



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

April 16, 2009

Joint Committee on Finance

Paper #347

Fee Increases on Securities Agents and Investment Advisers (Financial Institutions)

[LFB 2009-11 Budget Summary: Page 249, #5 (part)]

CURRENT LAW

Current law provides that every applicant for an initial or annual renewal license of an agent representing a broker-dealer, an issuer, or an investment adviser representative for a securities transaction must pay a fee of \$30 to the Department of Financial Institutions (DFI). A broker-dealer, investment adviser, or federally-covered adviser maintaining a branch office within this state for the purpose of trading securities must pay an additional annual filing fee of \$30 to DFI for each branch office.

Fees collected from licenses for securities agents and investment adviser representatives are deposited to DFI's general program operations appropriation, along with other revenue from various license, filing, and examination fees and assessments applicable to financial institutions and services. Such funds are used to pay for DFI's operating expenses, including staffing and administrative costs. At the end of each fiscal year, most unencumbered program revenue in the appropriation is lapsed to the general fund.

GOVERNOR

Increase the fees for licensing an agent representing a broker-dealer, an issuer, or an investment adviser representative for a securities transaction and for maintaining a branch office within this state for the purpose of trading securities from \$30 to \$60. The administration estimates that this provision would increase program revenue by \$2,800,000 annually.

DISCUSSION POINTS

1. DFI's Division of Securities is responsible for regulating the offer and sale of securities, franchise investment offerings, and corporate takeovers. The Division carries out these responsibilities through the following: (a) registration requirements for securities and franchise offerings (or allowing certain exemptions from such requirements); (b) licensing and monitoring of the activities of broker-dealers, securities agents, and investment advisers; and (c) field audits, surveillance, and investigation of complaints.

2. According to DFI, license fees have been imposed on securities agents since the early 1930s. Prior to 1973, the licensing fee for securities agents was \$10. The fee for investment adviser representatives was not imposed until 1973. At that time, fees for investment adviser representatives were established at the same rate as those for securities agents, which were raised to \$20. Such fees were last increased in 1984, when they were increased from \$20 to the current level of \$30. The fee for branch offices maintained by a broker-dealer was last increased from \$20 to \$30 in 1974. In 1978, the branch office licensing fee was extended to include branches maintained by an investment adviser.

3. Under the Wisconsin Uniform Securities Law (Chapter 551 of the State statutes), an "agent" is any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect transactions in securities. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent if such a person is within this general definition. An agent does not include, however, an individual who represents an issuer in effecting certain transactions that are exempt from the state's registration requirements (such as certain revenue obligations issued or guaranteed by a government agency) or if no commission or other remuneration is paid or given directly or indirectly to the individual for soliciting any person in this state.

4. Agents are required to be licensed in this state before making any transactions or solicitations. However, an exemption from licensing exists if the agent's only customers in Wisconsin are certain financial institutions or institutional investors to whom offers of sales of securities are exempt from the state's securities registration requirements.

5. To be licensed as an agent, an agent must pass an examination. However, if an individual meets certain requirements, the examination requirement may be waived. Licenses must be renewed annually.

6. An investment adviser representative is a person supervised by an investment adviser who provides advice or analysis on securities for individual clients. An investment adviser representative is compensated through fees for such advice or analysis, not on the basis of sales of securities.

7. At the end of each fiscal year, DFI lapses most unencumbered program revenue to the general fund. DFI estimates that the proposed fee increase would indirectly increase general

fund revenues by \$2,800,000 annually.

8. As of March, 2009, DFI's Division of Securities had licensed 108,700 securities agents, 5,400 investment adviser representatives, and 4,600 office branches.

9. The administration's revenue estimate of \$2,800,000 assumes that the fee would be paid for 93,333 securities agents, investment adviser representatives, and branch offices. As of March these entities totaled 118,700, and legislation enacted during the last session is expected to increase the number of licensed investment adviser representatives. Given current data, adopting the Governor's proposal would result in an estimated \$3,600,000 annually, or \$800,000 per year more than the administration's estimate. If the Governor's proposal were not adopted, the estimated revenue generated under current law would increase by \$800,000 per year (from \$2,800,000 to \$3,600,000). In preparing its estimates last fall, DFI expected that the number of licensed entities would decline as a result of the economic downturn. To date, this has not occurred.

10. According to DFI, as of March 16, 2009, all states, the District of Columbia, Puerto Rico, and the Virgin Islands impose license fees on securities agents; all but five states also impose license fees on investment adviser representatives. In all states that impose a license fee, except California, there is both an initial application fee and a renewal fee. In the majority of states, the fees for the two types of licenses, and for both initial applications and license renewals, are the same. However, some states impose different fees on the two types of licenses and some have different fees for an initial application as opposed to a license renewal. The highest of such fees, imposed by the state of Texas, is \$250, which is imposed on renewals of both types of licenses (the initial application fee for both types of licenses is \$235). Colorado's fee of \$8 is the lowest fee among states that impose such fees on both types of licenses and both initial and renewal licenses.

11. Ten states impose a filing fee on broker-dealer and investment adviser branch offices, nine of which also impose a renewal fee. The highest of such fees are Connecticut, Florida, Nevada, Rhode Island, and Vermont, which impose initial fees of \$100. These states also impose a \$100 fee on renewals, except Connecticut. Illinois' initial and renewal fee of \$20 is the lowest among states that impose such fees.

12. The following table shows the highest and lowest license fees, as described above, as well as the average and median license fees imposed by the 50 states and the District of Columbia. In addition, the table indicates, for each type of fee, the number of states (including the District of Columbia, Puerto Rico, and the Virgin Islands) that impose fees that are higher than Wisconsin's current fee of \$30 and the proposed fee of \$60. For each type of fee, one or more states have fees that are equal to Wisconsin's.

	<u>Securities Agent Fees</u>		<u>Investment Adviser Representative Fees</u>		<u>Branch Fees</u>	
	<u>Initial</u>	<u>Renewal</u>	<u>Initial</u>	<u>Renewal</u>	<u>Initial</u>	<u>Renewal</u>
Highest fee	\$235	\$250	\$235	\$250	\$100	\$100
Lowest fee	8	8	8	8	20	20
Average Fee	63	62	60	58	68	62
Median Fee	50	50	50	50	75	50
Number with higher than \$30 fees	48	46	40	38	7	5
Number with higher than \$60 fees	15	14	10	10	5	4

*All statistics shown are for states that impose a fee. One state does not impose a fee for a renewal license for securities agents, five states do not impose an initial fee for an initial investment adviser representative license, six states do not impose a fee for an investment adviser representative renewal license, 41 states do not impose an initial branch fee, and 42 states do not impose a renewal branch fee.

13. The license fees imposed by the state on securities agents and investment adviser representatives have not been raised in 25 years. If the fee had been automatically indexed by the general rate of inflation (the consumer price index for all urban consumers, published by the U.S. Bureau of Labor Statistics), the fee would have reached \$61 in 2009. The license fee imposed on broker-dealers or investment advisers for each branch office maintained in the state was last changed 35 years ago for broker-dealers and over 30 years ago for investment advisers. If the branch office fee had been automatically indexed by the general rate of inflation, the fee would have reached \$128 for broker-dealer branches and \$97 for investment adviser branches in 2009. Therefore, it could be argued that the proposed increase in the license fees are reasonable.

14. Others might suggest that a fee increase should only be imposed if the resultant program revenues were to be used for the purposes for which the fee exists. According to the administration, \$1.4 million of the additional revenue generated during the biennium under the proposal would be used to create a Wisconsin venture fund in the Department of Commerce to provide grants and matching funds to connect capital to companies in Wisconsin. The Capital Connections program would be used to fund existing access to capital networks, proposed networks, and to sponsor events which connect capital to companies. No statutory language in the bill specifically ties any revenue generated from this provision to the venture fund.

15. Other options would include increasing the licensing fee by an amount other than the proposed increase of \$30. Each \$10 increase in the fee would generate an estimated \$1.2 million per year in additional revenue. For example, the following increases in the current fee would be expected to increase PR-revenue and GPR-revenue as follows: (a) for a \$10 increase -- \$1.2 million per year; (b) for a \$20 increase -- \$2.4 million per year; (c) for a \$40 increase -- \$4.8 million per year; and (d) for a \$50 increase -- \$6.0 million per year.

ALTERNATIVES

1. Approve the Governor's proposal, and reestimate an increase of base revenue of

\$800,000 per year and reestimate increased revenue generated by the proposal by \$800,000 per year.

ALT 1	Change to Bill Revenue
GPR	\$3,200,000
PR	3,200,000

2. Adopt one of the license fee increases on broker-dealer representatives, investment adviser representative, and branch office of federally-covered advisers specified below.

	<u>Increase Fees by</u>	<u>Increase Fees to</u>	<u>Fund</u>	<u>Change to Bill</u>
2a.	\$10	\$40	GPR-REV PR-REV	-\$1,600,000 -1,600,000
2b.	20	50	GPR-REV PR-REV	800,000 800,000
2c.	40	70	GPR-REV PR-REV	5,600,000 5,600,000
2d.	50	80	GPR-REV PR-REV	8,000,000 8,000,000

3. Delete provision and reestimate current law fee revenues. Compared to current law, estimated fee revenues would increase by \$800,000 annually. Compared to the bill, revenue would be lower by \$2.0 million in each year.

ALT 3	Change to Bill Revenue
GPR	- \$4,000,000
PR	- 4,000,000

Prepared by: Sean Moran