

## Chapter DFI–Sec 5

### LICENSING AND NOTICE FILING PROCEDURES FOR INVESTMENT ADVISERS, FEDERAL COVERED ADVISERS, AND INVESTMENT ADVISER REPRESENTATIVES

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**History:** Chapter SEC 5 was renumbered chapter DFI–Sec 5 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

**DFI–Sec 5.01 Licensing procedure. (1) (a) 1.** The investment adviser registration depository operated by the National Association of Securities Dealers shall receive and maintain filings on forms established for the investment adviser registration depository and collect related fees from investment advisers on behalf of the division.

2. The central registration depository operated by the national association of securities dealers shall receive and maintain filings on forms established for the central registration depository and collect related fees from investment adviser representatives on behalf of the division.

(b) 1. Unless otherwise provided under sub. (8), or s. DFI–Sec 5.10, or by order of the division, applications for initial and renewal licenses of investment advisers, as well as amendments, reports, notices, related filings and fees, shall be filed with the investment adviser registration depository.

2. Unless otherwise provided under sub. (8) or by order of the division, applications for initial and renewal licenses of investment adviser representatives, as well as amendments, reports, notices, related filings and fees, shall be filed with the central registration depository.

(c) Except as provided in par. (a), applications for initial or renewal licenses of investment adviser representatives shall be filed on forms prescribed in s. DFI–Sec 9.01 (1).

**(2) (a)** A licensing application for purposes of s. 551.32 (1) (a), Stats., consists of all information required by the form prescribed under sub. (1) (c), any additional information required by the division and all required fees. Any documents or fees required to be filed with the division that are not permitted to be filed with or cannot be accepted by the investment adviser registration depository or the central registration depository shall be filed directly with the division.

(b) An application for initial license as an investment adviser under this paragraph shall be deemed filed under s. 551.32 (1) (a), Stats., on the date the application is transferred from “NO STATUS” to “PENDING” on the records of the investment adviser registration depository. An application for renewal of a license as an investment adviser under this paragraph shall be deemed filed under s. 551.32 (1) (a), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

(c) An application for initial license or for renewal of a license as an investment adviser representative for an investment adviser licensed under this chapter consists of the payment of Wisconsin investment adviser representative license or renewal fees to the central registration depository. An application for initial license as an investment adviser representative under this paragraph shall be deemed filed under s. 551.32 (1) (a), 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 license as an investment adviser representative under this paragraph shall be deemed “filed” under s. 551.32 (1) (a), Stats., when the fee on deposit with the central registration depository has been allocated to the division.

(d) 1. Each investment adviser shall file an amendment to its application with the investment adviser registration depository within 30 days of any material change to information included in its application in accordance with the instructions to Form ADV.

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

3. Each investment adviser representative and his or her employing investment adviser or federal covered adviser shall 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.

(e) An electronic signature affixed to any filing made in compliance with the requirements of the investment adviser registration depository or the central registration depository shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

**(3)** Unless waived under sub. (4), each applicant for an initial license as an investment adviser or as an investment adviser representative after January 1, 2000, and each applicant whose application has not become effective by January 1, 2000, is required to provide the Division with proof that he or she has obtained a passing score on the examination specified in par. (a) or each examination specified in par. (b).

(a) The Series 65 Uniform Investment Adviser Law Examination.

(b) The Series 7 General Securities Representative Examination as well as the Series 66 Uniform Combined State Law Examination.

**(4)** The examination requirement in sub. (3) shall be waived for any applicant who meets any of the following criteria:

(a) The applicant has passed, or has received a waiver from the need to pass, the National Association of Securities Dealers, Inc., Series 7 examination, and in addition has passed or received a waiver from the need to pass the North American Securities Administrators Association Series 63 Examination.

(b) The applicant has been licensed as an investment adviser or licensed as an investment adviser representative in any jurisdiction in the United States within 2 years prior to the date the application is filed.

(c) The applicant has received an order of the division, issued under such conditions as the division may prescribe, waiving the requirement to take and pass the examination in sub. (3).

(d) The applicant provides the division with proof that he or she currently holds one of the following professional designations:

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

(e) The applicant was licensed as an investment adviser or licensed as an investment adviser representative in any jurisdiction in the United States on January 1, 2000, except that the administrator may require additional examinations for any individual found to have violated any state or federal securities law.

(5) Prior to issuance of a license as an investment adviser, at least one employee located at the principal office of the investment adviser must be designated in the license application on the form prescribed in s. DFI-Sec 9.01 (1) (b) and filed with the division to act in a supervisory capacity and be licensed 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).

(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete under s. 551.34 (1) (a), Stats., and the division may issue an order denying effectiveness to the application.

(7) Every investment adviser whose principal office is located in this state shall have at least one person licensed as an investment adviser representative employed on a full-time basis at its principal office.

(8) (a) Investment advisers licensed or required to be licensed who experience unanticipated technical difficulties that prevent submission of an electronic filing to the investment adviser registration depository may request a temporary hardship exemption from the requirements to file electronically. An investment adviser whose principal place of business is located in this state may request a temporary hardship exemption by doing all of the following:

1. Filing Form ADV-H in paper format with the division not later than one business day after the due date for the type of filing that is the subject of the Form ADV-H.

2. Submitting the filing that is the subject of the Form ADV-H in electronic format to the investment adviser registration depository not later than seven business days after the due date for the type of filing that is the subject of the Form ADV-H.

(b) The temporary hardship exemption will be deemed effective upon receipt by the division of the completed Form ADV-H within the filing deadline provided in par. (a). Multiple temporary hardship exemption requests by an investment adviser within the same calendar year may be disallowed by the division.

(c) A continuing hardship exemption will be granted only if an investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. An investment adviser whose principal place of business is located in this state may request a continuing hardship exemption by filing Form ADV-H in paper format with the division at least twenty business days before the due date for the type of filing that is the subject of the Form ADV-H. The division shall grant or deny the request within ten business days after the filing of Form ADV-H.

(d) The continuing hardship exemption is effective upon approval by the division for a time period not longer than one year after the date on which the Form ADV-H is filed. If the division approves the request, and for the period of time for which the exemption is granted, the investment adviser shall, not later than five business days after the exemption approval date, submit fil-

ings in paper format, along with the appropriate processing fees, to the division as prescribed by separate rule or order.

(e) An investment adviser whose principal place of business is located in another state may claim a hardship exemption from the electronic filing requirement in this state if that investment adviser has received a hardship exemption in the state where its principal office is located.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) and (6), renum. (4) (b) and (c) to be (4) (c) and (d), cr. (4) (b), r. and recr. (5), Register, December, 1980, No. 300, eff. 1-1-81; am. (3) to (5), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and (2), r. and recr. (3) and (4), Register, December, 1983, No. 336, eff. 1-1-84; am. (3), renum. (4) (g) to be (4) (h), cr. (4) (g), Register, December, 1986, No. 372, eff. 1-1-87; renum. (3) to be (3) (a) and am., renum. (4) (b) to (h) to be (4) (c) to (i), r. (4) (intro.) and (a), cr. (3) (b), (4) (a) and (b), Register, December, 1987, No. 384, eff. 1-1-88; renum. (4) (c) to (i) to be (4) (c) 1. to 4., (4) (b) 3. and 4. and (c) 5. and am. (3), r. and recr. (4), Register, December, 1992, No. 444, eff. 1-1-93; am. (4) (b) 3. and 4., cr. (4) (c) (intro.), Register, December, 1988, No. 396, eff. 1-1-89; renum. (4) (a), (c) 1. to 5. to be (4) (a) (intro.) and 2. to 6. and am. (intro.), cr. (4) (a) 1., am. (4) (b) (intro.), r. (4) (c) (intro.), Register, December, 1990, No. 420, eff. 1-1-91; am. (3), r. and recr. (4), Register, December, 1992, No. 444, eff. 1-1-93; renum. (3) (a) to (3), r. (3) (b), Register, December, 1994, No. 468, eff. 1-1-95; r. and recr. (3), am. (4) (a) and (5), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), (3) (intro.), (4) (b), (5) and (7), Register, December, 1998, No. 516, eff. 1-1-99; r. and recr. (3), am. (4) (a), cr. (4) (d), Register, December, 1999, No. 528, eff. 1-1-00; emerg. am. (4) (b), cr. (4) (e), eff. 1-1-00; am. (4) (b), cr. (4) (e), Register, May, 2000, No. 533, eff. 6-1-00; emergency r. and recr. (1) and (2), cr. (8), eff. 1-1-01; CR 01-25: r. and recr. (1) and (2), cr. (8), Register July 2001, No. 547 eff. 8-1-01; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register December 2001 No. 552; **CR 02-102: renum. (1) (a) to be (1) (a) 1. and am., renum. (1) (b) to be (1) (b) 1. and am., cr. (1) (a) 2., (1) (b) 2., am. (2) (a), (c) (d) 3. and (e), Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.02 Net capital requirement.**

(1) Each investment adviser licensed or required to be licensed under ch. 551, Stats., whose principal office is in this state and who accepts prepayment of fees exceeding \$500 per client that are collected six or more months in advance, shall maintain at all times a positive net worth. The division may require that a current appraisal be submitted in order to establish the worth of any asset.

(2) Each investment adviser licensed or required to be licensed under ch. 551, Stats., whose principal office is in this state who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000.

(3) If an investment adviser is an individual, the person shall segregate capital on personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the investment adviser is licensed.

(4) The requirements of subs. (1) and (2) shall not apply to any investment adviser that has its principal office in a state other than this state, provided that the investment adviser is licensed in that state and is in compliance with that state's minimum net capital requirements, if any.

(5) For purposes of this section, the term "net capital" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets any of the following:

(a) Prepaid expenses, deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of an intangible nature.

(b) Home, home furnishings, automobiles and any other personal items not readily marketable, if the investment adviser is an individual.

(c) Advances or loans to stockholders and officers, if the investment adviser is a corporation.

(d) Advances or loans to partners, if the investment adviser is a partnership.

(6) The division may by order exempt any investment adviser whose principal office is in this state from the provisions of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business or the particular facts and circumstances of the application, the division determines that

compliance with the provisions is not necessary in the public interest or for the protection of investors.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; cr. (3), Register, December, 1992, No. 444, eff. 1-1-93; am. (1), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), renum. (2) and (3) to be (3) and (6) and am. (6), cr. (2), (4) and (5), Register, December, 1998, No. 516, eff. 1-1-99; r. and recr. (1) and (2), Register, December, 1999, No. 528, eff. 1-1-00.

### **DFI-Sec 5.03 Investment advisers' records.**

(1) Every licensed investment adviser whose principal office is in this state shall prepare and keep current at that office, or at a designated office located in this state, as specified in writing to, and permitted by, the division, or at an office under the direct supervision and control of the principal or designated office, the following books and records relating to its business:

(a) All partnership agreements, or all articles of incorporation, by-laws, minute books and stock certificate books of the investment adviser.

(b) A general ledger (or other records in the case of a sole proprietor) reflecting all asset, liability, income, expense, and capital accounts.

(c) A record showing all payments received, including date of receipt, purpose, and from whom received; and all disbursements, including date paid, purpose, and to whom made.

(d) A record showing all receivables and payables.

(e) All trial balances, financial statements, and internal audit working papers which may be prepared relating to the business of the investment adviser.

(f) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the customer concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the customer and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(g) Copies of all written communications, correspondence, confirmations, appraisals and other records relating to investment activities of customers.

(h) A separate file containing a copy of all complaints made or submitted by customers relating to investment activities for customers, and all investigative inquiries made by law enforcement and securities regulatory authorities to the investment adviser or its investment adviser representatives regarding their securities and investment advisory business, and containing evidence, including representative copies, of the responses made by the investment adviser and its investment adviser representatives to the complaint or investigation. In this paragraph, "complaint" means any written or oral statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the investment adviser in connection with providing investment advice or placing orders on behalf of customers.

(i) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any customer.

(j) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any customer to the investment adviser or to a third party.

(k) A copy of all written agreements entered into by the investment adviser with any customer, or with any other person if the agreement relates to the business of the investment adviser.

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

(m) A record or information demonstrating compliance with the net capital requirement in s. DFI-Sec 5.02.

(n) A record that complies with Rule 204-2 (a) (12) under section 204 of the 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 customer transactions in the same security.

(o) A record of the initial offer, evidenced by the client's written acknowledgement, as well as the annual offer, to each client of the adviser's brochure or other document used to comply with s. DFI-Sec 5.05 (8).

(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

3. A record of the dates that each brochure and supplement, each amendment or revision thereto, and each summary of material changes, was given or offered to any client or to any prospective client who subsequently becomes a client.

(q) Copies bearing signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to the disclosure reporting pages of Form U-4. These documents shall be retained by the investment adviser who prepared the filing on behalf of the investment adviser representative.

(2) Each licensed 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 the following books and records in addition to those required under sub. (1):

(a) A journal or other record showing all purchases, sales, receipts and deliveries of securities, including certificate numbers, for all accounts and all other debits and credits to the accounts.

(b) A separate ledger for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(c) Copies of confirmations of all transactions effected by or for the account of any client.

(d) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(3) Each licensed investment adviser who renders investment supervisory or management service to any customer shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, maintain and keep current:

(a) Records for each customer showing the securities purchased or sold on advice of the adviser, and the date, amount, and price of each purchase and sale.

(b) Records identifying the customer and the current amount or interest owned by each customer for each security in which any customer has a current position.

(c) Written information concerning a customer'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 customer. The written information shall be updated when the investment adviser receives information from the customer that results in material changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the investment adviser's ability to make suitable recommendations for the customer as required under s. DFI-Sec 5.06 (4).

(4) Every licensed investment adviser shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required under sub. (1) 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 6 years after the closing of the account and records required under sub. (1) (a) shall be preserved by the investment adviser for a period of not less than 6 years after withdrawal or expiration of its license in this state. The record may be retained by computer 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) Every branch office as defined in s. DFI-Sec 1.02 (7) (b), of a licensed investment adviser whose principal office is in this state, shall prepare and keep current the records described in subs. (1) (c), (f), (g), (h), (k) and (L) and (3) (a), (b) and (c).

(6) The records required in sub. (5) 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 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.

(7) The requirements of subs. (1) to (6) shall not apply to any investment adviser that has its principal office in a state other than this state, provided that the investment adviser is licensed in that state and is in compliance with that state's books and records requirements, if any.

(8) The division may by order exempt any investment adviser 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 that issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. (1), renum. (2) and (3) to be (3) and (4) and am., cr. (2), Register, December, 1980, No. 300, eff. 1-1-81; am. (3), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (h), Register, December, 1989, No. 408, eff. 1-1-90; am. (1) (intro.), renum. (4) to be (6), cr. (4) and (5), Register, December, 1991, No. 432, eff. 1-1-92; am. (1) (intro.), renum. (6) to be (7), cr. (6), Register, December, 1992, No. 444, eff. 1-1-93; am. (4), Register, December, 1994, No. 468, eff. 1-1-95; cr. (1) (m) and (n), Register, December, 1995, No. 480, eff. 1-1-96; am. (1) (intro.), renum. (2) to (5) and (7) to be (3) to (6) and (8) and am. (5) and (6), cr. (2) and (7), r. (6), Register, December, 1998, No. 516, eff. 1-1-99; cr. (1) (o), am. (5), Register, December, 1999, No. 528, eff. 1-1-00; am. (1) (h) and (5), renum. (1) (o) to be (3) (c) and am., cr. (1) (o), Register, December, 2000, No. 540, eff. 1-1-01; emerg. cr. (1) (p) and (q), eff. 1-1-01; CR 01-25; cr. (1) (p) and (q), Register, July, 2001, No. 547, eff. 8-1-01.

#### DFI-Sec 5.035 Investment advisors with custody.

(1) Except as provided in subs. (2) and (3), every licensed investment adviser whose principal office is in this state that takes or has custody of any securities or funds of any customer shall comply with all of the following:

(a) The investment adviser shall notify the division in writing within 30 days after the investment adviser first has custody of customer funds or securities, which notification may be given on Form ADV.

(b) The securities of each customer shall be segregated, marked to identify the particular customer having the beneficial

ownership or interest in the securities, and held in safekeeping in a place reasonably free from risk of destruction or other loss.

(c) With regard to customer funds, the investment adviser shall comply with the following:

1. Deposit all customer funds in one or more bank accounts containing only customer funds.

2. The bank account or accounts shall be maintained in the name of the investment adviser as agent or trustee for the customers.

3. The investment adviser shall maintain a separate record for each bank account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each customer's beneficial interest in the account.

(d) Immediately after accepting custody or possession of funds or securities from any customer, the investment adviser shall notify the customer in writing of the place where, and the manner in which, the funds and securities will be maintained. If and when there is a subsequent change in the place where, or the manner in which, a customer's funds or securities are maintained, the investment adviser shall give immediate written notice of the change to the customer.

(e) At least once every three months, the investment adviser shall send to each customer an itemized statement showing the customer's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the customer's account during the period.

(f) At least once every calendar year, the investment adviser shall cause an independent certified public accountant or public accountant to conduct an examination at a time chosen by the accountant without prior notice to the investment adviser, for the purpose of verifying the account balances for all customer funds and securities. A copy of a report from the accountant stating that the accountant has made an examination of customer funds and securities, and describing the nature and extent of the examination, shall be filed with the division promptly after the examination.

(2) Subsection (1) does not apply to an investment adviser also registered as a broker-dealer under section 15 of the securities exchange act of 1934, and licensed as a broker-dealer under ch. 551, Stats., if either of the following apply:

(a) The broker-dealer is subject to, and is in compliance with, rule 15c3-1 (Net Capital Requirements for Brokers or Dealers) under the securities exchange act of 1934.

(b) The broker-dealer is a member of an exchange whose members are exempt from rule 15c3-1 under the securities exchange act of 1934 by application of paragraph (b) (2) thereof, and the broker-dealer is in compliance with all rules and settled practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(3) An investment adviser who acts as a trustee of a beneficial trust is not required to comply with the requirements in sub. (1) if all of the following conditions are met for each trust:

(a) The only accounts for which the adviser maintains custody of funds or securities are those in which the adviser acts as trustee of a trust beneficially owned by a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the adviser.

(b) For each account under par. (a), the adviser complies with all of the following:

1. The adviser provides a written statement to each beneficial owner of the account setting forth a description of the requirements of sub. (1) and the reasons why the adviser will not be complying with the rule requirements.

2. The adviser obtains from each beneficial owner a signed statement acknowledging the receipt of the written statement required under subd. 1.

3. The adviser maintains a copy of both the written statement required under subd. 1., and the signed acknowledgement required under subd. 2. from each beneficial owner, until the account is closed or the adviser relinquishes trusteeship.

**History:** Cr. Register, December, 1999, No. 528, eff. 1-1-00.

**DFI-Sec 5.04 Reporting requirements.** (1) Every investment adviser shall file with the division immediate notice via facsimile or other electronic means whenever the net capital of the investment adviser is less than is required under s. DFI-Sec 5.02 (1), specifying the amount of net capital on the date of the notice and the steps the investment adviser has taken or will take to come into compliance.

(2) Each investment adviser shall file with the division 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 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 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) Except as provided in subs. (2) and (4), each investment adviser 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 investment adviser's most recent application for license, in an amendment to Form ADV filed with the division within 30 days of the date of the change.

(4) Each investment adviser shall notify the division in writing within 10 days from the first date the person who is the designated supervisor under s. DFI-Sec 5.05 (7) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the division in writing a substituted designated supervisor within the 45 day period provided under s. DFI-Sec 5.05 (7).

(5) (a) Each investment adviser shall notify the division in writing within 14 days of either the opening or the change of address in this state of any branch office.

(b) Each investment adviser shall notify the division in writing at least 14 days after the closing in this state of any branch office as defined in s. DFI-Sec 1.02 (7) (b).

(c) The notification provided to the division under par. (a) or (b) shall include the address and telephone number of the branch office, the name of the supervisor at the branch office, the number of representatives operating out of that branch office and any other information the division may request.

(6) Each investment adviser shall file annually with the division incident to its license renewal application, a report identifying each of its branch offices as defined by s. DFI-Sec 1.02 (7) (b) that is located in this state.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (2) to (4), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and cr. (1) (b), Register, December, 1982, No. 324, eff. 1-1-83; cr. (5), Register, December, 1989, No. 408, eff. 1-1-90; am. (1) (a), r. and recr. (3), r. (4), renum. (5) to be (4), Register, December, 1990, No. 420, eff. 1-1-91; am. (1) (a), cr. (5) and (6), Register, December, 1991, No. 432, eff. 1-1-91; am. (1) (a), cr. (1) (c), Register, December, 1994, No. 468, eff. 1-1-95; r. and recr. (1), Register, December, 1995, No. 480, eff. 1-1-96; am. (1), cr. (7) and (8), Register, December, 1998, No. 516, eff. 1-1-99; am. (1), Register, December, 1999, No. 528, eff. 1-1-00; CR 01-082; am. (5) (a), Register December 2001 No. 552, eff. 1-1-02; CR 02-102; r. (7) and (8), Register December 2002 No. 564, eff. 1-1-03.

**DFI-Sec 5.05 Rules of conduct.** (1) Each investment adviser shall establish 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 include the designation and licensure of a number of supervisory employees

reasonable in relation to the number of its licensed investment adviser representatives, offices and activities in this state.

(2) An investment adviser shall not enter, extend, or renew any investment advisory contract if the contract:

(a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client other than a person specified in s. 551.23 (8) (a) to (f), Stats.

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

(c) Fails to provide, in substance, that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after such change.

(d) Fails to disclose, in substance, the term of the advisory agreement, the fee to be charged by the adviser, the formula for computing the advisory fee, the formula for computing the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

(3) Subsection (2) (a) shall not prohibit 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. 551.23 (8) (a) to (f), Stats.

(4) An investment adviser shall not enter 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.

(5) No licensed investment adviser may enter into, extend or renew any investment advisory contract with a customer in this state unless the contract is in writing and a copy of the contract is given to the customer within 20 days after the execution of the contract.

(6) Each investment adviser who renders account supervisory or management services shall provide at least annually to each Wisconsin customer a written summary of the customer's account which includes information setting forth the name, quantity and market value of each security under management, and the total value of cash and securities under management.

(7) Every licensed 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 licensed as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. DFI-Sec 5.01 (5). If a licensed 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 provided in this subsection, each investment adviser shall offer and deliver to each client and prospective client a firm brochure and one or more 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.

(b) 1. Each investment adviser shall deliver the current brochure required by this section, and the current brochure supplement for each investment adviser representative who will provide advisory services, to a client or prospective client.

2. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services for a client if the investment adviser representative does any of the following:

- a. Regularly communicates investment advice to that client.
- b. Formulates investment advice for assets of that client.
- c. Makes discretionary investment decisions for assets of that client.
- d. Solicits, offers or negotiates for the sale of or sells investment advisory services.

3. The documents required in subd. 1. shall be delivered at the following times:

- a. Not less than 48 hours prior to entering into any investment advisory contract with a client or prospective client.
- b. At the time of entering into any contract, if the contract specifically provides that the client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) Each investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by par. (a). If a client accepts the written offer, the investment adviser shall send to that client the current brochure and supplements not later than seven days after the investment adviser is notified of the acceptance.

(d) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection, the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a separate client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership is also considered to be a limited partnership.

(e) 1. Each investment adviser that is a sponsor of a wrap fee program shall deliver to a client or prospective client in lieu of the brochure required in par. (b), 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.

2. An investment adviser is not required to offer or deliver the wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.

3. A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to deliver under par. (b) 1.

(f) Each investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients not more than 30 days from the date that the information contained in the brochure or brochure supplement becomes materially inaccurate. The investment adviser shall comply with the instructions to Part 2 of Form ADV regarding updating and delivery.

(g) Each investment adviser that renders substantially different types of investment advisory services to different clients may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable to only

a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Nothing in this subsection shall relieve any investment adviser from any obligation pursuant to any provision of ch. 551, Stats., or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(i) Each investment adviser shall deliver to each of its clients its current brochure and all required brochure supplements not later than January 1, 2002.

(9) Each investment adviser that participates in a wrap fee arrangement with a broker-dealer shall disclose to each customer under the arrangement the portion of the wrap fee that is attributable to advisory services. This requirement may be satisfied if the information is contained in the brochure provided to the customer either by the investment adviser or the sponsor of the wrap fee arrangement.

(10) No investment adviser 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 investment adviser or assisting or providing information to persons to establish an advisory relationship with the investment adviser unless the promotional functions are performed by persons licensed as representatives of the investment adviser.

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

(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 licensed investment adviser in the area on the premises of the financial institution designated under par. (a);

(c) Disclose the identity of the licensed investment adviser in, without limitation because of enumeration, all advertising, correspondence, business cards, promotional materials and records relating to the investment adviser's services provided on the premises of the financial institution. Materials described in this paragraph may not display the financial institution's name or logotype in a manner that would mislead customers 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 the following:

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

2. Establishment of a system under which the investment adviser approves, prior to use, copies of all advertising used by the financial institution relating to the investment advisory services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.41 and 551.53, Stats.; and

3. Establishment of a system that ensures that all books and records required by rule or order under ch. 551, Stats., are properly maintained.

(e) Disclose in writing prior to or at the time of entering into each investment advisory agreement that the investment advisory services are provided by the investment adviser and not by the financial institution, that non-deposit investment products are not guaranteed by the financial institution, are not deposits or other obligations of the financial institution, are not subject to any federal deposit insurance protection and involve risk, including possible loss of principal.

(f) Notify the division at the time of filing notice of opening or change of address of a branch office as required in s. DFI-Sec 5.04 (5), that the office is located on the premises of a financial institution in this state, which notification shall include the identity of the institution.

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

(a) Fail to provide both the caller's identity and the identity of the investment adviser with whom the caller is affiliated, at the beginning of any telephone or electronic solicitation.

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

(c) Telephone or electronically solicit any person in this state after that individual has requested that they not be telephoned.

(d) Make repeated telephone or electronic solicitations in an annoying, abusive or harassing manner, either individually or in concert with others.

(e) Use threats, intimidation or obscene language in connection with securities recommendations, transactions or other investment advisory activities.

(13) Each investment adviser shall provide clients with a written notification or invoice of fees due for investment advisory services. The notification or invoice shall specify the time period covered by the fee for ongoing supervisory or management services or shall detail the services rendered for preparation of financial plans or analyses.

**History:** Cr. December, 1977, No. 264, eff. 1-1-78; am. (1), r. (5) and (6), cr. (2) (d), (5) to (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (7), Register, December, 1982, No. 324, eff. 1-1-83; cr. (8), Register, December, 1987, No. 384, eff. 1-1-88; am. (2) (a) and (7), Register, December, 1989, No. 408, eff. 1-1-90; am. (5), Register, December, 1991, No. 432, eff. 1-1-92; am. (7), Register, December, 1992, No. 444, eff. 1-1-93; cr. (9), Register, December, 1994, No. 468, eff. 1-1-95; am. (7), Register, December, 1995, No. 480, eff. 1-1-96; am. (2) (a), (3), cr. (10) to (12), Register, December, 1996, No. 492, eff. 1-1-97; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1998, No. 508; am. (1), (11) (d) 3. and (12) (intro.), Register, December, 1998, No. 516, eff. 1-1-99; cr. (11) (f), Register, December, 1999, No. 528, eff. 1-1-00; cr. (13) and (14), Register, December, 2000, No. 540, eff. 1-1-01; emerg. r. and recr. (8), eff. 1-1-01; CR 01-25: r. and recr. (8), Register July, 2001, No. 547 eff. 8-1-01; **CR 02-102: r. (14), Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.06 Prohibited business practices.** Except as otherwise provided in sub. (13), the following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an investment adviser or an investment adviser representative under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified in this section:

(1) Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

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

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

(4) 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 investment adviser;

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

(6) Borrowing money or securities from, or lending money or securities to, a customer, unless that customer is a financial institution or institutional investor designated in s. 551.23 (8) (a) to (f), Stats.;

(7) 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;

(8) Placing an order for the purchase or sale of a security if the security is not registered or the security or transaction is not exempt from registration under ch. 551, Stats.

(9) Placing an order for a customer, or recommending that the customer place an order, to purchase or sell a security through a broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23 (8) (a) to (f), Stats.

(10) Recommending to a customer that the customer engage the services of a broker-dealer, agent or investment adviser not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23 (8) (a) to (f), Stats.

(11) Failing accurately to describe or disclose in advertising or other materials used in connection with the promotion or transaction of investment advisory services in this state, the identity of the investment adviser or the nature of the investment advisory services offered or the employment relationship between the investment adviser and its representatives. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery and display signs.

(12) Taking or having custody of client funds or securities without being in compliance with rule 206 (4)-2 of the investment advisers act of 1940 and the net capital requirement in s. DFI-Sec 5.02 (2).

(13) The subsections of this section shall apply to an investment adviser representative of a federal covered adviser only to the extent permitted by section 203 (b) (2) of the investment advisers act of 1940, and only to the extent the prohibited conduct involves fraud or deceit.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (intro.) and (1), renum. (2) to be (8) and am., cr. (2) to (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (9), cr. (10), Register, December, 1986, No. 372, eff. 1-1-87; cr. (11), Register, December, 1989, No. 408, eff. 1-1-90; am. (9), (10), Register, December, 1996, No. 492, eff. 1-1-97; am. (intro.), cr. (12) and (13), Register, December, 1998, No. 516, eff. 1-1-99; am. (6), Register, December, 1999, No. 528, eff. 1-1-00.

#### **DFI-Sec 5.07 License and notice filing period.**

(1) The license of an investment adviser expires on December 31 of each year. Each licensed investment adviser seeking renewal of its license shall file for renewal with the investment adviser registration depository according to the depository's schedule.

(2) (a) The license of an investment adviser representative expires on the same day as the expiration of the license of the investment adviser or the notice filing of the federal covered adviser which the person represents. The license of an investment adviser representative is not effective during any period when the investment adviser which that person represents is not licensed, or when the federal covered adviser that the person represents does not have an effective notice filing with the division, or during

any period when the representative is not employed either by a specified investment adviser licensed under ch. 551, Stats., or a federal covered adviser that has filed a notice with the division under s. 551.32 (1m) (a), Stats. Each licensed investment adviser representative seeking renewal of his or her license shall file for renewal with the central registration depository according to the depository's schedule.

(b) An agent who is qualified to perform the functions of an investment adviser representative on behalf of a broker-dealer under s. DFI-Sec 4.01 (10), may not perform those functions during any period when the agent's status with the national association of securities dealers or a national securities exchange is deficient for failure to meet continuing education requirements.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am., Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1994, No. 468, eff. 1-1-95; am. (1) and (2), cr. (3) and (4), Register, December, 1998, No. 516, eff. 1-1-99; emerg. r. and recr. eff. 1-1-01; CR 01-25; r. and recr., Register July 2001, No. 547 eff. 8-1-01; **CR 02-102: am. (1), renum. (2) to be (2) (a) and am., cr. (2) (b), Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.08 Withdrawal of licenses. (1)** An application for withdrawal from the status of a licensed investment adviser under s. 551.32 (9) (a), Stats., shall be filed with the central registration depository on Form ADV-W.

(2) An application for withdrawal from the status of a licensed investment adviser representative shall be filed with the central registration depository on Form U-5 within 15 days of the termination of the representative's employment pursuant to s. 551.31 (4) (c), Stats.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (2), Register, December, 1979, No. 288, eff. 1-1-80; am. (2), Register, December, 1982, No. 324, eff. 1-1-83; am. Register, December, 1994, No. 468, eff. 1-1-95; am. (2), Register, December, 1998, No. 516, eff. 1-1-99; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, August, 1999, No. 524; CR 01-25; r. and recr., Register July 2001, No. 547 eff. 8-1-01; **CR 02-102: am. (2), Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.09 Denial, suspension, revocation and censure.** Any order denying, suspending or revoking the license of an investment adviser or an investment adviser representative or censuring a licensee may include such other sanctions as the division finds appropriate.

**History:** Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1998, No. 516, eff. 1-1-99.

**DFI-Sec 5.10 Electronic filing.** The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as the investment adviser registration depository or the central registration depository provides for receipt of such filings and fees and the division provides 30 days notice of the change. Any documents or fees required to be filed with the division that are not permitted to be filed with, or cannot be accepted by, the investment adviser registration depository

or the central registration depository shall be filed directly with the division.

**History:** emerg. cr. eff. 1-1-01; CR 01-25; cr. Register July 2001, No. 547 eff. 8-1-01; **CR 02-102: am. Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.11 Federal covered adviser notice filing procedure. (1)** The notice filing for a federal covered adviser pursuant to s. 551.32 (1m), Stats., shall be filed with the investment adviser registration depository on Form ADV. A notice filing for a federal covered adviser shall be deemed filed when the fee on deposit with the investment adviser registration depository has been allocated to the division. Any documents or fees required to be filed with the division that are not permitted to be filed with, or cannot be accepted by, the investment adviser registration depository shall be filed directly with the division.

(2) A federal covered adviser shall file all amendments to its Form ADV with the investment adviser registration depository according to the instructions to Form ADV.

(3) Each federal covered adviser seeking renewal of its notice filing shall file for renewal with the investment adviser registration depository according to the depository's schedule and instructions. An application for renewal of a notice filing under this paragraph shall be deemed filed under s. 551.32 (1m), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

**History:** emerg. cr. eff. 1-1-01; CR 01-25; cr. Register July 2001, No. 547 eff. 8-1-01; **CR 02-102: am. (3), Register December 2002 No. 564, eff. 1-1-03.**

**DFI-Sec 5.12 Transition filing. (1)** Each investment adviser licensed or required to be licensed in this state shall make its initial transition filing electronically with the investment adviser registration depository not later than June 1, 2001, unless a hardship exemption has been granted by the division.

(2) Each investment adviser licensed or required to be licensed in this state shall resubmit its Part 1 of Form ADV electronically with the investment adviser registration depository not later than August 31, 2001, unless a hardship exemption has been granted by the division.

(3) Amendments to an investment adviser's Form ADV that are made after its transition filing is completed pursuant to subs. (1) and (2) shall be filed electronically with the investment adviser registration depository, unless a hardship exemption has been granted by the division.

(4) Each investment adviser representative licensed or required to be licensed in this state shall resubmit its Form U-4 electronically with the central registration depository not later than a date prescribed by separate rule or order of the division, unless a hardship exemption has been granted by the division.

**History:** emerg. cr. eff. 1-1-01; CR 01-25; cr. Register July 2001, No. 547 eff. 8-1-01; **CR 02-102: am. (4), Register December 2002 No. 564, eff. 1-1-03.**