

Clearinghouse Rule 09-056

ORDER OF THE STATE OF WISCONSIN, DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES ADOPTING RULES

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

Analysis Prepared by the Department of Financial Institutions, Division of Securities

Statute(s) interpreted: s. 551.615, Stats.

Statutory authority: ss. 551.406(5), 551.605(1), and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to ch. 551, Stats., the department regulates securities.

Summary of proposed rule: The objective of the rule is to amend ss. DFI—Sec 1.02(5)(b) and (c); repeal ss. DFI—Sec 1.02(8), 2.01(9) and (10), 2.02(9)(b) and (m); amend ss. DFI—Sec 3.03(1); amend ss. DFI—Sec 4.01(3) and (4)(e) – (g), and 5.01(4)(a) and (b), and 5.05(2)(a); create s. DFI—5.13(4); amend s. DFI—7.01(2)(title) and (c); and repeal ss. DFI—Sec 9.01(1)(b)10 and 13. The purpose of the rule is as follows: Section 1. These amendments are necessary to clarify that these apply to federally-covered advisors, their investment adviser representatives and state advisers, and also to correct cross references. Section 2. This section can be repealed as duplicative to the definition in s. 551.102(11)(m), Stats. Section 3. As a result of 2007 Wisconsin Act 196, these exemptions are no longer necessary. Section 4. These sections can be repealed because of the language and scope of the merger/reorganization and employee benefit plan registration exemptions resulting from 2007 Wisconsin Act 196. Section 5. These amendments provide for an electronic filing alternative (to the existing hardcopy notice filing provision) for federal Regulation D/Rule 506 securities offerings that are or will be made in Wisconsin. Section 6. This amendment provides specific recognition of electronic prospectus delivery modes that comply with federal requirements on the subject. Section 7. The amendment to s. DFI—Sec 4.01(3) clarifies that if a broker-dealer or agent applicant has received a waiver, he or she need not again take and pass such exams. The amendments to ss. DFI—Sec 4.01(4)(e) to (g) clarify that even though the applicant may receive a waiver from passing the general securities business examination requirement, it does not relieve the applicant from passing one of the state law exams. Section 8. Section DFI—Sec 5.01(4)(a) embodies two distinct examination waiver concepts for investment advisors and investment advisor representatives that are best separated, and the amendment eliminates a conflict with (b). Amending s. DFI—Sec 5.01(4)(b) preserves the **minimum qualification standard envisioned by s. DFI—Sec 5.01(3)**. **Section 9 corrects a citation.** Section 10 is necessary to provide the exemption from registration for investment adviser representatives of noticed filed federal covered investment advisers in order to comply with the provisions of federal law. Section 11. Because of the change from “licensing” to “registration” for broker-dealer and investment adviser matters, these amendments help differentiate between “licensee” matters and registration of

securities matters. Section 12. Form IAR (WI) is no longer necessary because renewals are handled via IARD, and form IAUSR(WI) will be discontinued as part of the application process.

Summary of and preliminary comparison with existing or proposed federal regulation: There are no newly-developed or proposed federal regulations addressed by this rule. However, Wisconsin Securities Law and rules are generally coordinated with corresponding federal requirements, pursuant to s. 551.615, Stats.

Comparison with rules in adjacent states: These rule chapters reflect the 2002 Uniform Securities Act which Iowa and Minnesota have adopted and written rules; Illinois and Michigan have not.

Summary of factual data and analytical methodologies: The division applied its own experience in its regulation of securities generally for the minor clarifications, corrections, revisions and examination matters addressed by the rule.

Analysis and supporting documentation used to determine effect on small business: The rule makes minor clarifications, corrections and revisions for conformity with existing statutes; imposes no additional substantive requirements; and reduces the same.

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

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

Agency Contact Persons

To obtain a copy of the rule or fiscal estimate at no charge or for questions regarding the agency's internal processing of the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@wisconsin.gov. A copy of the rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org.

For substantive questions on the rule, contact Randall Schumann, Attorney, Department of Financial Institutions, Division of Securities, P.O. Box 1768, Madison, WI 53701-1768, tel. (608) 266-3414, e-mail randall.schumann@wisconsin.gov.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Securities adopts the following:

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

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

DFI-Sec 1.02(5)(c) Except as provided under s. DFI-Sec ~~5.12~~ [5.13](#), for purposes of ss. [551.401 \(1\)](#), [551.402 \(1\)](#), [551.403 \(1\)](#), ~~and [551.404 \(1\)](#)~~ and [551.405\(1\)](#), Stats., soliciting any person in this state through

the United States mail, by telephone or by other means from outside or from within this state to become a customer, client or subscriber of the person on whose behalf the soliciting is performed.

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

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

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

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

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

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

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

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

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

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

DFI-Sec 4.01(3) Unless waived under sub. (4), each applicant for an initial registration as a broker-dealer or agent is required to take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository, either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination, and take and pass within the two year period immediately preceding the "FILING DATE" of the application reflected on the records of the central registration depository, ~~one of~~ or receive a waiver from passing, the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to take and pass, or receive a waiver from passing, each examination in pars. (b) to (h) that relates to the applicant's proposed securities activities:

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

DFI-Sec 4.01(4)(f) The applicant is currently registered and in good standing as an agent with any Canadian stock exchange or with a securities regulator of any Canadian province or territory, or with the Investment Dealers Association of Canada and has passed either the Series 37 or Series 38 Canada modules of the Series 7 general securities representative qualification examination, and either the Series 63 Uniform Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination, except that the applicant's activities may not include the offer and sale of municipal securities unless the applicant passes the examination listed in sub. (3) (d).

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

State Law Examination, except that the applicant's activities may not include the offer and sale of municipal securities unless the applicant passes the examination listed in sub. (3) (d).

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

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

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

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

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

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

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

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

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

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

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

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

Dated: October 30, 2009

Agency: _____
Patricia Struck, Administrator
Department of Financial Institutions
Division of Securities