

## CHAPTER 551

## WISCONSIN UNIFORM SECURITIES LAW

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**Cross-reference:** See also [DFI-Sec.](#) Wis. adm. code.

SUBCHAPTER I  
GENERAL PROVISIONS

**551.101 Short title.** This chapter shall be known and may be cited as the “Wisconsin Uniform Securities Law.”

**History:** 2007 a. 196.

Regulating Wisconsin-based Businesses: The Wisconsin Uniform Securities Act. Fallone. Wis. Law. Oct. 2009.

**551.102 Definitions.** In this chapter, unless the context otherwise requires:

(1m) “Administrator” means the administrator of the division of securities in the department of financial institutions.

(2) “Agent” means an individual, other than a broker–dealer, who represents a broker–dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities. But a partner, officer, or director of a broker–dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

(3) “Bank” means any of the following:

(a) A banking institution organized under the laws of the United States.

(b) A member bank of the Federal Reserve System.

(c) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to section 1 of Public Law 87–722 (12 USC 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter.

(d) A receiver, conservator, or other liquidating agent of any institution or firm included in par. (a), (b), or (c).

(4) “Broker–dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. The term does not include any of the following:

(a) An agent.

(b) An issuer.

(c) A bank or savings institution if its activities as a broker–dealer are limited to those specified in sections 3 (a) (4) and 3 (a) (5) of the Securities Exchange Act of 1934 (15 USC 78c (a) (4) and (5)), or a bank that satisfies the conditions specified in section 3 (a) (4) (E) of the Securities Exchange Act of 1934 (15 USC Section 78c (a) (4)).

(d) An international banking institution.

(dm) The investment board.

(e) A person excluded by rule adopted or order issued under this chapter.

**(4m)** “Certified investor” means an individual who is a resident of this state and who, at the time of an offer or sale of securities, satisfies any of the following:

(a) Has an individual net worth, or joint net worth with the individual’s spouse, of at least \$750,000. For purposes of calculating net worth under this paragraph, the individual’s primary residence shall be included as an asset and indebtedness secured by the primary residence shall be included as a liability.

(b) Had an individual income in excess of \$100,000 in each of the two most recent years or joint income with the individual’s spouse in excess of \$150,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

**(5)** “Depository institution” means any of the following:

(a) A bank.

(b) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include any of the following:

1. An insurance company or other organization primarily engaged in the business of insurance.

2. A Morris Plan bank.

3. An industrial loan company.

**(5m)** “Division of securities” or “division” means the division of securities in the department of financial institutions.

**(6)** “Federal covered investment adviser” means a person registered under the Investment Advisers Act of 1940.

**(7)** “Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under section 18 (b) of the Securities Act of 1933 ([15 USC 77r](#) (b)) or rules or regulations adopted pursuant to that provision.

**(8)** “Filing” means the receipt under this chapter of a record by the administrator or a designee of the administrator.

**(8m)** “Financial institution holding company” means a bank holding company, as defined in [12 USC 1841](#) (a), or a savings and loan holding company, as defined in [12 USC 1467a](#) (a) (1) (D).

**(9)** “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

**(9m)** “Funding portal” has the meaning given in section 3 (a) (80) of the Securities Exchange Act of 1934 ([15 USC 78c](#) (a) (80)).

**(10)** “Guaranteed” means guaranteed as to payment of all principal and all interest.

**(11)** “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(a) A depository institution or international banking institution.

(b) An insurance company.

(c) A separate account of an insurance company.

(d) An investment company as defined in the Investment Company Act of 1940.

(e) A broker–dealer registered under the Securities Exchange Act of 1934.

(f) An employee pension, profit–sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker–dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser

registered under this chapter, a depository institution, or an insurance company.

(g) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker–dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company. For purposes of this paragraph, “political subdivision of a state” does not include a school district.

(h) A trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in par. (f) or (g), regardless of the size of their assets, except a trust that includes as participants self–directed individual retirement accounts or similar self–directed plans.

(i) An organization described in section 501 (c) (3) of the Internal Revenue Code ([26 USC 501](#) (c) (3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000.

(j) A small business investment company licensed by the Small Business Administration under section 301 (c) of the Small Business Investment Act of 1958 ([15 USC 681](#) (c)) with total assets in excess of \$10,000,000.

(k) A private business development company as defined in section 202 (a) (22) of the Investment Advisers Act of 1940 ([15 USC 80b–2](#) (a) (22)) with total assets in excess of \$10,000,000.

(L) A federal covered investment adviser acting for its own account.

(m) A qualified institutional buyer, as defined in Rule 144A (a) (1), other than Rule 144A (a) (1) (i) (H), adopted under the Securities Act of 1933 ([17 CFR 230.144A](#)).

(n) A major U.S. institutional investor, as defined in Rule 15a–6 (b) (4) (i) adopted under the Securities Exchange Act of 1934 ([17 CFR 240.15a–6](#)).

(o) Any other person, other than an individual, of institutional character with total assets in excess of \$2,500,000 not organized for the specific purpose of evading this chapter.

(p) Any other person specified by rule adopted or order issued under this chapter.

**(12)** “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

**(13)** “Insured” means insured as to payment of all principal and all interest.

**(14)** “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

**(15)** “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications, writings, or electronic means, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice regarding securities to others for compensation as part of a business or that holds itself out as providing

investment advice regarding securities to others for compensation. The term does not include any of the following:

- (a) An investment adviser representative.
- (b) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession.
- (c) A broker–dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker–dealer and that does not receive special compensation for the investment advice.
- (d) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation.
- (e) A federal covered investment adviser.
- (f) A bank or savings institution.
- (fm) The investment board.
- (g) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser.
- (h) Any other person excluded by rule adopted or order issued under this chapter.

**(16)** “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include any of the following:

- (a) An individual who performs only clerical or ministerial acts.
- (b) An individual who is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services.
- (c) An individual who is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this state, as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940 ([15 USC 80b–3a](#)), and, in addition to the place of business, any of the following apply to the individual:

1. The individual is an “investment adviser representative,” as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940 ([15 USC 80b–3a](#)).

2. The individual is not a supervised person, as defined in section 202 (a) (25) of the Investment Advisers Act of 1940 ([15 USC 80b–2](#) (a) (25)).

- (d) An individual who is excluded by rule adopted or order issued under this chapter.

**(17)** “Issuer” means a person that issues or proposes to issue a security, subject to the following:

(a) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(b) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(c) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty,

whether whole or fractional, that creates fractional interests for the purpose of sale.

(d) With respect to a fractional or pool interest in a life settlement investment, “issuer” means every person who creates the fractional or pool interest for the purpose of offering or selling the interest.

(e) With respect to a life settlement investment that is not a fractional or pool interest, “issuer” means the provider, as defined in s. [632.69 \(1\) \(p\)](#), or the person who purchases or otherwise acquires the life settlement from a provider and then offers or sells life settlement investments except that, under this paragraph, “issuer” does not include a broker–dealer or agent registered under this chapter and does not include the owner of the insurance policy, certificate of insurance, or death benefit underlying the life settlement investment.

**(17m)** “Life settlement investment” means the entire interest or any fractional or pool interest in a life insurance policy or certificate of insurance or in the death benefit thereunder that is the subject of a life settlement, as defined in s. [632.69 \(1\) \(j\)](#), but does not include any of the following:

(a) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy, or certificate of insurance by the owner to a provider pursuant to s. [632.69](#).

(b) The exercise of accelerated benefits pursuant to the life insurance policy or certificate and consistent with applicable law.

**(18)** “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

**(19)** “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14 (d) of the Securities Exchange Act of 1934 ([15 USC 78n](#) (d)).

**(20)** “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

**(21)** “Place of business” of a broker–dealer, an investment adviser, or a federal covered investment adviser means any of the following:

(a) An office at which the broker–dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(b) Any other location that is held out to the general public as a location at which the broker–dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

**(22)** “Predecessor act” means ch. [551](#), 2005 stats.

**(23)** “Price amendment” means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

**(24)** “Principal place of business” of a broker–dealer or an investment adviser means the executive office of the broker–dealer or investment adviser from which the officers, partners, or managers of the broker–dealer or investment adviser direct, control, and coordinate the activities of the broker–dealer or investment adviser.

**(25)** “Record,” except in the phrases “of record,” “official record,” and “public record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.



(26) “Sale” includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include all of the following:

(a) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value.

(b) A gift of assessable stock involving an offer and sale.

(c) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(27) “Securities and Exchange Commission” means the United States Securities and Exchange Commission.

(28) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; limited partnership interest; life settlement investment or similar agreement; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(a) Includes both a certificated and an uncertificated security.

(b) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period.

(bm) Does not include a funding agreement authorized under s. 632.66.

(c) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974 or in a governmental benefit plan qualified for federal income tax purposes under the Internal Revenue Code or trust or fund managed by the investment board.

(d) Subject to the exception in par. (e), includes all of the following:

1. An investment in a common enterprise with the expectation of profits to be derived through the essential managerial efforts of someone other than the investor. For purposes of this subdivision, a “common enterprise” is an enterprise in which the fortunes of the investor are tied to the efficacy of the efforts of those seeking the investment or a third party.

2. Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of the initial value is induced by the offeror’s promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(e) Includes as an “investment contract,” among other contracts, an interest in a limited liability partnership and in a limited liability company; except an interest, or class or series thereof, in a limited liability partnership or limited liability company is not an “investment contract” if any of the following apply:

1. Each holder of an interest, or class or series thereof, is actively engaged in the management of the limited liability partnership or limited liability company. However, evidence that partners or members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability partnership or limited liability company, or the right to participate in management, shall not establish, without more, that all partners or members are actively engaged in the management of the limited liability partnership or limited liability company.

2. Each holder of an interest, or class or series thereof, is authorized under applicable law or under the partnership, operating, or other governing agreement or document to act for and bind the limited liability partnership or limited liability company and the total number of holders of all interests in the limited liability partnership or limited liability company does not exceed 15.

(f) Does not include a time share created and marketed in accordance with ch. 707 if the requirements under s. 707.11 are satisfied.

(g) Does not include a membership interest in a domestic mutual holding company, as provided under s. 644.22.

(h) Does not include as an “investment contract” any contract excluded by rule adopted or order issued under this chapter.

(29) “Self-regulatory organization” means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) “Sign” means to do any of the following, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol.

(b) To attach or logically associate with the record an electronic symbol, sound, or process.

(31) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**History:** 2007 a. 196; 2009 a. 180, 344, 345; 2013 a. 52; 2021 a. 114.

A profit-sharing agreement between management and labor in exchange for wage concessions was not a security. *Fore Way Express, Inc. v. Bast*, 178 Wis. 2d 693, 505 N.W.2d 408 (Ct. App. 1993).

There is a presumption that every note is a security, which may be rebutted by showing that the note falls within or closely resembles the family of instruments deemed not to be securities. Family resemblance is determined by examining four factors: 1) the motivations of a reasonable seller and buyer; 2) the note’s plan of distribution; 3) the reasonable expectations of the investing public; and 4) whether other risk-reducing factors exist, making unnecessary the application of the securities laws to protect the public. *State v. McGuire*, 2007 WI App 139, 302 Wis. 2d 688, 735 N.W.2d 555, 05–2832.

When a certificate of stock was mailed to the plaintiff in Wisconsin, and extensive solicitation was conducted by the defendants in Wisconsin, there was an “offer” within former s. 551.02 (11) (b), 1969 stats. Since the securities were neither registered in Wisconsin nor exempt from registration, the plaintiff was entitled to rescind the transaction and recover the purchase price of the securities, plus costs. *Hardtke v. Love Tree Corp.*, 386 F. Supp. 1085 (1975).

An “offer to sell” under former s. 551.02 (11) (b), 1973 stats., was made when the defendant gave an unexecuted partnership agreement to the plaintiff implicitly inviting the plaintiff to return it completed as to form and amount. *Feitler v. Midas Associates*, 418 F. Supp. 735 (1976).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.103 References to federal statutes.** “Securities Act of 1933” (15 USC 77a et seq.), “Securities Exchange Act of 1934” (15 USC 78a et seq.), “Public Utility Holding Company Act of 1935” (15 USC 79 et seq.), “Investment Company Act of 1940” (15 USC 80a–1 et seq.), “Investment Advisers Act of 1940” (15 USC 80b–1 et seq.), “Employee Retirement Income Security Act of 1974” (29 USC 1001 et seq.), “National Housing Act” (12 USC 1701 et seq.), “Commodity Exchange Act” (7 USC 1 et seq.), “Internal Revenue Code” (26 USC 1 et seq.), “Securities Investor Protection Act of 1970” (15 USC 78aaa et seq.), “Securities Litigation Uniform Standards Act of 1998” (112 Stat. 3227), “Small

Business Investment Act of 1958” (15 USC 661 et seq.), and “Electronic Signatures in Global and National Commerce Act” (15 USC 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended.

**History:** 2007 a. 196.

**551.104 References to federal agencies.** A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

**History:** 2007 a. 196.

**551.105 Electronic records and signatures.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede section 101 (c) of that act (15 USC 7001 (c)) or authorize electronic delivery of any of the notices described in section 103 (b) of that act (15 USC 7003 (b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with section 104 (a) of that act (15 USC 7004 (a)).

**History:** 2007 a. 196.

## SUBCHAPTER II

### EXEMPTIONS FROM REGISTRATION OF SECURITIES

**551.201 Exempt securities.** The following securities are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

(1) (a) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 CFR 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing but 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 exempt only as provided under par. (b).

(b) Unless subject to a letter of credit of a bank, savings bank, or savings and loan association as provided in this paragraph, a revenue obligation of an issuer specified under par. (a) that is 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 exempt subject to rules adopted by the division of securities. A revenue obligation is exempt from any filing under the rules of the division if it is the subject of a guarantee or an irrevocable letter of credit from a depository institution in favor of holders of the revenue obligations providing for payment of all principal of the revenue obligations and all accrued and unpaid interest to the date of an event of default on the revenue obligations, and the letter of credit is accompanied by an opinion of counsel stating all of the following:

1. Either that payment of debt service will not constitute a preference under federal bankruptcy law if a petition in bankruptcy with respect to the enterprise is filed or that the guarantee or letter of credit will provide for reimbursement to holders of the revenue obligations if they are required by order of a federal bankruptcy court to disgorge as a preference any payment of a debt service.

2. That the enforceability of the guarantee or letter of credit would not be materially affected by the filing of a petition under federal bankruptcy law with respect to the enterprise or any person

obligated to reimburse the depository institution for payments made under the guarantee or letter of credit.

(2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor.

(3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by, any of the following:

(a) An international banking institution.

(b) A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87–722 (12 USC 92a).

(c) Any other depository institution, unless by rule or order the administrator proceeds under s. 551.204.

(4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state.

(5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is any of the following:

(a) Regulated in respect to its rates and charges by the United States or a state.

(b) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory.

(c) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act.

(6) A federal covered security specified in section 18 (b) (1) of the Securities Act of 1933 (15 USC 77r (b) (1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under section 9 (b) of the Securities Exchange Act of 1934 (15 USC 78i (b)).

(7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3 (c) (10) (B) of the Investment Company Act of 1940 (15 USC 80a–3 (c) (10) (B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, speci-

fying with respect to par. (b) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to do any of the following:

(a) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule.

(b) To file a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with s. 551.611, and grounds for denial or suspension of the exemption.

(c) To register under s. 551.304.

(8) Any securities of a cooperative corporation organized under ch. 185 or an unincorporated cooperative association organized under ch. 193.

(9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18 (b) (1) of the Securities Act of 1933 (15 USC 77r (b) (1)).

**History:** 2007 a. 196; 2011 a. 178.

**551.202 Exempt transactions.** The following transactions are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

(1) An isolated nonissuer transaction, whether effected by or through a broker–dealer or not.

(2) A nonissuer transaction by or through a broker–dealer registered or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days if, at the date of the transaction, all of the following apply:

(a) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(b) The security is sold at a price reasonably related to its current market price.

(c) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker–dealer as an underwriter of the security or a redistribution.

(d) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains all of the following:

1. A description of the business and operations of the issuer.
2. The names of the issuer's executive officers and the names of the issuer's directors, if any.
3. An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization.

4. An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement.

(e) Any of the following requirements is met:

1. The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading

on the National Association of Securities Dealers Automated Quotation System.

2. The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940.

3. The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years.

4. The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

(3) A nonissuer transaction by or through a broker–dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System.

(4) A nonissuer transaction by or through a broker–dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of section 13 or 15 (d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o (d)).

(5) A nonissuer transaction by or through a broker–dealer registered or exempt from registration under this chapter in a security to which any of the following applies:

(a) The security is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its 4 highest rating categories.

(b) The security has a fixed maturity or a fixed interest or dividend, if all of the following apply:

1. A default has not occurred during the current fiscal year or within the 3 previous fiscal years, or during the existence of the issuer and any predecessor if less than 3 fiscal years, in the payment of principal, interest, or dividends on the security.

2. The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(6) A nonissuer transaction by or through a broker–dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase, but with respect to a nonissuer transaction involving a security that is not a federal covered security the administrator may require by rule that the records of the broker–dealer confirm that the order or offer to purchase was unsolicited.

(7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter.

(8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others.

(9) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing.

(10) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if all of the following apply:



(a) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit.

(b) A general solicitation or general advertisement of the transaction is not made.

(c) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker–dealer or as an agent.

**(12)** A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

**(13)** A sale or offer to sell to any of the following:

(a) An institutional investor.

(am) An accredited investor, as defined in Rule 501 (a) adopted under the Securities Act of 1933 (17 CFR 230.501 (a)), provided that prior to the sale in this state to an accredited investor described in Rule 501 (a) (5) or (6) adopted under the Securities Act of 1933, the seller files a consent to service of process with the administrator in the form required under s. 551.611. Failure to file the consent as required is a cause for administrative action by the administrator under s. 551.604 but does not result in the loss of this exemption. This consent is not required to be filed if any of the following apply:

1. The issuer of the securities to be sold has its principal place of business or a majority of its full–time employees located in this state.

2. The issuer or seller of the securities files or has previously filed a consent to service of process with the administrator.

3. The seller is a broker–dealer or agent of the issuer registered under this chapter.

(ar) A certified investor, or a person whom the issuer reasonably believes is a certified investor at the time of the sale or offer of the security, if all of the following apply:

1. The transaction meets the requirements of the federal exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147 adopted under the Securities Act of 1933 (17 CFR 230.147).

2. If the offer or sale of the security had been undertaken under an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)), the transaction would not have been disqualified from the exemption under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)), except that the administrator may waive the requirement under this subdivision and authorize transactions in reliance on the exemption under this paragraph notwithstanding the condition specified in this subdivision.

(b) A federal covered investment adviser.

(c) Any other person exempted by rule adopted or order issued under this chapter.

**(14)** (a) Subject to par. (b), any transaction pursuant to an offer directed by the offeror to not more than 25 persons in this state excluding those persons designated in sub. (13) but including persons exempt under sub. (24), during any period of 12 consecutive months whether or not the offeror or any of the offerees is then present in this state if all of the following apply:

1. No general solicitation or general advertising is made in connection with the offer to sell or sale of the securities unless it has been permitted by the administrator.

2. No commission or other remuneration is paid or given, directly or indirectly, to a person other than a broker–dealer registered under this chapter or an agent registered under this chapter for soliciting any person in this state other than those persons designated in sub. (13).

3. The offeror reasonably believes that all the purchasers in this state, other than those designated in sub. (13), are purchasing for investment.

(b) The administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or

further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in par. (a), and may require reports of sales under this exemption.

**(14m)** (a) Any transaction pursuant to an offer directed by the offeror to not more than 100 residents of this state, excluding those persons designated in sub. (13) (a), (am), and (ar) but including persons exempt under sub. (24), if all of the following apply:

1. The issuer is a business entity that is organized under the laws of this state and authorized to do business in this state, that has its principal office in this state, and that has a majority of its full–time employees working in this state.

2. No commission or other remuneration is paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker–dealer or agent under this chapter.

3. No general solicitation or general advertising is made in connection with the offer to sell or sale of the securities unless it has been permitted by the administrator.

4. If the transaction had been undertaken under an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)), the transaction would not have been disqualified from the exemption under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)), except that the administrator may waive the requirement under this subdivision and authorize transactions in reliance on the exemption under this paragraph notwithstanding the condition specified in this subdivision.

(b) The exemption under this subsection and the exemption under sub. (27) may be used in conjunction with each other.

**(15)** A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state and if, prior to any offer or sale of any security that is not a federal covered security, the issuer files a notice specifying the terms of the offer, all other information that the administrator by rule requires, and any additional information reasonably related to the offering required to be filed by the administrator within 10 days after the filing date of the notice, and the administrator does not by order disallow the exemption within 10 days after the date of filing the notice or, if additional information is required, within 10 days after the date of filing that information.

**(16)** An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if all of the following apply:

(a) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 CFR 230.165).

(b) A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

**(17)** An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if all of the following apply:

(a) A registration statement has been filed under this chapter, but is not effective.

(b) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter.

(c) A stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties.

(19) A rescission offer, sale, or purchase under s. 551.511.

(20) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

(21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent, for the participation of their employees including offers or sales of such securities to all of the following:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors.

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders.

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered.

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations.

(22) A transaction involving any of the following:

(a) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock.

(b) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(c) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 CFR 230.162).

(23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc. and the TSX Venture Exchange, Inc. are designated securities exchanges. After an administrative hearing in compliance with ch. 227, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this subsection, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

(24) Any offer or sale of its securities by an issuer, having its principal office in this state, if the aggregate number of persons holding directly or indirectly all of the issuer's securities, after the securities to be issued are sold, does not exceed 25, exclusive of persons under sub. (13), if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, except to broker-dealers and agents licensed in this state, and if no advertising is published unless it has been permitted by the division of securities.

(24m) Any offer or sale of its securities by an issuer to a resident of this state if all of the following apply:

(a) The issuer is a business entity that is organized under the laws of this state and authorized to do business in this state, that has its principal office in this state and that has a majority of its full-time employees working in this state.

(b) The aggregate number of persons holding directly or indirectly all of the issuer's securities, after the securities to be issued are sold, does not exceed 100, exclusive of persons under sub. (13) (a), (am), and (ar).

(c) No commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state in connection with the offer to sell or sale of the securities, except to broker-dealers and agents licensed in this state.

(d) No advertising is published in connection with the offer to sell or sale of the securities unless it has been permitted by the division of securities.

(e) If the offer or sale of the security had been undertaken under an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)), the transaction would not have been disqualified from the exemption under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)), except that the administrator may waive the requirement under this paragraph and authorize transactions in reliance on the exemption under this subsection notwithstanding the condition specified in this paragraph.

(25) Any offer or sale of a preorganization subscription, if no commission or other remuneration is paid or given directly or indirectly for soliciting any subscriber in this state and no advertising is published or circulated unless it has been permitted by the division of securities, and if the subscription is not binding and no payment is made by any subscriber until the securities subscribed for may legally be sold.

(26) An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements:

(a) The issuer of the security is a business entity with a principal place of business in this state and that is doing business in this state.

(b) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147A adopted under the Securities Act of 1933 (17 CFR 230.147A).

(c) 1. Except as provided in subd. 2., the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subsection, excluding sales to any accredited investor, certified investor, or institutional investor, does not exceed the following amount:

a. If the issuer has not undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$1,000,000 subject to adjustment under s. 551.206, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection.

b. If the issuer has undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal



year which complies with generally accepted accounting principles, \$2,000,000 subject to adjustment under s. 551.206, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection.

2. An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning 10 percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitation in subd. 1. a. and b.

(d) The issuer does not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor or certified investor.

(e) Except as provided in sub. (26m), the offering under this subsection is made exclusively through one or more Internet sites and each Internet site is registered with the division under s. 551.205 (1) (b).

(f) Not less than 10 days prior to the commencement of an offering of securities in reliance on the exemption under this subsection, the issuer files a notice with the administrator, in writing or in electronic form as prescribed by the administrator, which the administrator shall make available as an electronic document on the department of financial institutions Internet site, containing all of the following:

1. A notice of claim of exemption from registration, specifying that the issuer will be conducting an offering in reliance on the exemption under this subsection, accompanied by the filing fee specified in s. 551.614 (1m).

2. A copy of the disclosure statement to be provided to prospective investors in connection with the offering, containing all of the following:

a. A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer.

b. The identity of all persons owning more than 10 percent of the ownership interests of any class of securities of the company.

c. The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and their prior experience.

d. The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered.

e. The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any Internet site operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital.

f. For each person identified as required under subd. 2. e., a description of the consideration being paid to the person for such assistance.

g. A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management.

h. The names and addresses, including the Uniform Resource Locator, of each Internet site that will be used by the issuer to offer or sell securities under this subsection.

i. Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion shall be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering.

3. An escrow agreement with a bank, savings bank, savings and loan association, or credit union authorized to do business in this state in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

(g) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 USC 80a–3), or an entity that would be an investment company but for the exclusions provided in section 3 (c) of the Investment Company Act of 1940 (15 USC 80a–3 (c)), or subject to the reporting requirements of section 13 or 15 (d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o (d)).

(h) The issuer informs all prospective purchasers of securities offered under this subsection that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147A (17 CFR 230.147A (e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(i) The issuer requires each purchaser to certify in writing or electronically as follows:

I UNDERSTAND AND ACKNOWLEDGE THAT:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss.

This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this

investment, and that, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

.... (Signature)

(j) The issuer obtains from each purchaser of a security offered under this subsection evidence that the purchaser is a resident of this state and, if applicable, is an accredited investor or certified investor.

(k) All payments for purchase of securities offered under this subsection are directed to and held by the financial institution specified in par. (f) 3. The bank or depository institution shall notify the administrator of the receipt of payments for securities. This information shall be confidential as provided in s. 551.607 (2) (g).

(L) The issuer of securities offered under this subsection provides a copy of the disclosure document provided to the administrator under par. (f) 2. to each prospective investor at the time the offer of securities is made to the prospective investor.

(m) No offer or sale of a different class or series of security has been made by the issuer in reliance on the exemption under this subsection or sub. (27) during the immediately preceding 12-month period.

(n) If the offer or sale of the security had been undertaken under an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)), the transaction would not have been disqualified from the exemption under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)), except that the administrator may waive the requirement under this paragraph and authorize transactions in reliance on the exemption under this subsection notwithstanding the condition specified in this paragraph.

**(26m)** (a) An offer to sell, but not a sale, of a security by an issuer if, subject to par. (b), the offer is conducted in accordance with all of the following requirements:

1. The offer contains information required in the solicitation of interest form prescribed by the division and is made by or on behalf of the issuer by means of a newspaper publication, scripted media broadcast, Internet posting, or delivery of notices to be published or other documents, 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.

2. The issuer intends that sales of the security be made pursuant to the exemption under sub. (26).

3. Prior to the initial solicitation of interest made under this subsection, the offeror files with the division a completed solicitation of interest form, as prescribed by the division, together with any other materials to be used to conduct solicitations of interest, including the script of any broadcast to be made, any information to be posted on the Internet, and a copy of any notice to be published. Any 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 or posted document under this subdivision may include a coupon, or digital form, returnable to the issuer indicating interest in a potential offering and revealing the name, address, electronic mail address, and telephone number of the prospective purchaser.

4. The text of any published notice or script for broadcast, any information to be posted on the Internet, and any printed material delivered in any solicitation of interest under this subsection begins with the disclosures and information required in, and in the format of, the solicitation of interest form prescribed by the division.

5. 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 are or

would be disqualified from use of the registration exemption under this subsection.

6. No solicitation of interest pursuant to this subsection is made after the filing of materials required for the exemption under sub. (26).

7. No sales of the securities that are the subject of solicitations of interest under this subsection are made until 20 calendar days after the last delivery of a solicitation of interest document, scripted media broadcast, Internet post, or other media publication. For purposes of this subdivision, the last delivery date for solicitations of interest by means of the Internet is the last day on which a digital form is available for a prospective purchaser's response indicating interest.

8. During the solicitation of interest period, neither the issuer nor any person acting on its behalf accepts or solicits money, subscriptions, or commitments to purchase securities.

(b) A failure to comply with any of the requirements for exemption under par. (a) does not result in the loss of the exemption under this subsection for any offer to a particular person if the offeror demonstrates that all of the following apply:

1. The failure to comply did not pertain to a requirement directly intended to protect that particular person.

2. The failure to comply was insignificant with respect to the offering as a whole.

3. A good faith and reasonable attempt was made to comply with all requirements under par. (a).

**(27)** An offer or sale of a security by an issuer if the offer or sale is conducted in accordance with all of the following requirements:

(a) The issuer of the security is a business entity with a principal place of business in this state and that is doing business in this state.

(b) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3 (a) (11) of the Securities Act of 1933 (15 USC 77c (a) (11)) and Rule 147A adopted under the Securities Act of 1933 (17 CFR 230.147A).

(c) 1. Except as provided in subd. 2., the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subsection, excluding sales to any accredited investor, certified investor, or institutional investor, does not exceed the following amount:

- a. If the issuer has not undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$1,000,000 subject to adjustment under s. 551.206, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection.

- b. If the issuer has undergone and made available to each prospective investor and the administrator the documentation resulting from a financial audit of its most recently completed fiscal year which complies with generally accepted accounting principles, \$2,000,000 subject to adjustment under s. 551.206, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on the exemption under this subsection.

2. An offer or sale to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning 10 percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitation in subd. 1. a. and b.

(d) The issuer does not accept more than \$10,000 from any single purchaser unless the purchaser is an accredited investor or certified investor.

(e) No commission or other remuneration is paid or given, directly or indirectly, for any person's participation in the offer or

sale of securities for the issuer unless the person is registered as a broker–dealer or agent under this chapter. This paragraph does not apply if the offer or sale of the security is to a certified investor.

(f) No general solicitation or general advertising is made in connection with the offer to sell or sale of the securities unless it has been permitted by the administrator.

(g) All funds received from investors are deposited into a bank, savings bank, savings and loan association, or credit union authorized to do business in this state, and all the funds are used in accordance with representations made to investors.

(h) Before the 101st offer of the security, the issuer provides a notice to the administrator in writing or in electronic form, accompanied by the filing fee specified in s. 551.614 (1m). The administrator shall prescribe the form required for the notice and make the form available as an electronic document on the department of financial institutions Internet site. Notwithstanding s. 551.204 (1) and (3), the notice shall be limited to all of the following:

1. Stating that the issuer is conducting an offering in reliance on the exemption under this subsection.
2. Identifying the names and addresses of all of the following persons:
  - a. The issuer.
  - b. All persons who will be involved in the offer or sale of securities on behalf of the issuer.
  - c. The bank, savings bank, savings and loan association, or credit union in which investor funds will be deposited.

(i) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 USC 80a–3), or subject to the reporting requirements of section 13 or 15 (d) of the Securities Exchange Act of 1934 (15 USC 78m or 78o (d)).

(j) The issuer informs all purchasers that the securities have not been registered under this chapter and makes the disclosures required under subsection (f) of Rule 147A adopted under the Securities Act of 1933 (17 CFR 230.147A (f)).

(k) No offer or sale of a different class or series of security has been made by the issuer in reliance on the exemption under this subsection or sub. (26) during the immediately preceding 12-month period.

(L) If the offer or sale of the security had been undertaken under an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)), the transaction would not have been disqualified from the exemption under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)), except that the administrator may waive the requirement under this paragraph and authorize transactions in reliance on the exemption under this subsection notwithstanding the condition specified in this paragraph.

**History:** 2007 a. 196; 2013 a. 52; 2013 a. 151 s. 28; 2017 a. 213.

When a certificate of stock was mailed to the plaintiff in Wisconsin, and extensive solicitation was conducted by the defendants in Wisconsin, there was an “offer” within former s. 551.02 (1) (b), 1969 stats. Since the securities were neither registered in Wisconsin nor exempt from registration, the plaintiff was entitled to rescind the transaction and recover the purchase price of the securities, plus costs. *Hardtke v. Love Tree Corp.*, 386 F. Supp. 1085 (1975).

Registration and reporting requirements for exempt transactions are discussed. *Feitler v. Midas Associates*, 418 F. Supp. 735 (1976).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

To Fund or Not to Fund: Deficiencies in the Wisconsin Crowdfunding Act that Hamper the Viability of Intrastate Crowdfunding. *Hovestol*. 100 MLR 1063 (2017).

**551.203 Additional exemptions and waivers.** A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of ss. 551.301 to 551.306 and 551.504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under ss. 551.201 and 551.202.

**History:** 2007 a. 196.

**551.204 Denial, suspension, revocation, condition, or limitation of exemptions; burden of proof; additional information.** (1) **ENFORCEMENT RELATED POWERS.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under s. 551.201 or 551.202 or an exemption or waiver created under s. 551.203 with respect to a specific security, transaction, or offer, except to the extent limited by the National Securities Markets Improvement Act of 1996. An order under this section may be issued only pursuant to the procedures in s. 551.306 (4) or s. 551.604 and only prospectively.

(2) **KNOWLEDGE OF ORDER REQUIRED.** A person does not violate s. 551.301, 551.303 to 551.306, 551.504, or 551.511 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

(3) **ADDITIONAL INFORMATION REQUIRED.** With respect to an exemption under s. 551.201 or 551.202 that is perfected if a notice or other information is filed with the division of securities and the division does not disallow the exemption within a specified period after the filing, the division may, within 10 days after the filing date of the notice or other information, require that additional information reasonably related to the offering be filed. If the division requires additional information, the date by which the division may disallow the exemption is 10 days after the date of filing that information.

**History:** 2007 a. 196.

**551.205 Additional provisions related to crowdfunding exemption for intrastate offerings through Internet sites.** (1) All of the following requirements apply to an offer or sale of securities pursuant to the exemption under s. 551.202 (26):

(a) Prior to any offer or sale of securities, the issuer shall provide to the Internet site operator evidence that the issuer has a principal place of business in this state and is doing business in this state.

(b) 1. The Internet site operator shall register with the division by filing a statement, which the administrator shall make available as an electronic document on the department of financial institutions Internet site, accompanied by the filing fee specified in s. 551.614 (1m), that includes all of the following:

a. That the Internet site operator is a business entity organized under the laws of this state and authorized to do business in this state.

b. That the Internet site is being utilized to offer and sell securities pursuant to the exemption under s. 551.202 (26).

c. The identity and location of, and contact information for, the Internet site operator.

d. Except as provided in subds. 2. and 4., that the Internet site operator is registered as a broker–dealer under s. 551.401.

2. The Internet site operator is not required to register as a broker–dealer under s. 551.401 if all of the following apply with respect to the Internet site and its operator:

a. It does not offer investment advice or recommendations.

b. It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the Internet site.

c. It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the Internet site.

d. It does not hold, manage, possess, or otherwise handle investor funds or securities.

e. The fee it charges an issuer for an offering of securities on the Internet site is a commission, a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the Internet site, or a combination of such fixed and variable amounts.



f. It does not identify, promote, or otherwise refer to any individual security offered on the Internet site in any advertising for the Internet site.

g. It does not engage in such other activities as the division, by rule, determines are prohibited of such an Internet site.

h. Neither the Internet site operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the Internet site operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506 (d) (1) adopted under the Securities Act of 1933 (17 CFR 230.506 (d) (1)) that would disqualify an issuer under Rule 506 (d) adopted under the Securities Act of 1933 (17 CFR 230.506 (d)) from claiming an exemption specified in Rule 506 (a) to (c) adopted under the Securities Act of 1933 (17 CFR 230.506 (a) to (c)).

3. If any change occurs in the information that an Internet site operator submits to the division in a statement filed under subd. 1., the Internet site operator shall notify the division within 30 days after the change occurs.

4. The Internet site operator is not required to register as a broker–dealer under s. 551.401 if the Internet site operator is registered as a broker–dealer under the Securities Exchange Act of 1934 (15 USC 78o) or is a funding portal registered under the Securities Act of 1933 (15 USC 77d–1) and the Securities and Exchange Commission has adopted rules under authority of section 3 (h) of the Securities Exchange Act of 1934 (15 USC 78c (h)) and P.L. 112–106, section 304, governing funding portals. Nothing in this section requires an Internet site operator to register as a broker–dealer under the Securities Exchange Act of 1934 or as a funding portal under the Securities Act of 1933.

(c) The issuer and the Internet site operator shall maintain records of all offers and sales of securities effected through the Internet site and shall provide ready access to the records to the division, upon request. The division may access, inspect, and review any Internet site registered under this subsection as well as its records.

(2) An issuer of a security, the offer and sale of which is exempt under s. 551.202 (26), shall provide, free of charge, a quarterly report to the issuer’s investors until no securities issued under s. 551.202 (26) are outstanding. An issuer may satisfy the reporting requirement of this subsection by making the information available on an Internet site if the information is made available within 45 days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. If the quarterly report is made available on an Internet site, the issuer shall provide a written copy of the report to any investor upon request. Upon written request from the division, the issuer shall provide a copy of the quarterly report to the division within 10 business days following the division’s request. The report shall contain all of the following:

(a) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

(b) An analysis by management of the issuer of the business operations and financial condition of the issuer.

**History:** 2013 a. 52; 2017 a. 213.

**551.206 Adjustments.** At 5–year intervals after January 1, 2014, the department of financial institutions shall adjust the monetary amounts specified in s. 551.202 (26) (c) 1. a. and b. and (27) (c) 1. a. and b. to reflect changes since January 1, 2014, in the consumer price index for all urban consumers, Milwaukee–Racine area average, as determined by the U.S. department of labor. Each adjustment shall be rounded to the nearest multiple of \$50,000. Each adjustment under this section shall be published on the department of financial institutions Internet site.

**History:** 2013 a. 52; 2013 a. 151 s. 28.

## SUBCHAPTER III

### REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

**551.301 Securities registration requirement.** It is unlawful for a person to offer or sell a security in this state unless any of the following apply:

(1) The security is a federal covered security.

(2) The security, transaction, or offer is exempted from registration under this chapter.

(3) The security is registered under this chapter.

**History:** 2007 a. 196.

Section 551.21 (1) is violated through an offer to sell an unregistered security, even if no sale occurs. *State v. Johnson*, 2002 WI App 224, 257 Wis. 2d 736, 652 N.W.2d 642, 01–1092.

When a certificate of stock was mailed to the plaintiff in Wisconsin, and extensive solicitation was conducted by the defendants in Wisconsin, there was an “offer” within former s. 551.02. (11) (b), 1969 stats. Since the securities were neither registered in Wisconsin nor exempt from registration, the plaintiff was entitled to rescind the transaction and recover the purchase price of the securities, plus costs. *Hardtke v. Love Tree Corp.*, 386 F. Supp. 1085 (1975).

Registration and reporting requirements for exempt transactions are discussed. *Feitler v. Midas Associates*, 418 F. Supp. 735 (1976).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.302 Notice filing.** (1) REQUIRED FILING OF RECORDS. With respect to a federal covered security, as defined in section 18 (b) (2) of the Securities Act of 1933 (15 USC 77r (b) (2)), that is not otherwise exempt under ss. 551.201 to 551.203, a rule adopted by the administrator or an order issued under this chapter may require the filing of any or all of the following records:

(a) *Prior to offer.* Not later than the initial offer of the federal covered security in this state, a copy of each document that is part of its registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which may, at the option of the issuer, be accompanied by a form containing the information specified by the administrator by rule. If a filing is required under this paragraph, the filing shall be accompanied by a consent to service of process signed by the issuer and a notice filing fee under s. 551.614. Any notice filing required under this paragraph is effective upon receipt by the administrator of the documents and fees required under this paragraph, or upon the effectiveness of the registration statement under the Securities Act of 1933, whichever is later.

(b) *After offer.* After the initial offer of the federal covered security in this state, a copy of each document that is part of an amendment to its registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, concurrent with the federal filing, which may, at the option of the issuer, be accompanied by a form containing the information specified by the administrator by rule. If a filing is required under this paragraph and the amendment relates either to a name change of the issuer or a change in the designation of the federal covered security, the filing shall be accompanied by a fee in the amount prescribed by the rule or order requiring the filing. Unless the issuer requests a later effective date, an amendment filing required under this paragraph is effective upon receipt by the administrator of the documents and fees required under this paragraph.

(c) *Unit trust or investment company.* For a unit investment trust or closed–end investment company to extend its offering beyond a one–year period, a notice of extension, together with any filing fee prescribed by rule or order, at the time prescribed by rule or order.

(3) NOTICE FILINGS FOR CERTAIN FEDERAL COVERED SECURITIES. With respect to a security that is a federal covered security under section 18 (b) (4) (D) of the Securities Act of 1933 (15 USC 77r (b) (4) (D)), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with

s. 551.611 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state and the payment of a fee as provided in s. 551.614 or by rule of the administrator; and the payment of a fee as provided in s. 551.614 or by rule of the administrator for any late filing.

(4) **STOP ORDERS.** Except with respect to a federal covered security under section 18 (b) (1) of the Securities Act of 1933 (15 USC 77r (b) (1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

(5) **WAIVER.** The administrator may, by rule or order, waive or further condition any waiver of a requirement under this section or under any rule promulgated by the administrator, or order issued, under this section.

History: 2007 a. 196.

### 551.303 Securities registration by coordination.

(1) **REGISTRATION PERMITTED.** A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(2) **REQUIRED RECORDS.** A registration statement and accompanying records under this section must contain or be accompanied by all of the following records in addition to the information specified in s. 551.305 and a consent to service of process complying with s. 551.611:

(a) A copy of the latest form of prospectus filed under the Securities Act of 1933.

(b) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter.

(c) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator.

(d) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(3) **CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(a) A stop order under sub. (4) or s. 551.306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under s. 551.306.

(b) The registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this chapter.

(4) **NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS.** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telecopy, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(5) **EFFECTIVENESS OF REGISTRATION STATEMENT.** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telecopy, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under s. 551.306. The notice by the administrator does not preclude the institution of such a proceeding.

History: 2007 a. 196.

### 551.304 Securities registration by qualification.

(1) **REGISTRATION PERMITTED.** A security may be registered by qualification under this section.

(2) **REQUIRED RECORDS.** A registration statement under this section must contain the information or records specified in s. 551.305, a consent to service of process complying with s. 551.611, and, if required by rule adopted under this chapter, any, or any combination, of the following information or records:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(b) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected.

(c) With respect to persons covered by par. (b), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer.

(d) With respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in par. (b) other than the person's occupation.

(e) With respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in par. (b), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment.

(f) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected; and a statement of the reasons for making the offering.

(g) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities.

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter.

(i) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(j) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in par. (b), (d), (e), (f), or (h) and by any person that holds or will hold 10 percent or more in the aggregate of those options.

(k) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years, and a copy of the contract.

(L) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities.

(m) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with s. 551.202 (17) (b).

(n) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered.

(o) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer.

(p) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement.

(q) A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant.

(r) Any additional information or records required by rule adopted or order issued under this chapter, including, without limitation, a report by accountants, engineers, appraisers, or another professional person as deemed necessary by the administrator.

**(3) CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.** A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if all of the following apply:

(a) A stop order is not in effect and a proceeding is not pending under s. 551.306.

(b) The administrator has not issued an order under s. 551.306.

(c) The applicant or registrant has not requested that effectiveness be delayed.

**(4) DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT.** The administrator may delay effectiveness once for not more than 90 days if the administrator determines and notifies via comment letter or other letter that the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination, which may be by means of a comment letter or correspondence and not an order. The administrator may also further delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

**(5) PROSPECTUS DISTRIBUTION MAY BE REQUIRED.** A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in sub. (2) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of the following:

(a) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution.

(b) The confirmation of a sale made by or for the account of the person.

(c) Payment pursuant to such a sale.

(d) Delivery of the security pursuant to such a sale.

**History:** 2007 a. 196; 2009 a. 180.

**551.305 Securities registration filings. (1) WHO MAY FILE.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

**(2) FILING FEE.** A person filing a registration statement shall pay a filing fee as provided in s. 551.614 or as may be supplemented by rule of the administrator. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under s. 551.306, the administrator shall retain the fee as provided in s. 551.614 or as may be supplemented by rule of the administrator.

**(3) STATUS OF OFFERING.** A registration statement filed under s. 551.303 or 551.304 must specify all of the following:

(a) The amount of securities to be offered in this state.



(b) The states in which a registration statement or similar record in connection with the offering has been or is to be filed.

(c) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(4) INCORPORATION BY REFERENCE. A record filed under this chapter or the predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(5) NONISSUER DISTRIBUTION. In the case of a nonissuer distribution, information or a record may not be required under sub. (9) or s. 551.304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(7) FORM OF SUBSCRIPTION. A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than 5 years.

(8) EFFECTIVE PERIOD. Except while a stop order is in effect under s. 551.306, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker–dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(9) PERIODIC REPORTS. While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering. No report may be required under this subsection of a financial institution holding company.

(10) POSTEFFECTIVE AMENDMENTS. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee as provided in s. 551.614 or as may be supplemented by rule of the administrator. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

(11) INDENTURES. The administrator may by rule require that securities be issued under a trust indenture, unless this requirement is waived by the administrator.

History: 2007 a. 196; 2013 a. 52.

### 551.306 Denial, suspension, and revocation of securities registration.

(1) STOP ORDERS. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that any of the following apply:

(a) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under s. 551.305 (10) as of its effective date, or a report under s. 551.305 (9), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter.

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section.

(d) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed.

(e) With respect to a security sought to be registered under s. 551.303, there has been a failure to comply with the undertaking required by s. 551.303 (2) (d).

(f) The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

(g) The offering will work or tend to work a fraud upon purchasers or would so operate.

(3) INSTITUTION OF STOP ORDER. The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(4) SUMMARY PROCESS. The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in sub. (5) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 10 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(5) PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order may not be issued under this chapter without all of the following:

(a) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(b) An opportunity for hearing.

(c) Findings of fact and conclusions of law in a record in accordance with ch. 227.

(6) **MODIFICATION OR VACATION OF STOP ORDER.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

**History:** 2007 a. 196.

**551.307 Waiver and modification.** The administrator may waive or modify, in whole or in part, any or all of the requirements of ss. 551.302, 551.303, and 551.304 (2) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to s. 551.305 (9).

**History:** 2007 a. 196.

#### SUBCHAPTER IV

##### BROKER–DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

**551.401 Broker–dealer registration requirement and exemptions.** (1) **REGISTRATION REQUIREMENT.** It is unlawful for a person to transact business in this state as a broker–dealer unless the person is registered under this chapter as a broker–dealer or is exempt from registration as a broker–dealer under sub. (2) or (4) or s. 551.205 (1) (b) 2.

(2) **EXEMPTIONS FROM REGISTRATION.** A broker–dealer is exempt from the registration requirement of sub. (1) if its only transactions effected in this state are with the following:

- (a) The issuer of the securities involved in the transactions.
- (b) A broker–dealer registered as a broker–dealer under this chapter or not required to be registered as a broker–dealer under this chapter.
- (c) Institutional investors.
- (cm) Accredited investors as defined in Rule 501 (a) (1), (2), (3), (7) or (8) adopted under the Securities Act of 1933.
- (d) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record.
- (e) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker–dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence.
- (f) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if all of the following apply:

- 1. The broker–dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence.
- 2. Within 45 days after the customer’s first transaction in this state, the person files an application for registration as a broker–dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has granted registration or denied the application for registration or has stayed the pendency of the application for good cause; provided the person may effect unsolicited orders to liquidate open positions in existing customer accounts if no commission or other remuneration is paid or given directly or indirectly for effecting such transactions.

(h) Any other person exempted by rule adopted or order issued under this chapter.

(3) **LIMITS ON EMPLOYMENT OR ASSOCIATION.** It is unlawful for a broker–dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is denied or suspended or revoked or the individual is barred from employment or association with a broker–dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self–regulatory organization. A broker–dealer or issuer does not violate this subsection if the broker–dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the denial, suspension, revocation, or bar. Upon request from a broker–dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker–dealer.

(4) **FOREIGN TRANSACTIONS.** A rule adopted or order issued under this chapter may permit any of the following:

(a) A broker–dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by, any of the following:

- 1. An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker–dealer had a bona fide customer relationship before the individual entered the United States.
- 2. An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self–directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction.
- 3. An individual who is present in this state, with whom the broker–dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(b) An agent who represents a broker–dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker–dealer described in par. (a).

**History:** 2007 a. 196; 2013 a. 52.

Violators of s. 551.31 (1) and (3) are subject to strict liability. What constitutes transacting business as an investment advisor in violation of s. 551.31 (3) is discussed. *Garretto v. Elite Advisory Services, Inc.*, 793 F. Supp. 796 (1992).

**NOTE:** The above annotation refers to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.402 Agent registration requirement and exemptions.** (1) **REGISTRATION REQUIREMENT.** It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under sub. (2).

(2) **EXEMPTIONS FROM REGISTRATION.** The following individuals are exempt from the registration requirement of sub. (1):

- (a) An individual who represents a broker–dealer in effecting transactions in this state limited to those described in section 15 (h) (2) of the Securities Exchange Act of 1934 (15 USC 78o (h) (2)).
- (b) An individual who represents a broker–dealer that is exempt under s. 551.205 (1) (b) 2. or 551.401 (2) or (4).
- (c) An individual who represents an issuer with respect to an offer or sale of the issuer’s own securities or those of the issuer’s parent or any of the issuer’s subsidiaries, and who is not compensated in connection with the individual’s participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(d) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by s. 551.202, other than s. 551.202 (11), (14) or (24).

(e) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18 (b) (3) or 18 (b) (4) (D) of the Securities Act of 1933 (15 USC 77r (b) (3) or 77r (b) (4) (D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities.

(f) An individual who represents a broker–dealer registered in this state under s. 551.401 (1) or exempt from registration under s. 551.205 (1) (b) 2. or 551.401 (2) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record.

(g) An individual who represents an issuer in connection with the purchase of the issuer's own securities.

(h) An individual who represents an issuer or broker–dealer and who restricts participation to performing clerical or ministerial acts.

(hm) An individual who represents a broker–dealer and effects transactions in this state exclusively with customers listed under s. 551.401 (2) (a) to (d) and (h).

(i) Any other individual exempted by rule adopted or order issued under this chapter.

**(3) REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR ASSOCIATED.** The registration of an agent is effective only while the agent is employed by or associated with a broker–dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

**(4) LIMIT ON EMPLOYMENT OR ASSOCIATION.** It is unlawful for a broker–dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker–dealers or issuers unless the agent is registered under sub. (1) for the broker–dealer or issuer or exempt from registration under sub. (2).

**(5) LIMIT ON AFFILIATIONS.** Except as permitted under sub. (6), an individual may not act as an agent for more than one broker–dealer or one issuer at a time, unless the broker–dealers or the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

**(6) DUAL REPRESENTATION.** An agent may make offers and sales of securities for more than one issuer that is a limited partnership or for more than one issuer that is an investment company without obtaining a separate registration for each limited partnership or investment company represented by the agent if all of the following conditions are satisfied:

(a) The limited partnerships have the same general partner or the investment companies have the same investment adviser.

(b) An application to amend the agent's registration to name each limited partnership or investment company as the agent's employer is filed with and approved by the administrator before the agent makes any offer or sale in the state on behalf of the additional limited partnership or investment company.

**History:** 2007 a. 196; 2013 a. 52.

**551.403 Investment adviser registration requirement and exemptions.** (1) **REGISTRATION REQUIREMENT.** It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under sub. (2).

(2) **EXEMPTIONS FROM REGISTRATION.** The following persons are exempt from the registration requirement of sub. (1):

(a) A person whose only clients in this state are:

1. Federal covered investment advisers, investment advisers registered under this chapter, or broker–dealers registered under this chapter.

2. Institutional investors, except any institutional investor described in s. 551.102 (11) (k), (m), or (o).

2m. Accredited investors as defined in Rule 501 (a) (1) or (3) adopted under the Securities Act of 1933.

3. Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered or exempt from registration under the securities act of the state in which the clients maintain principal places of residence.

4. Any other client exempted by rule adopted or order issued under this chapter.

(b) A person without a place of business in this state if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this state in addition to those specified under par. (a).

(c) Any other person exempted by rule adopted or order issued under this chapter.

**(3) LIMITS ON EMPLOYMENT OR ASSOCIATION.** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is denied or suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker–dealer by an order under this chapter, the Securities and Exchange Commission, or a self–regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the denial, suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

**(4) INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIRED.** It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under s. 551.404 (1) or is exempt from registration under s. 551.404 (2).

**History:** 2007 a. 196; 2011 a. 32.

Violators of s. 551.31 (1) and (3) are subject to strict liability. What constitutes transacting business as an investment adviser in violation of s. 551.31 (3) is discussed. *Garretto v. Elite Advisory Services, Inc.*, 793 F. Supp. 796 (1992).

**NOTE:** The above annotation refers to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.404 Investment adviser representative registration requirement and exemptions.** (1) **REGISTRATION REQUIREMENT.** It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under sub. (2).

(2) **EXEMPTIONS FROM REGISTRATION.** The following individuals are exempt from the registration requirement of sub. (1):

(a) An individual who is employed by or associated with an investment adviser that is exempt from registration under s. 551.403 (2) or a federal covered investment adviser that is excluded from the notice filing requirements of s. 551.405.

(am) An individual who is employed by or associated with an investment adviser or a federal covered investment adviser and whose clients in the state are exclusively those clients listed in s. 551.403 (2) (a) 1. to 2m. and 4.

(b) Any other individual exempted by rule adopted or order issued under this chapter.

(3) **REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR ASSOCIATED.** The registration of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser registered



under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under s. 551.405.

(4) **LIMIT ON AFFILIATIONS.** An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(5) **LIMITS ON EMPLOYMENT OR ASSOCIATION.** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection.

(6) **REFERRAL FEES.** An investment adviser registered or exempt from registration under this chapter, a federal covered investment adviser that has filed a notice under s. 551.405 or is exempt from such notice filing requirement, or a broker–dealer registered or exempt from registration under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered or exempt from registration under this chapter, a federal covered investment adviser that has filed a notice or is exempt from filing a notice under s. 551.405, or a broker–dealer registered or exempt from registration under this chapter with which the individual is employed or associated as an investment adviser representative.

**History:** 2007 a. 196.

**551.405 Federal covered investment adviser notice filing requirement.** (1) **NOTICE FILING REQUIREMENT.** Except with respect to a federal covered investment adviser described in sub. (2), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with sub. (3).

(2) **NOTICE FILING REQUIREMENT NOT REQUIRED.** The following federal covered investment advisers are not required to comply with sub. (3):

(a) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

1. Federal covered investment advisers, investment advisers registered under this chapter, and broker–dealers registered under this chapter.

2. Institutional investors.

2m. Accredited investors as defined and listed in 17 CFR 230.501 (a) (1), (2), (3), (7), or (8) under Regulation D under the Securities Act of 1933.

3. Bona fide preexisting clients whose principal places of residence are not in this state.

4. Other clients specified by rule adopted or order issued under this chapter.

(b) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this state in addition to those specified under par. (a).

(c) Any other person excluded by rule adopted or order issued under this chapter.

(3) **NOTICE FILING PROCEDURE.** A person acting as a federal covered investment adviser, not excluded under sub. (2), shall file

a notice, a consent to service of process complying with s. 551.611, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in s. 551.614 (2).

(4) **EFFECTIVENESS OF FILING.** The notice under sub. (3) becomes effective upon its filing and expires on December 31 unless any of the following occurs:

(a) The notice filing is renewed.

(b) The notice filing is limited or extended for not more than 6 months and the notice filer pays a fee, adjusted proportionately by the administrator by rule or order.

(c) The administrator specifies a different expiration date by rule or order.

**History:** 2007 a. 196.

**551.406 Registration by broker–dealer, agent, investment adviser, and investment adviser representative.**

(1) **APPLICATION FOR INITIAL REGISTRATION.** A person shall register as a broker–dealer, agent, investment adviser, or investment adviser representative by filing with the administrator, or an organization which the administrator by rule designates, an application and a consent to service of process complying with s. 551.611, and paying the fee specified in s. 551.614 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain all of the following:

(a) The information or record required for the filing of a uniform application.

(b) Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(2) **AMENDMENT.** If the information or record contained in an application filed under sub. (1) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(3) **EFFECTIVENESS OF REGISTRATION.** (a) If an order is not in effect and a proceeding is not pending under s. 551.412, registration is effective 30 days from the filing of the application or at the earliest of the following times prior to the expiration of 30 days from the filing of the application, whichever is earlier, unless the registration is denied:

1. The date that the administrator issues registration to the applicant.

2. The date that approval of registration status is transmitted by the administrator to the applicant through the central registration depository of the National Association of Securities Dealers, Inc.

3. On January 1 for any renewal application filed during December of the preceding year with the central registration depository, unless the administrator makes a written request for additional information relevant to the application prior to January 1.

(b) A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(4) **REGISTRATION RENEWAL.** A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under s. 551.412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in s. 551.614, and by paying costs charged by the designee of the administrator for processing the filings.

(5) **ADDITIONAL CONDITIONS OR WAIVERS.** A rule adopted or order issued under this chapter may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in

whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

(6) **ADDITIONAL INFORMATION REQUIRED.** (a) In addition to the information required elsewhere under this section, an application for registration shall contain, in the case of an individual, the individual's social security number and, in the case of a person who is not an individual, the person's federal employer identification number. The administrator may not disclose any information received under this paragraph to any person except the following:

1. The department of revenue, for the sole purpose of requesting certifications under s. 73.0301.

1m. The department of workforce development, for the sole purpose of requesting certifications under s. 108.227.

2. The department of children and families in accordance with a memorandum of understanding under s. 49.857.

(b) If an applicant for the issuance or renewal of a registration under this section is an individual who does not have a social security number, the applicant, as a condition of applying for or applying to renew the registration, shall submit a statement made or subscribed under oath or affirmation to the administrator that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families.

(c) Any license issued or renewed in reliance upon a false statement submitted by an applicant under par. (a) or (b) is invalid.

**History:** 2007 a. 196; 2013 a. 36.

**551.407 Succession and change in registration of broker-dealer or investment adviser.** (1) **SUCCESSION.** A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to s. 551.401 or 551.403 or a notice pursuant to s. 551.405 for the unexpired portion of the current registration or notice filing.

(2) **ORGANIZATIONAL CHANGE.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a change in control. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a change in control, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(3) **NAME CHANGE.** A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(4) **CHANGE OF CONTROL.** A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

**History:** 2007 a. 196.

**551.408 Termination of employment or association of agent and investment adviser representative and transfer of employment or association.** (1) **NOTICE OF TERMINATION.** If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either regis-

trant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(2) **TRANSFER OF EMPLOYMENT OR ASSOCIATION.** If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under s. 551.405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under s. 551.405; then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of s. 551.406 (1) and payment of the filing fee required under s. 551.614, the registration of the agent or investment adviser representative is:

(a) Immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months.

(b) Temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

(3) **WITHDRAWAL OF TEMPORARY REGISTRATION.** The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in s. 551.412 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.

(4) **POWER TO PREVENT REGISTRATION.** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under sub. (2) (a) or (b) based on the public interest and the protection of investors.

(5) **TERMINATION OF REGISTRATION OR APPLICATION FOR REGISTRATION.** If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**History:** 2007 a. 196.

**551.409 Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.** Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a revocation or sus-

pension proceeding under s. 551.412 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**History:** 2007 a. 196.

**551.411 Postregistration requirements.** (1) **FINANCIAL REQUIREMENTS.** Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act of 1940 (15 USC 80b–18a), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker–dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(2) **FINANCIAL REPORTS.** Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222 (b) of the Investment Advisers Act of 1940 (15 USC 80b–18a), a broker–dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(3) **RECORD KEEPING.** Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act of 1940 (15 USC 80b–18a):

(a) A broker–dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter.

(b) Broker–dealer records required to be maintained under par. (a) may be maintained in any form of data storage acceptable under section 17 (a) of the Securities Exchange Act of 1934 (15 USC 78q (a)) if they are readily accessible to the administrator.

(c) Investment adviser records required to be maintained under par. (a) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(4) **AUDITS OR INSPECTIONS.** The records of a broker–dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. The administrator may also conduct an examination of the books, records, and affairs of an applicant for registration as a broker–dealer or investment adviser. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(5) **CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE.** Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act of 1940 (15 USC 80b–18a), a rule adopted or order issued under this chapter may require a broker–dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount prescribed by the administrator by rule. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker–dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial

requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in s. 551.509 (10) (b).

(6) **REQUIREMENTS FOR CUSTODY.** Subject to section 15 (h) of the Securities Exchange Act of 1934 (15 USC 78o (h)) or section 222 of the Investment Advisers Act of 1940 (15 USC 80b–18a), an agent may not have custody of funds or securities of a customer except under the supervision of a broker–dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker–dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(7) **INVESTMENT ADVISER BROCHURE RULE.** With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(8) **CONTINUING EDUCATION.** A rule adopted or order issued under this chapter may require an individual registered under s. 551.402 or 551.404 to participate in a continuing education program approved by the administrator and administered by a self–regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under s. 551.404.

(9) **INTEREST RATE ON CUSTOMER ACCOUNTS.** No registered broker–dealer shall be subject to s. 138.05 (1) (a) with respect to any debit balance in a customer account if the debit balance is payable on demand and the only collateral for the balance is securities.

**History:** 2007 a. 196.

**551.412 Denial, revocation, suspension, censure, withdrawal, restriction, condition, or limitation of registration.** (1) **DISCIPLINARY CONDITIONS — APPLICANTS.** If the administrator finds that the order is in the public interest and sub.

(4) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant, to be a broker–dealer, agent, investment adviser, or investment adviser representative and, if the applicant is a broker–dealer or investment adviser, of a partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly in control of the broker–dealer or investment adviser.

(2) **DISCIPLINARY CONDITIONS — REGISTRANTS.** If the administrator finds that the order is in the public interest and sub. (4) authorizes the action, an order issued under this chapter may revoke, suspend, censure, condition, or limit the registration of a registrant and, if the registrant is a broker–dealer or investment adviser, of a partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly in control of the broker–dealer or investment adviser. However, the administrator may not do any of the following:

(a) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based.

(b) Under sub. (4) (e) 1. or 2., issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which sub. (4) would authorize the action had the conduct occurred in this state.

(3) **DISCIPLINARY PENALTIES — REGISTRANTS.** If the administrator finds that the order is in the public interest and sub. (4) (a)



to (f), (h), (i), (j), (L), (m), or (o) to (r) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$10,000 for a single violation or \$100,000 for more than one violation, or in such amount as agreed to by the parties, on a registrant and, if the registrant is a broker–dealer or investment adviser, a partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly in control of the broker–dealer or investment adviser.

(4) **GROUND FOR DISCIPLINE.** A person may be disciplined under subs. (1) to (3) if the person:

(a) Has filed an application for registration in this state under this chapter or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact.

(b) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years.

(c) Has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(d) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(e) Is the subject of an order, issued after notice and opportunity for hearing, by any of the following:

1. The securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker–dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative.

2. The securities regulator of a state or the Securities and Exchange Commission against a broker–dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser.

3. The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization.

4. A court adjudicating a United States Postal Service fraud order.

5. The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent.

6. A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business.

(f) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission; the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated.

(g) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant.

(h) Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under s. 551.411 (4) or refuses access to a registrant's office to conduct an audit or inspection under s. 551.411 (4).

(i) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years.

(j) Has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected.

(k) After notice and opportunity for a hearing, has been found within the previous 10 years:

1. By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated.

2. To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker–dealer, agent, investment adviser, investment adviser representative, or similar person.

3. To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(L) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state.

(m) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.

(n) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker–dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by sub. (5). The administrator may require an applicant for registration under s. 551.402 or 551.404 who has not been registered in a state within the 2 years preceding the filing of an application in this state to successfully complete an examination.

(o) Is the subject of an order of the administrator denying an application or suspending or revoking a registration as a broker–dealer, agent, or investment adviser.

(p) Is selling or has sold, or is offering or has offered for sale, in the state securities through any unlicensed agent or for any broker–dealer or issuer with knowledge that the broker–dealer or issuer has not complied with this chapter.

(q) Has made any material misrepresentation to or withheld or concealed any material fact from the administrator, or has refused to furnish information reasonably requested by the administrator.

(r) Has not complied with the conditions or limitations of a registration issued under this chapter.

(4g) **ADDITIONAL GROUNDS FOR DENIAL OF APPLICATION.** (a) The administrator shall deny an application for the issuance or renewal of a registration if any of the following applies:

1. The applicant fails to provide any information required under s. 551.406 (6) (a) 1., 1m., or 2.

2. The department of revenue certifies under s. 73.0301 that the applicant is liable for delinquent taxes. An applicant whose application for the issuance or renewal of a registration is denied under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a), but is not entitled to any other notice, hearing, or review under this subchapter.

2m. The department of workforce development certifies under s. 108.227 that the applicant is liable for delinquent unemployment insurance contributions. An applicant whose application for the issuance or renewal of a registration is denied under this subdivision for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a), but is not entitled to any other notice, hearing, or review under this subchapter.

3. The applicant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered under s. 49.857. An applicant whose application is denied under this subdivision for delinquent payments is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this subchapter.

(b) Unless s. 551.406 (6) (b) applies to the registrant, the administrator shall restrict or suspend a registration under this subchapter if the registrant is an individual who fails to provide his or her social security number. The administrator shall restrict or suspend a registration under this subchapter if the registrant is an individual who fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings or who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857. A registrant whose registration is restricted or suspended under this paragraph is entitled to a notice and hearing under s. 49.857 but is not entitled to any other notice or hearing under this subchapter.

(c) The administrator shall revoke a registration if the department of revenue certifies under s. 73.0301 that the registrant is liable for delinquent taxes. A registrant whose registration is revoked under this paragraph for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and hearing under s. 73.0301 (5) (a) but is not entitled to any other notice, hearing, or review under this subchapter.

(d) The administrator shall revoke a registration if the department of workforce development certifies under s. 108.227 that the registrant is liable for delinquent unemployment insurance contributions. A registrant whose registration is revoked under this paragraph for delinquent unemployment insurance contributions is entitled to a notice under s. 108.227 (2) (b) 1. b. and hearing under s. 108.227 (5) (a) but is not entitled to any other notice, hearing, or review under this subchapter.

(4r) ENUMERATION OF CLAUSES NOT EXCLUSIVE. The enumeration of the causes stated in sub. (4) shall not be exclusive and the administrator may deny an application or suspend or revoke any registrant or censure any registrant for any cause whether similar to or different from these causes when necessary or appropriate in public interest or for the protection of investors.

(5) EXAMINATIONS. A rule adopted or order issued under this chapter may require that an examination, including an examina-

tion developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(6) SUMMARY PROCESS. The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(7) PROCEDURAL REQUIREMENTS. An order issued may not be issued under this section, except under sub. (6), without all of the following:

- (a) Appropriate notice to the applicant or registrant.
- (b) Opportunity for hearing.
- (c) Findings of fact and conclusions of law in a record in accordance with ch. 227.

(8) CONTROL PERSON LIABILITY. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subs. (1) to (3) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(9) LIMIT ON INVESTIGATION OR PROCEEDING. The administrator may not institute a proceeding under sub. (1), (2), or (3) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

History: 2007 a. 196; 2013 a. 36.

## SUBCHAPTER V

### FRAUD AND LIABILITIES

**551.501 General fraud.** It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to do any of the following:

- (1) To employ a device, scheme, or artifice to defraud.
- (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

History: 2007 a. 196.

Intent to defraud is not a necessary element under s. 551.41 (2). *State v. Temby*, 108 Wis. 2d 521, 322 N.W.2d 522 (Ct. App. 1982).

Lack of reliance is a defense to all claims based on a misrepresentation theory. The application of s. 551.59 (1) (b) does not restrict the defense to claims under s. 551.41 (2). *Carney v. Mantuano*, 204 Wis. 2d 527, 554 N.W.2d 854 (Ct. App. 1996), 95–2529.

Whether a representation is material under s. 551.41 (2) is determined based on the objective standard of whether the omitted or misrepresented fact would have made a difference to a reasonable investor's decision to invest. *State v. Johnson*, 2002 WI App 224, 257 Wis. 2d 736, 652 N.W.2d 642, 01–1092.

An investment contract is any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor. An investor may have a role in the managerial efforts of an investment contract, so long as the investor does not provide the essential managerial efforts for the investment contract. *State v. LaCount*, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780, 06–0672.

The plaintiff in an omissions case was not required to prove reliance as an element of a s. 551.41 (2) claim, as reliance may be presumed in an omissions case. Indeed, positive proof of reliance in such a case is unnecessary. *Cuene v. Hilliard*, 2008 WI App 85, 312 Wis. 2d 506, 754 N.W.2d 509, 07–0124.

In a classic misrepresentation case, a plaintiff must be able to show the requisite causal connection between a defendant's misrepresentation and a plaintiff's injury. In Wisconsin the causal connection is defined by statute: a person who offers or sells a security in violation of s. 551.41 is liable to the purchaser. The causal connection is established when a statutory violation is established. *Cuene v. Hilliard*, 2008 WI App 85, 312 Wis. 2d 506, 754 N.W.2d 509, 07–0124.

The legislature clearly envisioned that some facts, even material and relevant ones, would not always need to be disclosed. Materiality is measured by an objective standard; a fact finder assesses whether the omitted fact would have made a difference to a reasonable investor's decision to invest. If the established omissions are so obviously important to an investor that reasonable minds cannot differ on the question of materiality, materiality may be resolved on summary judgment as a matter of law. *Cuene v. Hilliard*, 2008 WI App 85, 312 Wis. 2d 506, 754 N.W.2d 509, 07–0124.

Section 551.41 does not create a private right of action. Section 551.59 (1) contains a civil remedy for a violation of s. 551.41 (2), and the limitation period in s. 551.59 (5) applies. *Colonial Bank & Trust Co. v. American Bankshares*, 478 F. Supp. 1186 (1979).

Proof that the defendant entered into investment contracts with a purpose or intent to defraud investors is not required for a violation of s. 551.41 (3). The state need only prove that the accused willfully engaged in conduct that operates or would operate as a fraud or deceit upon a person. The nature of the act is dispositive, not the actor's state of mind. *Van Duyse v. Israel*, 486 F. Supp. 1382 (1980).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.502 Prohibited conduct in providing investment advice.** (1) **FRAUD IN PROVIDING INVESTMENT ADVICE.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities, to do any of the following:

- (a) To employ a device, scheme, or artifice to defraud another person.
- (b) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(2) **RULES DEFINING FRAUD.** A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person, as defined in section 202 (a) (25) of the Investment Advisers Act of 1940 (15 USC 80b–2 (a) (25)), of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons, as defined in section 202 (a) (25) of the Investment Advisers Act of 1940 (15 USC 80b–2 (a) (25)), of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(3) **RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

**History:** 2007 a. 196.

**551.503 Evidentiary burden.** (1) **CIVIL.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(2) **CRIMINAL.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

**History:** 2007 a. 196.

**551.504 Filing of sales and advertising literature.**

(1) **FILING REQUIREMENT.** Except as otherwise provided in sub.

(2), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(2) **EXCLUDED COMMUNICATIONS.** This section does not apply to sales and advertising literature specified in sub. (1) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by s. 551.201, 551.202, or 551.203 except as required pursuant to s. 551.201 (7).

**History:** 2007 a. 196.

**551.505 Misleading filings.** It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**History:** 2007 a. 196.

**551.506 Misrepresentations concerning registration or exemption.** The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

**History:** 2007 a. 196.

**551.507 Qualified immunity.** A broker–dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker–dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self–regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**History:** 2007 a. 196.

**551.508 Criminal penalties.** (1) **CRIMINAL PENALTIES.** A person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except s. 551.504 or the notice filing requirements of s. 551.302 or 551.405, or that willfully violates s. 551.505 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be guilty of a Class H felony. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

(1m) **ENHANCEMENT OF PENALTIES.** (a) If a person is convicted of a crime under sub. (1) and the crime is committed against another person who is at least 65 years of age when the crime is committed, for each such offense the maximum fine prescribed under sub. (1) may be increased by not more than \$5,000 and the



maximum term of imprisonment prescribed under sub. (1) may be increased by not more than 5 years.

(b) This subsection provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to the age of the victim at the time of the crime.

(c) It is no defense to the enhancement of penalties under this subsection that the person convicted did not know the age of the victim or reasonably believed that the victim was not at least 65 years of age.

(2) **CRIMINAL REFERENCE NOT REQUIRED.** The attorney general or the district attorney of the appropriate county, with or without a reference from the administrator, may institute criminal proceedings under this chapter.

(3) **NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT.** This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

**History:** 2007 a. 196; 2009 a. 196.

That s. 551.58 (1) does not require a person to know his or her actions are unlawful does not render the statute unconstitutional. *Mueller v. Sullivan*, 141 F.3d 1232 (1998).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.509 Civil liability.** (1) **SECURITIES LITIGATION UNIFORM STANDARDS ACT.** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(2) **LIABILITY OF SELLER TO PURCHASER.** A person is liable to the purchaser if the person sells a security in violation of s. 551.301 or 551.501 and, as to s. 551.501 (2), the purchaser did not know the untruth or omission and the seller cannot sustain the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(a) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate under s. 138.04 from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in par. (c).

(b) The tender referred to in par. (a) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in par. (c).

(c) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate under s. 138.04 from the date of the purchase, costs, and reasonable attorney fees determined by the court.

(3) **LIABILITY OF PURCHASER TO SELLER.** A person is liable to the seller if the person buys a security in violation of s. 551.501 and, as to s. 551.501 (2), the seller did not know the untruth or omission and the purchaser cannot sustain the burden of proof that the purchaser did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(a) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in par. (c).

(b) The tender referred to in par. (a) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in par. (c).

(c) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold

and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate under s. 138.04 from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.

(4) **LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT.** A person acting as a broker-dealer or agent that sells or buys a security in violation of s. 551.401 (1), 551.402 (1), or 551.506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in sub. (2) (a) to (c), or, if a seller, for a remedy as specified in sub. (3) (a) to (c).

(5) **LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE.** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of s. 551.403 (1), 551.404 (1), or 551.506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate under s. 138.04 from the date of payment, costs, and reasonable attorney fees determined by the court.

(6) **LIABILITY FOR INVESTMENT ADVICE.** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following:

(a) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate under s. 138.04 from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(b) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(7) **JOINT AND SEVERAL LIABILITY.** The following persons are liable jointly and severally with and to the same extent as persons liable under subs. (2) to (6):

(a) A person that directly or indirectly controls a person liable under subs. (2) to (6), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(b) An individual who is a managing partner, executive officer, or director of a person liable under subs. (2) to (6), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(c) An individual who is an employee of or associated with a person liable under subs. (2) to (6) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist.

(d) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subs. (2) to (6), unless the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(8) **RIGHT OF CONTRIBUTION.** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(9) **SURVIVAL OF CAUSE OF ACTION.** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(10) **STATUTE OF LIMITATIONS.** A person may not obtain relief:

(a) Under sub. (2) for violation of s. 551.301, or under sub. (4) or (5), unless the action is instituted within one year after the violation occurred.

(b) Under sub. (2), other than for violation of s. 551.301, or under sub. (3) or (6), unless the action is instituted within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation.

(11) **NO ENFORCEMENT OF VIOLATIVE CONTRACT.** A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(12) **NO CONTRACTUAL WAIVER.** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(13) **SURVIVAL OF OTHER RIGHTS OR REMEDIES.** The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or s. 551.411 (5).

**History:** 2007 a. 196.

This chapter is not the exclusive remedy for securities fraud. It does not preempt common law fraud remedies. *Esser Distributing v. Steidl*, 149 Wis. 2d 64, 437 N.W.2d 884 (1989).

Section 551.59 (7) is operative only when an innocent party elects rescission and restitution and waives a breach of contract remedy. *Criticare Systems, Inc. v. Sentek, Inc.*, 159 Wis. 2d 639, 465 N.W.2d 216 (Ct. App. 1990).

Lack of reliance is a defense to all claims based on a misrepresentation theory. The application of s. 551.59 (1) (b) does not restrict the defense to claims under s. 551.41 (2). *Carney v. Mantuano*, 204 Wis. 2d 527, 554 N.W.2d 854 (Ct. App. 1996), 95–2529.

The limitation period under s. 551.59 (5) begins to run when the defrauded party is in possession of essential facts that will, if diligently investigated, disclose the fraud. *Gieringer v. Silverman*, 539 F. Supp. 498 (1982).

A defrauded party may not recover any indirect or consequential damages under s. 551.59 (1) (a). *Jersild v. Aker*, 775 F. Supp. 1198 (1991).

**NOTE:** The above annotations refer to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.511 Rescission offers.** A purchaser, seller, or recipient of investment advice may not maintain an action under s. 551.509 if all of the following apply:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted, an offer stating the respect in which liability under s. 551.509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice, and any of the following:

(a) If the basis for relief under this section may have been a violation of s. 551.509 (2), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate under s. 138.04 from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate under s. 138.04 from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection.

(b) If the basis for relief under this section may have been a violation of s. 551.509 (3), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate under s. 138.04 from the date of the sale, or, if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate under s. 138.04 from the date of the sale.

(c) If the basis for relief under this section may have been a violation of s. 551.509 (4), and if the customer is a purchaser, an offer to pay as specified in par. (a), or, if the customer is a seller, an offer to tender or to pay as specified in par. (b).

(d) If the basis for relief under this section may have been a violation of s. 551.509 (5), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate under s. 138.04 from the date of payment.

(e) If the basis for relief under this section may have been a violation of s. 551.509 (6), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate under s. 138.04 from the date of the violation causing the loss.

(2) The offer under sub. (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than 3 days, that the administrator, by order, specifies.

(3) The offeror has the present ability to pay the amount offered or to tender the security under sub. (1).

(4) The offer under sub. (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice.

(5) The purchaser, seller, or recipient of investment advice that accepts the offer under sub. (1) in a record within the period specified under sub. (2) is paid in accordance with the terms of the offer.

**History:** 2007 a. 196.

A defrauded party may not recover any indirect or consequential damages under s. 551.59 (1) (a). *Jersild v. Aker*, 775 F. Supp. 1198 (1991).

**NOTE:** The above annotation refers to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

## SUBCHAPTER VI

### ADMINISTRATION AND JUDICIAL REVIEW

**551.601 Administration.** (1) **ADMINISTRATION.** The administrator shall administer this chapter.

(2) **UNLAWFUL USE OF RECORDS OR INFORMATION.** It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under s. 551.607 (2). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with s. 551.602, 551.607 (3), or 551.608.

(3) **NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED.** This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(4) **INVESTOR EDUCATION.** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate

with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(5) SECURITIES INVESTOR EDUCATION AND TRAINING FUNDING. All moneys collected from the administrative assessment under s. 551.604 (4) shall be credited to the appropriation under s. 20.144 (1) (i). Subject to s. 20.144 (1) (i), the division shall use moneys credited to that appropriation for the purposes specified in sub. (4) and s. 20.144 (1) (i).

History: 2007 a. 196.

**551.602 Investigations and subpoenas. (1) AUTHORITY TO INVESTIGATE.** The administrator may do any of the following:

(a) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter.

(b) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.

(c) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter.

(2) ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose of an investigation under this chapter, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(3) PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to, or may refer the matter to the attorney general, district attorney of the appropriate county, or appropriate federal authority who may apply to, the circuit court of the appropriate county or a court of another state to enforce compliance. The court may do any of the following:

(a) Hold the person in contempt.

(b) Order the person to appear before the administrator.

(c) Order the person to testify about the matter under investigation or in question.

(d) Order the production of records.

(e) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

(f) Impose a civil penalty of not less than \$5,000 and not greater than \$250,000 for each violation.

(g) Grant any other necessary or appropriate relief.

(4) APPLICATION FOR RELIEF. This section does not preclude a person from applying to the circuit court of the appropriate county or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(5) USE IMMUNITY PROCEDURE. (a) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly

or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the circuit court of the appropriate county to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(6) ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER JURISDICTION. At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

History: 2007 a. 196; 2021 a. 238 s. 45.

**551.603 Civil enforcement. (1) CIVIL ACTION INSTITUTED BY ADMINISTRATOR.** If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain, or may refer the matter to the attorney general or district attorney of the appropriate county who may maintain, an action in the circuit court of the appropriate county to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(2) RELIEF AVAILABLE. In an action under this section and on a proper showing, the court may do any of the following:

(a) Issue a permanent or temporary injunction, restraining order, or declaratory judgment.

(b) Order other appropriate or ancillary relief, which may include any of the following:

1. An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.

2. Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property.

3. Imposing a civil penalty up to \$5,000 for a single violation or up to \$250,000 for more than one violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act.



4. Ordering the payment of prejudgment and postjudgment interest.

(c) Order such other relief as the court considers appropriate.

(3) **NO BOND REQUIRED.** The administrator may not be required to post a bond in an action or proceeding under this chapter.

(4) **ENHANCEMENT OF CIVIL PENALTIES.** (a) In any action under this section, if the court imposes a civil penalty under sub. (2) (b) 3. for any violation against another person who is at least 65 years of age when the violation occurs, for each such violation the civil penalty prescribed under sub. (2) (b) 3. for a single violation may be increased by not more than \$5,000 and the maximum civil penalty for more than one violation may be increased by not more than \$250,000.

(b) This subsection provides for the enhancement of the civil penalties applicable for any underlying violation. If the court is not the trier of fact, the court shall direct that the trier of fact find a special verdict as to the age of any victim at the time of the violation.

(c) It is no defense to the enhancement of civil penalties under this subsection that the defendant did not know the age of the victim or reasonably believed that the victim was not at least 65 years of age.

**History:** 2007 a. 196; 2009 a. 196.

**551.604 Administrative enforcement.** (1) **ISSUANCE OF AN ORDER OR NOTICE.** If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

(a) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

(b) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker–dealer under s. 551.401 (2) (d) or (f) or an investment adviser under s. 551.403 (2) (a) 3.

(c) Issue an order under s. 551.204.

(2) **SUMMARY PROCESS.** An order under sub. (1) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty, restitution, disgorgement, interest, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of restitution, disgorgement, interest, or the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(3) **PROCEDURE FOR FINAL ORDER.** If a hearing is requested or ordered pursuant to sub. (2), a hearing must be held pursuant to ch. 227. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with ch. 227. The final order may make final, vacate, or modify the order issued under sub. (1).

(4) **CIVIL PENALTY.** In a final order under sub. (3), the administrator may impose a civil penalty in the form of an administrative assessment up to \$5,000 for a single violation or up to \$250,000 for more than one violation except that, if the violation is com-

mitted against another person who is at least 65 years of age when the violation occurs, for each such violation the civil penalty may be up to \$10,000 for a single violation or up to \$500,000 for more than one violation. It is no defense to the enhancement of civil penalties under this subsection that the defendant did not know the age of the victim or reasonably believed that the victim was not at least 65 years of age.

(4m) **RESTITUTION, DISGORGEMENT, AND INTEREST.** In a final order under sub. (3), in addition to any civil penalty under sub. (4) or costs under sub. (5), the administrator may order a person subject to the order to do any of the following:

(a) Pay restitution to any person suffering loss as a result of the violation.

(b) Disgorge any profits received as a result of the violation.

(c) Pay interest at the legal rate under s. 138.04 from the date of the violation.

(5) **COSTS.** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(6) **FILING OF CERTIFIED FINAL ORDER WITH COURT; EFFECT OF FILING.** If a petition for judicial review of a final order is not filed in accordance with s. 551.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(7) **ENFORCEMENT BY COURT; FURTHER CIVIL PENALTY.** If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than \$5,000 but not greater than \$100,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**History:** 2007 a. 196; 2009 a. 196.

**551.605 Rules, forms, orders, interpretative opinions, and hearings.** (1) **ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.** The administrator may do any of the following:

(a) Issue forms and orders and, after notice and comment, adopt and amend rules necessary or appropriate to carry out this chapter, and repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records.

(b) By rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter.

(c) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(2) **FINDINGS AND COOPERATION.** Under this chapter, except as provided under s. 551.412 (4g) (b), (c), and (d), a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing rules and forms, s. 551.608 applies in order 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.

(3) **FINANCIAL STATEMENTS.** (am) Subject to section 15 (h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, and except as provided in par. (bm), the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other

requirements specified by rule adopted or order issued under this chapter. Except as provided in par. (bm), a rule adopted or order issued under this chapter may establish:

1. Subject to section 15 (h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter.

2. Whether unconsolidated financial statements must be filed.

3. Whether required financial statements must be audited by an independent certified public accountant.

(bm) 1. Except as provided in subd. 2., a financial institution holding company whose securities have been registered under this chapter shall not be required to prepare or distribute to shareholders or provide to the department of financial institutions, at any time after such registration, any financial statements, financial information, annual reports, or other periodic reports except to the extent required under ss. 180.1620 and 180.1622.

2. Each financial institution holding company whose securities have been registered under this chapter and are held by 100 or more persons in this state shall distribute to the security holders not more than 120 days after the end of each fiscal year the annual financial statements prepared under s. 180.1620. This subdivision does not apply to a financial institution holding company that has any securities registered under section 12 of the Securities Exchange Act of 1934 (15 USC 781).

3. If any financial statement is required of a financial institution holding company under this chapter, the financial institution holding company shall not be required to do any of the following:

a. Except as may be required under s. 180.1620, have the financial statement prepared in accordance with generally accepted accounting principles.

b. Have the financial statement examined and reported upon or reviewed by or compiled by any certified public accountant.

(4) INTERPRETATIVE OPINIONS. The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

(5) EFFECT OF COMPLIANCE. A penalty under this chapter may not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith in conformity with a rule, form, or order of the administrator under this chapter.

(6) PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

History: 2007 a. 196; 2013 a. 36, 52.

**551.606 Administrative files and opinions.** (1) PUBLIC REGISTER OF FILINGS. The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(2) PUBLIC AVAILABILITY. The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(3) COPIES OF PUBLIC RECORDS. The administrator shall furnish a copy of a record that is a public record or a certification that

the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

History: 2007 a. 196.

**551.607 Public records; confidentiality.** (1) PRESUMPTION OF PUBLIC RECORDS. Except as otherwise provided in sub. (2), records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(2) NONPUBLIC RECORDS. The following records are not public records and are not available for public examination under sub. (1):

(a) Information and records obtained by the administrator in connection with an audit or inspection under s. 551.411 (4) or a pending investigation under s. 551.602.

(b) A part of a record filed in connection with a registration statement under ss. 551.301 and 551.303 to 551.305 or a record under s. 551.411 (4) that contains trade secrets or confidential information if the person filing the registration statement or record has asserted a claim of confidentiality or privilege that is authorized by law.

(c) A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure.

(d) A nonpublic record received from a person specified in s. 551.608 (1).

(e) Subject to s. 551.406 (6) (a), any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.

(f) A record obtained by the administrator through a designee of the administrator that a rule or order under this chapter determines has been appropriately expunged from the administrator's records by the designee.

(g) Any information or record received under s. 551.202 (26) (k) relating to payments for securities, the copy of the disclosure statement provided to the administrator under s. 551.202 (26) (f) 2., and any information or record obtained by the division under s. 551.205 (1) (c).

(3) ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in s. 551.608 (1), the administrator may disclose a record or information obtained in connection with an audit or inspection under s. 551.411 (4) or a record or information obtained in connection with a pending investigation under s. 551.602.

History: 2007 a. 196; 2013 a. 52.

**551.608 Uniformity and cooperation with other agencies.** (1) OBJECTIVE OF UNIFORMITY. The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to s. 551.607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(2) POLICIES TO CONSIDER. In cooperating, coordinating, consulting, and sharing records and information under this section

and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(a) Maximizing effectiveness of regulation for the protection of investors.

(b) Maximizing uniformity in federal and state regulatory standards.

(c) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

**(3) SUBJECTS FOR COOPERATION.** The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(a) Establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter.

(b) Developing and maintaining uniform forms.

(c) Conducting a joint examination or investigation.

(d) Holding a joint administrative hearing.

(e) Instituting and prosecuting a joint civil or administrative proceeding.

(f) Sharing and exchanging personnel.

(g) Coordinating registrations under ss. 551.301 and 551.401 to 551.404 and exemptions under s. 551.203.

(h) Sharing and exchanging records, subject to s. 551.607.

(i) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases.

(j) Formulating common systems and procedures.

(k) Notifying the public of proposed rules, forms, statements of policy, and guidelines.

(L) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity.

(m) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

**History:** 2007 a. 196.

**551.609 Judicial review.** A final order issued by the administrator under this chapter is subject to judicial review in accordance with ch. 227, but administrative enforcement orders originally entered without hearing may be reviewed only if the party seeking review has requested a hearing within the time provided by s. 551.604 (2).

**History:** 2007 a. 196.

**551.611 Service of process. (1) SIGNED CONSENT TO SERVICE OF PROCESS.** A consent to service of process complying with this section required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

**(2) CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.** If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under sub. (1), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for ser-

vice of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

**(3) PROCEDURE FOR SERVICE OF PROCESS.** Service under sub. (1) or (2) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless all of the following apply:

(a) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice.

(b) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

**(4) SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS BY ADMINISTRATOR.** Service pursuant to sub. (3) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

**(5) OPPORTUNITY TO DEFEND.** If process is served under sub. (3), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**History:** 2007 a. 196.

**551.613 Jurisdiction. (1) SALES AND OFFERS TO SELL.** Sections 551.301, 551.302, 551.401 (1), 551.402 (1), 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509, and 551.511 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

**(2) PURCHASES AND OFFERS TO PURCHASE.** Sections 551.401 (1), 551.402 (1), 551.403 (1), 551.404 (1), 551.501, 551.506, 551.509, and 551.511 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

**(3) OFFERS IN THIS STATE.** For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer meets any of the following criteria:

(a) The offer originates from within this state.

(b) The offer is directed by the offeror to a place in this state and received at the place to which it is directed, but for purposes of s. 551.301, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

**(4) ACCEPTANCES IN THIS STATE.** For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance meets all of the following criteria:

(a) The acceptance is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed.

(b) The acceptance has not previously been communicated to the offeror, orally or in a record, outside this state.

**(5) PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC COMMUNICATIONS.** An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months, or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program or other electronic communication is considered as having originated in this state if either the



broadcast studio or the originating source of transmission is located in this state, unless any of the following apply:

(a) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state.

(b) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state.

(c) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system.

(d) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(6) INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections 551.403 (1), 551.404 (1), 551.405 (1), 551.502, 551.505, and 551.506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

**History:** 2007 a. 196; 2009 a. 180.

Section 551.66, regarding the scope of the chapter, focuses on locus of certain actions, regardless of either party's presence. *Feitler v. Midas Associates*, 418 F. Supp. 735 (1976).

**NOTE:** The above annotation refers to ch. 551 as it existed prior to its repeal and recreation by 2007 Wis. Act 196.

**551.614 Fees and expenses.** (1) REGISTRATION AND NOTICE FILING FEES AND REPORTING. (a) There shall be a filing fee of \$1,500 for every registration statement filed under s. 551.303 or 551.304, and for every notice filing under s. 551.302. If a registration statement is denied or withdrawn before the effective date or a pre-effective stop order is entered under s. 551.306, or a notice filing is withdrawn, the filing fee shall be retained.

(b) 1. An indefinite amount of securities shall be registered for offer and sale in this state under a registration statement relating to redeemable securities issued by an open-end management company or a face amount certificate company, as defined in the Investment Company Act of 1940, and the applicant shall pay the fee under par. (a). The registrant also shall, within 60 days after the end of each fiscal year during which its registration statement is effective and within 60 days after the registration is terminated, file a report on a form prescribed by rule of the division. The form shall require the registrant to do one of the following:

a. Elect not to include the information under subd. 1. b. and instead pay a fee of \$15,000.

b. Report the amount of securities sold to persons in this state during the preceding fiscal year or, if the registration is terminated, during the portion of the preceding fiscal year during which the registration was effective, and pay a fee of 0.05 percent of the dollar amount of the securities sold to persons in this state, but not less than \$750 nor more than \$15,000.

2. An indefinite amount of securities is eligible for offer and sale in this state resulting from a notice filing under s. 551.302 for the initial offer of a federal covered security under section 18 (b) (2) of the Securities Act of 1933, if the filing party has notified the division of securities of the issuer's fiscal year, and the filing party pays the fee under par. (a). The filing party shall also, within 90 days after the end of each fiscal year following the filing under s. 551.302, and within 90 days after sales in this state have terminated, file a report to allow the division of securities to determine that the amount of the fee paid is correct. The report shall be on a form prescribed by rule of the division and shall require the filing party to do one of the following:

a. Elect not to include the information under subd. 2. b. and instead pay a fee of \$15,000.

b. Report the amount of securities sold to persons in this state during the preceding fiscal year or, if sales have terminated, dur-

ing the portion of the preceding fiscal year during which sales were made, and pay a fee of 0.05 percent of the dollar amount of the securities sold to persons in this state, but not less than \$750 nor more than \$15,000.

(1m) FILING FEES RELATING TO CERTAIN REGISTRATION EXEMPTIONS. There shall be a nonrefundable filing fee of \$50 for every notice of claim of exemption filed under s. 551.202 (26) (f) 1., a nonrefundable filing fee of \$50 for every notice provided under s. 551.202 (27) (h), and a nonrefundable filing fee of \$100 for every statement filed under s. 551.205 (1) (b) 1.

(2) FEES RELATED TO BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED ADVISERS. Every applicant for an initial or renewal license under s. 551.401, 551.402, 551.403, or 551.404 shall pay a filing fee of \$200 in the case of a broker-dealer or investment adviser and \$80 in the case of an agent representing a broker-dealer or issuer or an investment adviser representative, except that, in the case of an agent representing a broker-dealer or issuer or an investment adviser representative, no fee is required for an individual who is eligible for the veterans fee waiver program under s. 45.44. Every federal covered adviser in this state that is required to make a notice filing under s. 551.405 shall pay an initial or renewal notice filing fee of \$200. A broker-dealer, investment adviser, or federal covered adviser maintaining a branch office within this state shall pay an additional filing fee of \$80 for each branch office. When an application is denied, or an application or a notice filing is withdrawn, the filing fee shall be retained.

(3) EXAMINATION EXPENSES. The expenses reasonably attributable to the examination of any matter arising under this chapter shall be charged to the applicant, registrant, or licensee involved, but the expenses so charged shall not exceed such maximum amounts as the division of securities by rule prescribes.

(4) OTHER FEES. The division of securities may by rule require the payment of prescribed fees for delinquent or materially deficient filings of information or documents required under this chapter to be filed with the division or an organization designated under s. 551.406 (1) (intro.).

(5) FEES PAID TO STATE. All fees and expenses collected by the division under this section shall be deposited into the general fund and credited to the appropriation account under s. 20.144 (1) (g).

**History:** 2007 a. 196; 2009 a. 28; 2011 a. 209; 2013 a. 52.

**551.615 Statutory policy.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act of 2002" and to coordinate the interpretation and administration of this chapter with related federal regulation.

**History:** 2007 a. 196.

## SUBCHAPTER VII

### TRANSITION

**551.701 Effective date.** This chapter takes effect on January 1, 2009.

**History:** 2007 a. 196.

**551.703 Application of act to existing proceeding and existing rights and duties.** (1) APPLICABILITY OF PREDECESSOR ACT TO PENDING PROCEEDINGS AND EXISTING RIGHTS. The predecessor act exclusively governs all actions or proceedings that are pending on January 1, 2009, or may be instituted on the basis of conduct occurring before January 1, 2009, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within 5 years after January 1, 2009, whichever is earlier.

(2) CONTINUED EFFECTIVENESS UNDER PREDECESSOR ACT. All effective registrations under the predecessor act, and all administrative orders relating to the registrations, rules, statements of pol-

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icy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act, remain in effect while they would have remained in effect if this chapter had not been reenacted. They are considered to have been filed, issued, or imposed under this chapter, but are exclusively governed by the predecessor act.

**(3) APPLICABILITY OF PREDECESSOR ACT TO OFFERS OR SALES.** The predecessor act exclusively applies to an offer or sale made within one year after January 1, 2009, pursuant to an offering made in good faith before January 1, 2009, on the basis of an exemption available under the predecessor act.

**History:** 2007 a. 196.