apply~~ Section DFI-Sec 5.06 applies to an investment adviser representative of a federal covered investment adviser only to the extent permitted by section 203 (b) (2) of the ~~investment advisers act~~ Investment Advisers Act of 1940, and only to the extent the prohibited conduct involves fraud or deceit.

**SECTION 121.** DFI-Sec 5.06 (16) (intro.) and (a) are amended to read:

DFI-Sec 5.06 (16) (intro.) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair

the rendering of unbiased and objective advice including ~~but not limited to~~ any of the following:

(a) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; ~~and.~~

**SECTION 122.** DFI-5.06 (17) (a) is renumbered DFI-Sec 5.06 (17) and, as renumbered, is amended to read:

DFI-Sec 5.06 (17) While acting as principal for its own advisory account, ~~to~~ knowingly ~~sell~~ selling any security to or ~~purchase~~ purchasing any security from a client, or while acting as broker-dealer for a person other than the client, ~~to~~ knowingly ~~effect~~ effecting any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

**SECTION 123.** DFI-Sec 5.06 (17) (b) to (e) are renumbered DFI-Sec 5.065 (2) to (5), and DFI-Sec 5.065 (2), (3) (intro.), (a), (b), and (c), (4), and (5) (intro.), as renumbered, are amended to read:

DFI-Sec 5.065 (2) The prohibitions ~~of this subsection shall~~ in DFI-Sec 5.06 (17) do not apply to any transaction with a client of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(3) The prohibitions ~~of this subsection shall~~ in DFI-Sec 5.06 (17) do not apply to any transaction with a client of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(a) By means of publicly distributed written materials or publicly made oral statements; ~~.~~

(b) By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts; ~~.~~

(c) Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; ~~or.~~

(4) ~~Publicly~~ With regard to DFI-Sec 5.06 (17), publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection

with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement ~~shall~~ does not relieve it of any other disclosure obligations under ch. 551, Stats.

(5) ~~In~~ With regard to DFI-Sec 5.06 (17), in this subsection ~~section~~:

**SECTION 124.** DFI-Sec 5.06 (19) (intro.) and (b) (intro.) are amended to read:

DFI-Sec 5.06 (19) (intro.) Publishing, circulating, or distributing any advertisement which directly or indirectly does any ~~one~~ of the following:

(b) (intro.) Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes ~~both~~ all of the following:

**SECTION 125.** DFI-Sec 5.06 (19) (g) is renumbered DFI-Sec 5.065 (6), and DFI-Sec 5.065 (6) (intro.), as renumbered, is amended to read:

DFI-Sec 5.065 (6) (intro.) In ~~this subsection~~ DFI-Sec 5.06 (19), the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any ~~one~~ of the following:

**SECTION 126.** DFI-Sec 5.06 (25) (intro.) is renumbered DFI-Sec 5.066 (1) and, as renumbered, is amended to read:

DFI-Sec 5.066 **Additional prohibited conduct.** (1) Paying a cash fee or any other economic benefit, directly or indirectly, in connection with solicitation activities is a "dishonest or unethical business practice" or "taking unfair advantage of a client" by an investment adviser or an investment adviser representative under s. 551.412 (4) (m), Stats., unless the requirements of pars. (a) through (d) are sub. (2) are met.

**SECTION 127.** DFI-Sec 5.06 (25) (a) to (e) are renumbered DFI-Sec 5.066 (2) (a) to (e), and DFI-Sec 5.066 (2) (b) (intro.), 1., and 2., (c), (d) (intro.) and 1. to 5., and (e), as renumbered, are amended to read:

DFI-Sec 5.066 (2) (b) The cash fee or any other economic benefit is paid by the investment adviser with respect to solicitation activities that are impersonal in nature in that they are provided solely by ~~means of~~ one of the following means:

1. Written material or oral statements which do not purport to meet the objectives or needs of the specific client; ~~or~~ .
2. Statistical information containing no expressions of opinions as to the merits of particular securities or investment advisers; ~~or~~ .

(c) The cash fee or any other economic benefit is paid pursuant to a written agreement to which the investment adviser is a party, and all of the following conditions are met:

1. The written agreement; does all of the following:
  - a. Describes the solicitation or referral activities to be engaged in by the solicitor on behalf of the investment adviser and the cash fee or any other economic benefit to be received for such activities; ~~and~~ .
  - b. Contains an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of ch. 551, Stats., and rules ~~there under~~; and thereunder.
  - c. Requires that the solicitor, at the time of any solicitation or referral activities for which a cash fee or any other economic benefit is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's disclosure document required under s. DFI-Sec 5.05 (8) and a separate disclosure statement as described in par. (d), either in paper or electronic format; ~~and~~ .
2. The investment adviser receives from the client, prior to or at the time of entering into any written investment advisory contract, a signed and dated acknowledgement of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document; ~~and~~ .
3. The investment adviser makes a bona fide effort and has a reasonable basis for believing that the solicitor has complied with the agreement; ~~and~~ .

4. (cm) The requirements in ~~subds. 1., 2. and 3.~~ shall par. (c) do not apply if the solicitor is any of the following:

- a. ~~1.~~ A partner, officer, director or employee of such investment adviser; ~~or~~ .
- b. ~~2.~~ A partner, officer, director or employee of a person that controls, is controlled by, or is under common control with such investment adviser, provided the status of the solicitor is disclosed to the client at the time of the solicitation or referral.

(d) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to par. (c) 1. c. shall contain all of the following information:

- 1. The name of the solicitor; .
- 2. The name of the investment adviser; .
- 3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser; .
- 4. A statement that the solicitor will be compensated for solicitation or referral services by the investment adviser; .
- 5. The terms of the compensation arrangement including a description of the cash fee or any other economic benefit paid or to be paid to the solicitor; .

**SECTION. 128.** DFI-Sec 5.06 (25) and (26) are created to read:

DFI-Sec 5.06 (25) Accessing a client's account by using the client's own unique identifying information, such as username and password.

(26) Failing to act as a fiduciary for a client.

**SECTION 129.** DFI-Sec 5.07 (2) (b) is amended to read:

DFI-Sec 5.07 (2) (b) An agent of a broker-dealer that is also registered as an investment adviser, or notice filed as a federal covered investment adviser, shall also register as an investment adviser representative of that investment adviser or federal covered investment adviser pursuant to s. 551.404, Stats.

**SECTION 130.** DFI-Sec 5.09 (3) is created to read:

DFI-Sec 5.09 (3) The division may deny, suspend, or revoke the registration of an investment adviser or investment adviser representative, if the registrant is not of good business repute or conducts business in violation of such rules and

regulations as the division prescribes for the protection of investors, customers, or prospective customers.

**SECTION 131.** DFI-Sec 5.10 (1) is amended to read:

DFI-Sec 5.10 (1) Each investment adviser shall file a copy of its current form ADV Parts 1 and ~~H 2~~ electronically with the ~~Investment Adviser Registration Depository investment adviser registration depository.~~

**SECTION 132.** DFI-Sec 5.10 (3) is repealed.

**SECTION 133.** DFI-Sec 5.12 is repealed.

**SECTION 134.** DFI-Sec 5.13 (1) (intro.) and (2) (intro.) and (a) are amended to read:

DFI-Sec 5.13 (1) (intro.) For purposes of ss. [551.403 \(2\)](#) and [551.404 \(2\)](#), Stats., an investment adviser or an investment adviser representative is exempt from the registration requirement if its only transactions effected in this state are with any of the following:

(2) (intro.) A solicitor is not required to be registered as an investment adviser or as an investment adviser representative if the solicitor is in compliance with all requirements of s. ~~DFI-Sec 5.06 (25)~~ [DFI-Sec 5.066](#), and the solicitor satisfies ~~par. (a) or (b)~~ all of the following.

(a) Provides solicitation activities that are impersonal in nature as set forth in s. ~~DFI-Sec 5.06 (25)~~ [s. DFI-Sec 5.066](#) and the solicitor to whom a cash fee or any other economic benefit is paid for such referral does not trigger any of the following as being a person:

1. Subject to an order of the U.S. Securities & Exchange Commission issued under section 203(f) of the Investment Advisers Act of 1940;
2. Subject to an order of the administrator, the securities administrator of any other state, the U.S. Securities and Exchange Commission, or any ~~self-regulatory~~ self-regulatory organization denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative or barring the person from the securities or advisory industry or associating or affiliating with the securities or advisory industry, entered after notice and opportunity for hearing;

3. Convicted within the previous ten years of any felony, or any misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Investment Advisers Act of 1940;
4. Convicted within the previous ten years of any felony, or any misdemeanor involving conduct described in s. [551.412 \(4\) \(c\)](#), Stats.;
5. Found by the U.S. Securities & Exchange Commission to have engaged, or has been convicted of engaging in, any of the conduct specified in section 203(e)(1), (5) or (6) of the Investment Advisers Act of 1940;
6. Found by the administrator to have engaged, or has been convicted of engaging in, any of the conduct specified in s. [551.412 \(4\) \(a\)](#), [\(b\)](#) or [\(f\)](#), Stats.;
7. Subject to an order, judgment, or decree described in section 203(e)(4) of the Investment Advisers Act of 1940;
8. Subject to an order, judgment, or decree described in s. [551.412 \(4\) \(d\)](#), Stats.

**SECTION 135.** DFI-Sec 6.01 is amended to read:

DFI-Sec 6.01 An issuer of securities or any person who is an officer, director, or controlling person of the issuer is deemed to employ a “device, scheme, or artifice to defraud” the purchasers of the securities within the meaning of s. [551.501 \(1\)](#), Stats., if the person applies or authorizes or causes to be applied any material part of the proceeds from the sale of the securities in any material way contrary to the purposes specified in the prospectus used in the offering of the securities and not reasonably related to the business of the issuer as described in the prospectus. For the purposes of this chapter, “prospectus” includes any written or oral representations, advertising, written offering memorandum, or similar document, in printed or electronic form, that is related to or used in the offering of the securities.

**SECTION 136.** DFI-Sec 6.02 is amended to read:

DFI-Sec 6.02 A person authorizing or causing the distribution of securities as a stock dividend by a corporation other than the issuer, without registration of the securities under ch. [551](#), Stats., or the ~~securities act~~ Securities Act of 1933, is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities in broker-dealer transactions, within the meaning of s. [551.501 \(1\)](#), Stats., if any of the following apply:

(1) The issuer of the securities was organized, or the securities were acquired, for the purpose of the distribution or in connection ~~therewith~~ with the distribution, either by the distributing corporation or by any person in control of, controlled by, or under common control with, the distributing corporation;~~or.~~

(2) The issuer has nominal assets or income at the time of the distribution;~~and if~~ the person has reason to believe that the distribution will be followed by transactions in the securities effected through broker-dealers.

**SECTION 137.** DFI-Sec 6.03 is amended to read:

DFI-Sec 6.03 An issuer of outstanding securities registered under s. [551.303](#) or [551.304](#), Stats., or transactions in which are exempted from registration under s. [DFI-Sec 2.02 \(9\) \(o\)](#), or any controlling person of the issuer, is deemed to employ a “device, scheme or artifice to defraud” the purchasers of the securities within the meaning of s. [551.501 \(1\)](#), Stats., if the issuer fails to provide adequate facilities for the transfer and delivery of the securities to the purchasers thereof without unreasonable delay, either directly or through its transfer agent for the securities.

**SECTION 138.** DFI-Sec 6.05 (1) (intro.) is amended to read:

DFI-Sec 6.05 (1) (intro.) ~~An~~ Except as provided in sub. (2e), an issuer whose equity securities of any class have been registered under ch. [551](#), Stats., or predecessor laws or section 12 of the ~~securities exchange act~~ Securities Exchange Act of 1934, and which, on the date of the initial offer, notice, or solicitation relating to the proposed transaction, are held of record by 100 or more persons in this state, which number of holders constitutes 20% or more of the total number of holders of record of the securities, or any affiliated person of the issuer, is deemed to employ a “device, scheme or artifice to defraud” holders of the securities within the meaning of s. [551.501 \(1\)](#), Stats., or to engage in an “act, practice or course of business which operates or would operate as a fraud or deceit” upon the holders, within the meaning of s. [551.501 \(3\)](#), Stats., if the issuer or person enters into any transaction (including a series of transactions) in this state involving a purchase of any equity security of the issuer, other than an arm's length purchase by a person not affiliated with the issuer, which transaction has, or may have, ~~either~~ any of the following effects ~~described in sub. (2)~~ unless:

**SECTION 139.** DFI-Sec 6.05 (1) (a) to (e) are renumbered DFI-Sec 6.05 (2e) (a) to (e) and DFI-Sec 6.05 (2e) (a) 1. (intro.), a., b., and c., (b), (c), and (d), as renumbered, are amended to read:

DFI-Sec 6.05 (2e) (a) 1. (intro.) The terms of the transaction, including compensation for the equity securities to be purchased, are fair to all holders of the securities. The terms of the transaction ~~shall be~~ are presumed to be fair if:

a. The compensation is no less than that independently recommended by 2 qualified, independent appraisers after reasonable investigation considering all relevant factors, and the issuer's board of directors states that the compensation is fair to security holders and was determined in good faith; and

b. The latest public offering of the securities occurred more than 10 years prior to the transaction, or the compensation is greater than the public offering price; and

c. More than 50% of the securities held by persons not affiliated with the issuer approve the transaction; ~~and~~

(b) The issuer or person mails or delivers to each holder of record of the securities and files with the division, at least 20 days prior to any purchase or shareholder vote authorizing the purchase (if required), a complete and accurate description of the transaction, including, ~~without limitation,~~ the identity of the parties to the transaction, the source and amount of funds, the purpose of the transaction, any material plans or proposals concerning the issuer, any contracts, arrangements, or understanding involving the issuer with respect to its equity securities, a statement of the intentions of all affiliated persons (if known), current financial information concerning the issuer including pro forma data showing the effect of the transaction, federal tax consequences of the transaction to security holders and the issuer, the nature of the market for the securities before and after the transaction, the price at which purchases will be made and the basis therefor, summaries in reasonable detail of all appraisal reports or opinions (including any contrary or additional to those relied upon) and a statement that copies of the reports or opinions will be provided upon request, a statement of all projected expenses in connection with the transaction, and all other material information; and

(c) If the transaction includes a tender offer or request, or invitation for tenders, the offeror ~~shall~~:

1. ~~Permit~~ Permits tenders to be withdrawn at any time within 7 days and after 60 days from the date of the offer; and

2. ~~Purchase~~ Purchases on a pro rata basis those securities tendered within 10 days from the date of the offer, if more valid tenders are received within that period than the offeror has agreed to accept; ~~and~~

3. ~~Purchase~~ Purchases on substantially identical terms and for identical compensation from all validly tendering security holders; ~~;~~

(d) Security holders of the class not affiliated with the issuer ~~shall be~~ are not treated ~~not~~ less favorably in connection with the transaction than any who are so affiliated; ~~and.~~

**SECTION 140.** 6.05 (1) (ae) and (am) is created to read:

6.05 (1) (ae) Causing a class of equity securities of the issuer to be subject to delisting from a national securities exchange registered under the ~~securities exchange act~~ Securities Exchange Act of 1934, or cease to be authorized to be quoted in NASDAQ.

(am) Causing a class of equity securities of the issuer to be eligible for termination of registration, or suspension of reporting requirements, under the securities exchange act of 1934 or under ch. 551, Stats.

**SECTION 141.** DFI-Sec 6.05 (2) is repealed.

**SECTION 142.** DFI-Sec 6.05 (2e) (intro.) and (f) are created to read:

6.05 (2e) (intro.) An issuer is not deemed to employ a “device, scheme or artifice to defraud” or to engage in an “act, practice or course of business which operates or would operate as a fraud or deceit” as described under sub. (1) if any of the following situations apply:

(f) The transaction meets the requirement of rule 13e-3 (g) (2) under the Securities Exchange Act of 1934.

**SECTION 143.** DFI-Sec 7.01 (2) (d) is amended to read:

DFI-Sec 7.01 (2) (d) Filing under s. 551.302 (3), Stats., ~~or s. DFI-Sec 2.029~~ \$200.

**SECTION 144.** DFI-Sec 7.01 (3) (c) 1. and 2. and (d) 1. and 2. are amended to read:

DFI-Sec 7.01 (3) (c) 1. Reasonable transportation costs that may not exceed coach class air fare; ~~;~~

2. Ground transportation costs that on a per day basis may not exceed the daily rate charged by a national car rental agency in that locale for a compact-sized car; ~~and.~~

- (d) 1. Reasonable transportation costs that may not exceed coach class air fare; .  
2. Ground transportation costs that are on a per day basis may not exceed the daily rate charged by a national car rental agency in that locale for a compact-sized car; and.

**SECTION 145.** DFI-Sec 7.01 (5) (d) is repealed.

**SECTION 146.** DFI-Sec 7.01 (6) (h) is amended to read:

DFI-Sec 7.06 (6) (h) Delinquent filing of investment company report of sales on Form RS-IC Uniform Investment Company Notice Filing Form NF \$100.

**SECTION 147.** DFI-Sec 7.01 (8) (a) and (c) are repealed.

**SECTION 148.** DFI-Sec 7.02 (1) (c) is amended to read:

7.02 (1) (c) A circular, form letter, or other advertising record to be used in connection with a going-private transaction that is subject to the filing requirement in s. ~~DFI-Sec 6.05 (1) (b)~~ DFI-Sec 6.05 (2e) (b).

**SECTION 149.** DFI-Sec 7.05 (2) (a), (b) and (c) are amended to read:

DFI-Sec 7.05 (2) (a) Personnel files of office employees, former employees and job applicants; .

(b) Communications with legal counsel; .

(c) Records obtained under a pledge or reasonable expectation of confidentiality; .

**SECTION 150.** DFI-Sec 7.06 (1) (intro.) and (a) are amended to read:

DFI-Sec 7.06 (1) (intro.) All financial statements required by ch. 551, Stats., or these rules ~~shall~~ are subject to all of the following, and must be:

(a) Prepared in accordance with generally accepted accounting principles; ~~and.~~

**SECTION 151.** DFI-Sec 8.01 (intro.) and (1) are amended to read:

DFI-Sec 8.01 (1) (intro.) Every request for a hearing shall be in the form of a written petition filed with the division. A petition is considered filed when it is received by the Division. A petition for a hearing to review an order shall comply with all of the following:

(1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient

knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; ~~and.~~

**SECTION 152.** DFI-Sec 8.02 is amended to read:

DFI-Sec 8.02 A notice of hearing shall state the names of the parties to the hearing and the name of the hearing examiner. Unless otherwise provided in the notice of hearing, the decision of the hearing examiner shall be the final decision of the division. Every party so directed in the notice of hearing shall file an answer plainly admitting or denying each specific allegation and setting forth affirmative defenses. The party's answer shall also include notice of any motions specified in s. 802.06, Stats., that the party intends to present. Unless a different time is provided in the notice of hearing, or by the designated hearing examiner for cause shown, every answer shall be filed not later than 10 business days before the date of the hearing, or if a prehearing conference has been scheduled, not later than 5 business days before the date of the prehearing conference. Affirmative defenses, and motions required to be submitted with the party's answer, not raised by in the answer as herein provided may be deemed waived.

**SECTION 153.** DFI-Sec 8.04 is amended to read:

DFI-Sec 8.04 All pleadings, briefs, decisions and orders filed or issued in connection with any administrative proceeding under this chapter shall be captioned “Before the ~~division~~ State of Wisconsin, Department of Financial Institutions, Division of Securities, ~~State of Wisconsin~~” and shall be entitled “In the Matter of (name of party or parties), Petitioner (or Respondent).”

**SECTION 154.** DFI-Sec 8.05 (2) is amended to read:

DFI-Sec 8.05 (2) A written transcript of proceedings shall be prepared upon the written request in writing of any of the following:

- (a) ~~Of any~~ Any party, for the purpose of seeking a rehearing or judicial review; ~~or .~~
- (b) ~~Of any~~ Any person, upon tender of the estimated costs of transcription, adjusted to reflect the actual costs when determined.

**SECTION 155.** DFI-Sec 8.06 is amended to read:

DFI-Sec 8.06 A copy of every order issued ~~without a hearing~~ shall be sent promptly by certified mail to each party named in the order at his or her last known address ~~or to the party's attorney of record, or shall be personally served upon the~~

~~party or the party's attorney of record~~ as provided in s. 227.48, Stats., and such service shall be considered a reasonable step to give notice, as that term is used in s. 551.611 (3) (a), Stats.

**SECTION 156.** DFI-Sec 8.07 is amended to read:

DFI-Sec 8.07 Every order or other document is effective and issued when signed. ~~Mailing of any order or other document under this chapter~~ Unless required by rule or statute to be served by other means, mailing under this chapter of any order or other document by the division through first class mail to the last known address of any person, or personal service, constitutes effective service and notice thereof to the person, ~~provided that if.~~ If the person is a corporation, ~~service by certified mail mailing by first class mail~~ to the corporation's registered agent at the registered agent's last known address also constitutes effective service and notice to the corporation.

**SECTION 157.** DFI-Sec 9.01 and NOTE are repealed and recreated to read:

DFI-Sec 9.01 **Forms.**

(1) The following forms are prescribed for use under ch. 551, Stats., and may be accessed from the division of securities website at <https://dfi.wi.gov>:

(a) Securities registration application, notice filing and reporting forms:

1. Forms issued by the North American Securities Administrators Association:

- a. U-1. Uniform application to register securities.
- b. U-2. Uniform consent to service of process.
- c. U-2A. Uniform corporate resolution.
- d. U-7. Small corporate offering registration (SCOR) form.
- e. NF. Uniform investment company notice filing.
- f. AI. Model accredited investor exemption uniform notice of transaction.

2. Forms issued by the division:

- a. DOSSOI. Solicitation of interest form.

(b) Registration application, notice filing and reporting forms:

1. Forms issued by the U.S. Securities and Exchange Commission and filed through the Central Registration Depository or Investment Adviser Registration Depository systems:

- a. ADV. Uniform application for investment adviser registration and the form that shall be used by a federal covered investment adviser making an initial or renewal filing under s. 551.405 (3) or (4), Stats.
- b. ADV-W. Application for withdrawal of investment adviser registration.
- c. BD. Uniform application for registration or membership as a broker-dealer or to amend such application.
- d. BR. Broker-dealer or state-registered investment adviser uniform branch office registration form.
- e. BDW. Uniform request for broker-dealer withdrawal.
- f. U4. Uniform application for securities industry registration.
- g. U5. Uniform termination notice for securities industry representative and/or agent.

2. Forms issued by the division:

- a. DOSBDAA. Broker-dealer application activities questionnaire.
- b. DOSASIM. Application for agent registration to simultaneously represent more than one broker-dealer or issuer.
- c. DOSAIR. Application for renewal of an agent for issuer registration.
- d. DOSIAAA. Investment adviser applicant activities questionnaire.
- e. DOSIADS. Investment adviser designation of supervisor.
- f. DOSIAFC. Financial certification by investment adviser that it will comply with the net capital requirement at all times.

(2) Any other application, form, or notice under ch. 551, Stats., shall include the information specified in the applicable statutory section or rule, and may be filed with the division in the form of a letter or memorandum.

**Note:** The address for the division of securities is 4822 Madison Yards Way, North Tower, 4th Floor, P.O. Box 1768, Madison, WI 53701-1768. The telephone number for the division is 608-261-9555. The internet address is <https://dfi.wi.gov>.

**SECTION 158.** DFI-Sec 10.02 (5) (b) (intro.) and (6) are amended to read:

DFI-Sec 10.02 (5) (b) (intro.) For purposes of this chapter, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title does ~~either of the following, or both~~ one or more of the following:

(6) Nothing in this chapter ~~shall limit~~ limits the division's authority to enforce existing provisions of law.

**SECTION 159.** DFI-Sec 11.03 (2) is amended to read:

DFI-Sec 11.03 (2) Is derived from state and federal investment advisory statutes, ~~rule~~ rules and regulations, securities industry rules and regulations, and accepted standards and practices in the financial services industry.

**SECTION 160.** DFI-Sec 31.01 (1) is renumbered DFI-Sec 31.01 (1m) and (1m) (a) (intro.) and (b) (intro.), as renumbered, are amended to read:

DFI-Sec 31.01 (1m) (a) (intro.) “Franchise fee” ~~within the meaning of under~~ s. 553.03 (5m), Stats., ~~may be determined by the division to include, but not necessarily be limited to~~ includes any of the following:

(b) (intro.) “Franchise fee” under s. 553.03 (5m), Stats., ~~does~~ may not include any of the following:

**SECTION 161.** DFI-Sec 31.01 (2) (intro.), (a), (b), (d), and (e) (intro.) and 1., (4) (intro.) and (d), (5), and (6) are amended to read:

DFI-Sec 31.01 (2) (intro.) “Material event or material change” ~~within the meaning of~~, as that term is used in s. 553.31 (1), Stats., ~~shall include, but not be limited to,~~ includes the following:

(a) The termination, closing, or failure to renew during any 3-month period of ~~1) the~~ any of the following:

1. The greater of 1% or 5 of all franchises of a franchisor regardless of location or  
2) the

2. The lesser of 15% or 2 of the franchises of a franchisor located in the state of Wisconsin.

(b) Any change in control, corporate name, or state of incorporation, or reorganization of the franchisor whether or not the franchisor or its parent, if the franchisor is a subsidiary, is required to file reports under section 12 of the ~~securities exchange act~~ Securities Exchange Act of 1934.

(d) The commencement of any new product, service, or model line involving, directly or indirectly, additional investment by any franchisee or the discontinuation or modification of the marketing plan or system of any product or service of the franchisor where the total sales from such product or service exceeds 20% of the gross sales of the franchisor on an annual basis.

(e) An adverse financial development involving the franchisor or the franchisor's parent company, controlling person, or guarantor of the franchisor's obligations. In this paragraph, "adverse financial development" includes, ~~but is not limited to~~ any of the following:

1. The filing of a petition under federal or state bankruptcy or receivership laws; ~~or.~~

(4) (intro.) ~~The division shall, in any determination he or she shall make as to whether a marketing plan or system is deemed to be "prescribed" "Prescribed in a substantial part by a franchisor," within the meaning of as that term is used in s. 553.03 (4) (a) 1., Stats., shall include, but not be limited to,~~ consideration of at least the following factors:

(d) Whether the provisions of the agreement permitting the licensor to terminate the agreement, to buy back the distributor or license rights assigned by the agreement, or to refuse to renew the grant of such distributor or license rights are such as to operate or be exercisable substantially at the will of the licensor; ~~or.~~

(5) "Published in this state" ~~within the meaning of,~~ as that term is used in s. 553.59 (4), Stats., may be determined by the division to include, but not be limited to, includes advertising circulated for particular regional use within this state by residents of this state although printed outside of this state and mailed to residents of this state located at a Wisconsin address.

(6) ~~The division shall, in any determination he or she shall make as to whether a marketing plan or system of a franchisee is "substantially~~ "Substantially associated with the franchisor's business and trademark, service mark, trade name, logotype,

advertising or other commercial symbol” ~~within the meaning of~~ as term is used in s. 553.03 (4) (a) 2., Stats., shall include, but not be limited to, consideration of at least the following factors:

(a) Whether the identification of the licensor's business, or utilization of a trademark, service mark, trade name, logotype, advertising, or other commercial symbol, is utilized either by the licensor or the licensee to enhance the chances of the licensee's success in with respect to the licensee's transactions with persons dealing in or purchasing the licensor's product or service.

(b) Whether the agreement provides for the distributor or licensee to contribute a portion of operating revenue to the licensor for advertising expense, or representations made by the licensor or agents or employees suggest payment by the licensee for advertising conducted, managed, or prescribed by the licensor.

**SECTION 162.** DFI-Sec 31.01 (7) is renumbered DFI-Sec 31.01 (1e), and, as renumbered, is amended to read:

DFI-Sec 31.01 (1e) ~~The division shall, in determining whether a marketing plan or system of a manufacturer, licensor or a franchisor is a “bona fide wholesale transaction” or a series thereof within the meaning of,~~ as that term is used in s. 553.03 (5m), Stats., consider shall include consideration of at least the following factors, ~~among others:~~

**SECTION 163.** DFI-Sec 31.01 (8) is amended to read:

DFI-Sec 31.01 (8) “Timely” ~~within the meaning of,~~ as that term is used in s. 553.41 (4), Stats., means at least 14 calendar days prior to the execution of an agreement or the taking of consideration constituting the sale of the franchise.

**SECTION 164.** DFI-Sec 32.03 is amended to read:

DFI-Sec 32.03 Franchisors whose franchises are exempted under s. 553.25, Stats., shall ~~be required,~~ as a condition of maintenance of the exemption, ~~to~~ notify the division in writing within 30 days after the ~~happening~~ occurrence of any material event or material change within the meaning of s. DFI-Sec 31.01 (2), affecting the exempted franchises or the franchisor.

**SECTION 165.** DFI-Sec 32.05 (1) (intro.), (a) 1. and 2., (c) 1. and 2., and (d) are amended to read:

DFI-Sec 32.05 (1) (intro.) ~~The following transactions shall be exempted from s. 553.21, Stats., pursuant~~ Pursuant to s. 553.25, Stats., the following transactions are exempted from s. 553.21:

(a) 1. The franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature; ~~or~~ .

2. A franchisee or prospective franchisee of a governmental entity advertises, offers to sell, or sells an interest in such franchise or prospective franchise which may ~~consist of, but not be limited to,~~ include access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired.

(c) 1. The franchisor of the franchise; ~~or~~ .

2. A bank, trust company, credit union, or savings and loan association purchasing a franchise for its own account.

(d) The offer or sale to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this state and where the franchise business will not be operated in this state, and provided that the offer, sale, and purchase of the franchise ~~is effected in compliance~~ complies with any applicable franchise law of the state in which the franchise business will be operated or the franchisee is domiciled.

**SECTION 166.** DFI-Sec 32.06 is amended to read:

DFI-Sec 32.06 A notification to register a franchise shall be filed using the cover page of the 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association, together with a disclosure document prepared in conformance with those Disclosure Guidelines, and containing the information specified in s. 553.26 (1), Stats., and accompanied by the fee required in s. ~~553.26 (1)~~ 553.72 (1), Stats.

**SECTION 167.** DFI-Sec 32.09 is amended to read:

DFI-Sec 32.09 In lieu of the imposition of an escrow condition under s. 553.27 (2), Stats., and s. DFI-Sec 32.08, a franchisor may post a surety bond in an amount as ~~shall be~~ required by the division. The bond shall be issued by a corporate surety authorized to transact business in the state of Wisconsin, conditioned upon the completion by the franchisor of its obligations under the franchise contract to

provide real estate, improvements, equipment, inventory, training, or other items included in the offering.

**SECTION 168.** DFI-Sec 34.01 is amended to read:

DFI-Sec 34.01 A seller of franchises ~~exempt from registration under s. [553.23](#) or [553.25](#), Stats., or registered under s. [553.21](#), Stats.,~~ or any person who is an officer, director, or controlling person of the seller is deemed to employ a “fraudulent and prohibited practice” ~~within the meaning of~~, as that term is used in s. [553.41](#), Stats., and a “false, fraudulent and deceptive practice” ~~within the meaning of~~, as that term is used in s. [553.58 \(1\)](#), Stats., if the person applies or authorizes or causes to be applied any material part of the proceeds from the sale of the franchises in any material way contrary to the purpose specified in advertising or oral representations ~~utilized~~ used in connection with the offer to sell or sale of the franchise or in the prospectus required to be ~~utilized~~ used in connection with the offer to sell or sale of franchises registered under s. [553.21](#), Stats., and, ~~in any event~~, for a purpose not reasonably related to the business of the franchisor, as described in the advertising, oral representations, prospectus, or any contract related to the offer or sale of the franchise.

**SECTION 169.** DFI-Sec 35.01 (1) (intro.) is created to read:

DFI-Sec 35.01 (1) (intro.) Applications for any of the following:

**SECTION 170.** DFI-Sec 35.01 (1) (a) to (d) are amended to read

DFI-Sec 35.01 (1) (a) ~~Application for~~ An order of exemption under s. [553.25](#), Stats. \$200.

(b) ~~Application for~~ An opinion confirming a registration exemption or an exclusion from a definition \$500.

(c) ~~Application for issuance~~ Issuance of an interpretive opinion under ch. [553](#), Stats. \$500.

(d) ~~Application for~~ An amendment of a registration statement under s. [553.31](#), Stats. \$200.

**SECTION 171.** DFI-Sec 35.01 (3) is created to read

DFI-Sec 35.01 (3) Issuance of a certificate under s. 553.75 (4), Stats., relating to the existence or non-existence of documents ~~or entries on file~~ or contained in the records of the division's office, \$50.00 plus \$1 per page for copies included with the certificate.

**SECTION 172.** DFI-Sec 35.01 ~~(2) and (5)~~ (3) is repealed.

SECTION 173. DFI-Sec 35.04 is repealed.

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Department Head or Authorized Signature

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Date Submitted