



State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN That pursuant to ss. 551.406(5), 551.412(5), 551.605(1), 553.31(1), 553.58(1) and 227.11(2), Stats., and interpreting s. 551.615, Stats., the Department of Financial Institutions, Division of Securities will hold a public hearing at the Department of Financial Institutions, 345 W. Washington Avenue, 5th floor, Madison, Wisconsin, at 9:00 a.m. on Monday, June 28, 2010 to consider a rule amending, repealing and creating sections of chs. DFI—Sec 1, 2, 4, 5, 7, 8 and 32 relating to minor revisions to securities law and franchise law administrative code sections.

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

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

Statutory authority: ss. 551.406(5), 551.412(5), 551.605(1), 553.31(1), 553.58(1) and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to chs. 551 and 553, Stats., the division regulates securities and franchise investment.

Summary of proposed rule: The objective of the rule is to repeal and recreate s. DFI-Sec 1.02(7), create s. DFI-Sec 1.02(8), amend s. DFI-Sec 1.02(14) (intro) and (c), amend s. DFI-Sec 2.02(5)(d)1., amend s. DFI-Sec 2.02(9)(c), amend DFI-Sec 2.028 (intro), repeal s. DFI-Sec 4.01(4)(g), create s. DFI-Sec 4.04(7)(d), create s. DFI-Sec 5.01(2)(f)3., repeal and recreate s. DFI-Sec 5.01(4)(a), create s. DFI-Sec 5.04(5)(d), amend s. DFI-Sec 5.04(6)(b), repeal s. DFI-Sec 5.05(8)(i), create s. DFI-Sec 5.06(25), repeal and recreate s. DFI-Sec 5.10, repeal and recreate s. DFI-Sec 5.13(2), amend s. DFI-Sec 7.01(3)(a), repeal s. DFI-Sec 8.03 (note), and amend s. DFI-Sec 32.07(1), relating to minor revisions to securities law and franchise law administrative code sections. The purpose of the rule is as follows: Section 1: The branch office definition for broker-dealers has been harmonized with FINRA and other state regulators for many years. However, with the change in the Uniform Securities Act in 2009, the branch office definition in the rule was changed to refer to a slightly different statutory definition of “place of business.” The statutory definition works for investment advisers but not broker-dealers, hence the change in this rule. Section 2: This is a new definition to accompany the solicitor rules proposed for s. DFI-Sec 5.06(25) based on language developed by the NASAA IA Regulatory Policy and Review Project Group. Section 3: These changes clarify that the definition applies to investment advisers as well as investment adviser representatives and the nature of the solicitations made by third party solicitors. Section 4: This amendment changes the terminology used in the current rule (which limits applicability of its coverage solely to limited partnerships) by substituting the term “entity” to thereby have the rule apply to any type of business organization. Section 5: Incident to the Division’s 2008 rules revision to coordinate with the adoption of the new

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Wisconsin Securities Law effective January 1, 2009, current rule DFI-Sec 2.02(9)(c) inadvertently cross-referenced statute section 551.102(11) rather than the proper corresponding statute in sec. 551.202(13) [which specifically refers to “accredited investors,” whereas sec. 551.102(11) does not]. This amendment corrects that cross-referencing error. Section 6: This amendment would limit use of this registration exemption to sales of equity securities by Wisconsin-based entities meeting the exemption’s requirements. This exemption provision was originally created in 1986 for use by early-stage Wisconsin businesses to raise risk capital for its operations. As such, the exemption’s original language was specifically limited to sales of common stock of the business (which don’t obligate a business to redeem/payback the invested funds). Debt securities -- which require payback to investors -- could not be sold under the original language of this exemption. The original language of the exemption restricting its use to sales of common stock was changed in 1991 to read “securities,” thus enabling the exemption to be used for sales of debt as well as equity securities. Subsequently, some filings have been made by Wisconsin businesses for the purpose of selling their debt securities, including sales by a Wisconsin finance company of several million dollars of its Notes that currently are in default, and the company is in bankruptcy. To restore the exemption’s use back to its original purpose of enabling Wisconsin businesses to raise risk capital -- not capital from debt securities requiring repayment -- the language of the preamble is changed to permit only sales of equity securities. Section 7: In a FINRA rule change comment published as Notice 09-70, FINRA recommended the repeal of the S47 Japan Module of the General Securities Representative examination. However, FINRA indicated that the examination was never actually implemented and therefore is not an available examination anyone can take in lieu of the Series 7 exam. Section 8: This new section clarifies that a notice of the opening of a branch office is not complete and therefore, not deemed “filed” until all fees, including any applicable late filing fees, are received. This parallels the fee payment component in the broker-dealer application rule in s. DFI-Sec 4.01(2)(b) and the agent rule in s. DFI-Sec 4.01(2)(c). Section 9: S. DFI-Sec 4.01(6) currently provides the same review authority as s. DFI-Sec 5.01(2)(f) except for the ability to perform a pre-registration examination of the adviser’s records. This provision was inadvertently left out of the investment adviser rules. Section 10: This amendment clarifies that the Series 65 and 66 exams referred to are the post-1999 version as specified in subd. 2. It also adds clarification that if the applicant was registered as an agent of a broker-dealer within two years of the application and the approval of that registration was based on passage of the Series 7 and 66 exams, those exams would still be considered active for purposes of meeting the exam requirement in subd. 3. Section 11: This new section clarifies that a notice of the opening of a branch office is not complete and therefore, not deemed “filed” until all fees, including any applicable late filing fees, are received. This parallels the fee payment component in the investment adviser application rule in s. DFI-Sec 5.01(2)(a) and the investment adviser representative rule in s. DFI-Sec 5.01(2)(b). Section 12: Because applications are effective 30 days after filing, a renewal for January 1 effectiveness must be filed by December 1st. The date of November 30th is incorrect. Section 13: This provision was instituted to require all investment advisers to deliver updated disclosure documents to clients by January 1, 2002 to comply with changes to the law at that time. This subsection has met its sunset date and is no longer applicable. Section 14: This section specifies what activity constitutes solicitation on behalf of an investment adviser and parallels the disclosure and agreement requirements found in U.S. Securities & Exchange Commission rule 206(4)-3 under the Investment Advisers Act of 1940 but with much more clarity and is based on language developed by the NASAA IA Regulatory Policy and Review Project Group. Section 15: The Division currently requires only the ADV Part 1 to be filed electronically. This rule change will require advisers to file their initial and updated Form ADV Part II electronically

via the Investment Adviser Registration Depository rather than in paper. Sub. 1 is the general requirement to file both parts of the form via the Investment Adviser Registration Depository and sub. (3) mandates existing registrants to have their Part II filed electronically by July 1, 2011. The software is available for free to convert their Part II disclosure document for electronic filing. Because this is the public disclosure portion of the application, it is in the interest of investors in Wisconsin to be able to review this document via the Investment Adviser Public Disclosure website. Requiring all advisers to make such filings will automatically add them to the public disclosure website. It will also relieve Division staff from processing paper applications, especially since all application materials are now retained by the Division in electronic format only. Section 16: This rule changes the exemption provision for investment adviser solicitors following an exemption developed by the NASAA IA Regulatory Policy and Review Project Group. This exemption is based on “impersonal investment advice” and eliminates the de minimis exemption that was unique to Wisconsin and in effect permitted an unlimited total number of solicitations so long as no more than 9 per year were for any one adviser. Section 17: Corrects a statutory citation. Section 18: This amendment deletes the Note at the end of rule DFI-Sec 8.03 (which deals with appearances and defaults before the Division of Securities) because the 2003 *Krahenbuhl* case cited in the Note has been superseded by Supreme Court Rule 40.05 (effective January 1, 2009) which establishes new criteria/requirements regarding the ability of non-Wisconsin attorneys to represent clients in contested case proceedings before Wisconsin state agencies. Section 19: This rule contains the following amendments: (1) specifies that the application to amend should use the Uniform Franchise Registration Application Form (Form A); and (2) changes the franchise statute cross-referenced in the rule to be sec. 553.31(1), Stats., which is the statute specifically dealing with amendments.

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 other 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.

Fiscal Estimate

The rule places no additional duties or burdens on state or local government, and hence has no affect on costs to either.

Contact Person

To obtain a copy of the proposed rule or fiscal estimate at no charge, to submit written comments regarding the proposed rule, or for questions regarding the agency's internal processing of the proposed 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 proposed rule may also be obtained and reviewed at the Department of Financial Institution's website, www.wdfi.org. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

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.