

**ORDER OF THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN
AMENDING, ADOPTING AND REPEALING RULES**

To repeal DFI-Sec 4.01(5), and 4.05(6); to renumber DFI-Sec 4.01(6) to (10) and 7.01(4)(c); to amend DFI-Sec 4.01(3)(intro.), 4.04(8)(a), and 5.04(5)(a); and to create 2.04(1)(c) and 4.01(3)(h); relating to securities broker-dealer, agent, investment adviser and investment adviser representative licensing procedures, examination requirements, and rule of conduct provisions.

Pursuant to sections 551.63(1) and (2), 551.29(1)(c), 551.32(4) and (7), 551.33(1), (2) and (6), and 551.52(3), Wis. Stats., the Division of Securities of the Department of Financial Institutions amends, adopts and repeals rules interpreting those sections as follows:

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF SECURITIES

YEAR 2001 ANNUAL RULES REVISION

SECTION 1. DFI-Sec 2.04(1)(c) is created to read:

DFI-Sec 2.04(1)(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. 551.29(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 DFI-Sec 9.01(1)(d), together with a fee of \$200, 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. As required under s. 551.29(1m), Stats., to be included with any rules promulgated under s. 551.29(1)(c), Stats., for unit investment trusts or closed-end investment companies, it is restated herein that the statutory annual reporting and fee requirements applicable to an open-end management company or a face amount certificate company are set forth in s. 551.52(1)(b)2., Stats.

ANALYSIS: This rule utilizes the authority granted to the Division under s. 551.29(1)(c), Stats., to adopt rules permitting a unit

investment trust or a closed-end investment company which has previously made a filing with the Division under the Federal Covered Securities provision of s. 551.29(1), Stats., to extend its offering beyond a one-year period. Paralleling the existing rule in DFI-Sec 3.07 applicable to extensions of securities registrations, (which rule provides for a 30-day prior filing requirement and specifies certain information to be submitted), this rule prescribes: (1) a filing deadline for the notice of extension--which is specified as not less than 30 days prior to the end of one year from the date of filing either the initial notice with the Division, or an extension notice (for future filers) under the rule, whichever is most recent; and (2) the information and attachments to be included in the notice filing-- namely, an updated Form NF together with a fee of \$200, 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. The last sentence of the rule contains language mandated for notification purposes by s. 551.29(1m), Stats., which provides that if the Division promulgates rules for unit investment trusts or closed-end investment companies, the Division shall restate in those rules the statutory and annual reporting and fee requirements that are applicable to an open-end management company or a face amount certificate company.

SECTION 2. DFI-Sec 4.01(3)(intro) is amended to read:

DFI-Sec 4.01(3) Unless waived under sub. (4), each applicant for an initial license as a broker-dealer or agent is required to take and pass either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination ~~with a grade of at least 70% .~~ and take and pass ~~with a grade of at least 70%~~ one of 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 ~~(e)~~ (h) that relates to the applicant's proposed securities activities:

ANALYSIS: These amendments to the introductory paragraph of the securities agent examination licensing requirement do the following: (1) Renumber the cross-references to the paragraphs listing the various types of restricted/limited securities examinations to reflect the creation of the new restricted/limited Series 82 Private Placement Representative examination created in the following SECTION; (2) Add language to expressly provide that an applicant satisfies the restricted/limited licensing examination requirement by either passing the applicable examination, or as a result of receiving a waiver from having to pass such examination; and (3) Substitute "take and pass" language for the specified passing percentages in the proposed rule to reflect

both: (i) that the passing percentages for the various examinations are determined by the NASD which administers the examinations; and (ii) that for certain examinations, such as the Series 66 Examination, the passing rate can vary depending upon the weight of the questions pulled from the NASD Series 66 Examination Question Bank comprising the examination at any particular point in time.

SECTION 3. DFI-Sec 4.01(3)(h) is created to read:

DFI-Sec 4.01(3)(h) The Series 82 Private Placement Representative Examination.

ANALYSIS: This new limited securities agent examination is necessary because of provisions of the federal Gramm-Leach-Bliley Banking Reform Act of 1999 (“G-L-B Act”) dealing with private placement securities activities by bank employees. Because Congress determined that bank employees should be allowed to continue to sell private placements without having to become fully registered as agents with the National Association of Securities Dealers (“NASD”), Section 203 of the G-L-B Act amended the federal Securities Exchange Act of 1934 to require the NASD to both create a limited agent registration/license category, and create a separate new examination to be passed by

such limited agents. Although the impetus for the new Series 82 Examination referenced below was banking-related and mandated by the G-L-B Act, the NASD in adopting the examination made it “generic” for use by persons selling exclusively private placements in other than bank employee contexts. Consequently, the NASD created, effective May 12, 2001, a new category of limited registration/licensure [designated “private placement (PR)”] for bank employees and other persons selling exclusively private placements. Additionally, the NASD created a new Series 82 Examination which must be passed by each such limited agent (unless the limited agent qualifies under the NASD’s grandfathering provisions for the Series 82 Examination).

For persons qualifying under the NASD’s limited securities agent private placement procedure who also wish to obtain equivalent limited license status for Wisconsin state securities law purposes, this new examination rule provides that passage of the NASD Series 82 Examination will satisfy the Wisconsin securities examination requirement.

SECTION 4. DFI-Sec 4.01(5) is repealed.

ANALYSIS: In conjunction with the repeal in DFI-Sec 4.05(6) below of the broker-dealer licensing Rule of Conduct requirement to employ a designated supervisor, this Section repeals the rule in DFI-Sec 4.01(5) that prescribes the examination requirement to be met by designated supervisors. As set forth in the ANALYSIS to the repeal of DFI-Sec 4.05(6), this provision is repealed on uniformity grounds because there is no designated supervisor requirement under the federal securities laws, and few states have adopted separate requirements on this subject.

SECTION 5. DFI-Sec 4.01(6) to (10) are renumbered DFI-Sec 4.01(5) to (9).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal of DFI-Sec 4.01(5) in the preceding Section.

SECTION 6. DFI-Sec 4.04(8)(a) is amended to read:

DFI-Sec 4.04(8)(a) Each broker-dealer shall notify the division in writing ~~at least~~ within 14 days ~~prior to~~ of either the opening or the change of address in this state of any "branch office" as defined in s. DFI-Sec 1.02(7)(a).

ANALYSIS: The amendment to this broker-dealer reporting requirement will provide broker-dealers with the flexibility of being able to provide the required notification to the Division

either 14 days before or after the opening or change of address of any Wisconsin branch office (in contrast to the current language requiring 14 days prior notice). Permitting the timing of the notification to also take place within 14 days after the event tracks the existing broker-dealer reporting requirement in DFI-Sec 4.04(8)(b) relating to the closing of any Wisconsin branch office.

SECTION 7. DFI-Sec 4.05(6) is repealed.

ANALYSIS: In conjunction with the above repeal of rule DFI-Sec 4.01(5), this Section repeals the broker-dealer Rule of Conduct licensing provision in DFI-Sec 4.05(6) that requires each licensed broker-dealer to employ a designated supervisor (licensed as a securities agent in Wisconsin) to act in a supervisory capacity. As set forth in the ANALYSIS to the repeal of DFI-Sec 4.01(5), the provision is repealed on uniformity grounds because there is no designated supervisor requirement under the federal securities laws, and few states have adopted separate requirements on this subject.

SECTION 8. DFI-Sec 5.04(5)(a) is amended to read:

DFI-Sec 5.04(5)(a) Each investment adviser shall notify the division in writing at

least within 14 days ~~prior to~~ of either the opening or the change of address in this state of any branch office.

ANALYSIS: The amendment to this investment adviser reporting requirement parallels the amendment made above to the broker-dealer reporting requirement in DFI-Sec 4.04(8)(a). The amendment will provide investment advisers with the flexibility of being able to provide the required notification to the Division either 14 days before or after the opening or change of address of any Wisconsin branch office (in contrast to the current language requiring 14 days prior notice). Permitting the timing of the notification to also take place within 14 days after the event tracks the existing investment adviser reporting requirement in DFI-Sec 5.04(5)(b) relating to the closing of any Wisconsin branch office.

SECTION 9. DFI-Sec 7.01(4)(c) is renumbered DFI-Sec 7.01(1)(d).

ANALYSIS: This amendment relocates the existing fee rule in DFI-Sec 7.01(4)(c) relating to the review of finance company prospectuses (which fee is currently set forth as a paragraph of the securities advertising fee provisions) to more properly be a paragraph of the fee rules in DFI-Sec 7.01(1) relating to the review of various types of securities registration matters.

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The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2) (intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED at Madison, Wisconsin, this ____ day of _____, 2001.

[SEAL]

PATRICIA D. STRUCK
Administrator
Division of Securities