

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF SECURITIES

YEAR 2002 ANNUAL RULES REVISION

SECTION 1. DFI-SEC 3.03(4)(h) is amended to read:

DFI-SEC 3.03(4)(h) The North American Securities Administrators Association ~~Guidelines for Offerings of~~ Statement of Policy Regarding Church Bonds, adopted ~~October 1979~~ April 14, 2002.

ANALYSIS: The amendment contained in this Section, together with the rules created in Section 2, add to the current list of the North American Securities Administrators Association (“NASAA”) securities registration policies contained in existing rule DFI-Sec 3.03(4), Wis. Adm. Code, that may be used by the Division for purposes of reviewing the adequacy of prospectus disclosures in securities registration applications filed with the Division. The revisions relate to the NASAA Mortgage Program Guidelines (adopted in 1996), Omnibus Guidelines (adopted in 1992), and Guidelines For General Obligation Financing by Religious Denominations (adopted in 1994), as well as a totally revised (from the 1979 Guidelines) NASAA Statement of Policy Regarding Church Bonds as adopted by the NASAA membership April 14, 2002. The required authorization was received by letter dated August 20, 2002, from the Attorney General and the Revisor of Statutes permitting the Division to incorporate by reference the four NASAA Guidelines/Policies in this Section and in Section 2.

SECTION 2. DFI-Sec 3.03(4)(o) to (q) are created to read:

DFI-Sec 3.03(4)(o) The North American Securities Administrators Association Mortgage Program Guidelines, adopted September 10, 1996.

(p) The North American Securities Administrators Association Omnibus Guidelines, adopted March 29, 1992.

(q) The North American Securities Administrators Association Guidelines For General Obligation Financing by Religious Denominations, adopted April 17, 1994.

ANALYSIS: See the ANALYSIS to Section 1 above.

SECTION 3. DFI-Sec 4.04(3) is repealed.

ANALYSIS: This Section repeals a broker-dealer reporting rule relating to designated supervisors that should have been repealed incident to the repeal of the Designated Supervisor Rule of Conduct requirement that was part of the Division's 2001 Annual Rules Revision.

SECTION 4. DFI-Sec 4.04(4) to (9) are renumbered DFI-Sec 4.04(3) to (8).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal of DFI-Sec 4.04(3) in the preceding Section.

SECTION 5. DFI-Sec 4.04(3)(a), as renumbered, is amended to read:

DFI-Sec 4.04(3)(a) Except as provided in subs. (2) ~~, (3)~~ and ~~(9)~~ (8), each broker-dealer shall file with the division any notice of change of control or change of name, as well as any material change in the information included in the broker-dealer's most recent application for license, in an amendment to Form BD filed with the central registration depository within 30 days of the date of the change.

ANALYSIS: The amendments to this rule revise certain cross-referenced rule sections to reflect the repeal of DFI-Sec 4.04(3) in Section 3 above, and the renumbering in Section 4 above.

SECTION 6. DFI-Sec 4.05(7) to (12) are renumbered DFI-Sec 4.05(6) to (11).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal (as part of the Division's 2001 Annual Rules Revision) of the broker-dealer licensing Rule of Conduct requirement in DFI-Sec 4.05(6) to employ a designated supervisor.

SECTION 7. DFI-Sec 4.05(8)(L), as renumbered, is amended to read:

DFI-Sec 4.05(8)(L) Notify the division at the time of filing the notice of opening or change of address of a branch office as required in s. DFI-Sec 4.04 ~~(8)~~ (7) that the office is located on the premises of a financial institution in this state, which notification shall include the identity of the institution.

ANALYSIS: The amendment to this rule changes the numbering of the rule cross-referenced therein to reflect the renumbering in Section 4 above.

SECTION 8. DFI-Sec 4.06(1)(d) is amended to read:

DFI-Sec 4.06(1)(d) Executing a transaction on behalf of a customer without authority to do so, except that use by a broker-dealer of a negative response letter in conformity with ~~Article III, section 15 of the Rules of Fair Practice~~ rule 2510(d)(2) of the national association of securities dealers, inc. is not a violation of this rule;

ANALYSIS: The amendment to this broker-dealer Prohibited Business Practice provision revises the citation therein to the National Association of Securities Dealers (“NASD”) rule which was recently renumbered and retitled.

SECTION 9. DFI-Sec 4.07(2) is repealed and recreated to read:

DFI-Sec 4.07(2) The license of an agent is not effective during any period when either of the following apply:

(a) The broker-dealer that the agent represents is not licensed or when the securities of the issuer that the agent represents are not subject to an effective registration statement or an effective exemption, or upon termination of the offering.

(b) The agent's status with the national association of securities dealers or a national securities exchange is deficient for failure to meet continuing education requirements.

ANALYSIS: This repeal and recreation adds to the current Licensing Period rule for agents in DFI-Sec 4.07(2), a new provision in sub. (b) that relates to the failure by an agent to comply with continuing education requirements for agents adopted by the NASD and national securities exchanges. Because an agent's NASD or exchange registration is not effective if the agent is deficient for failing to meet continuing education requirements, this rule provides equivalent treatment for Wisconsin licensure purposes.

SECTION 10. DFI-Sec 4.085 is amended to read:

DFI-Sec 4.085 Temporary agent transfer licensing. For purposes of agent license applications filed pursuant to s. 551.32 (1), Stats., and agent license withdrawal applications filed pursuant to s. 551.32 (9) (a), Stats., the division may issue temporary agent licenses and terminate agent licenses in accordance with temporary ~~agent transfer~~

registration procedures under the central registration depository of the national association of securities dealers, as developed under contract with the North American securities administrators association. The license of an agent transferring from one licensed broker-dealer to another is not effective unless the requirements under the temporary ~~agent transfer~~ registration procedure are met by the agent, the broker-dealers involved in the transfer, and the central registration depository.

ANALYSIS: The retitling and amendments to this securities agent temporary license transfer rule section revise the terminology/label for that temporary procedure to correspond with the new “registration” terminology used by the NASD for such procedure.

SECTION 11. DFI-Sec 4.10(4)(a) is amended to read:

DFI-Sec 4.10(4)(a). Publication or circulation of advertising that offers or describes securities services available at or through the bank, savings institution or trust company, except for advertising relating to securities transaction execution services provided in accordance with s. DFI-Sec 4.05 ~~(9)~~ (8); or

ANALYSIS: The amendment to this rule changes the numbering of the rule cross-referenced therein to reflect the renumbering in Section 6 above.

SECTION 12. DFI-Sec 5.01(1)(a) is renumbered DFI-Sec 5.01(1)(a)1. and amended to read:

DFI-Sec 5.01 Licensing procedure. (1)(a)1. The investment adviser registration depository operated by the National Association of Securities Dealers shall receive and maintain filings on forms established for the investment adviser registration depository and collect related fees from investment advisers ~~and investment adviser representatives~~

on behalf of the division.

ANALYSIS: This Section contains the first of several related revisions to Chapter DFI-Sec 5 that make amendments to the rules establishing the license application filing process and procedure for investment adviser representatives. The revisions are necessary in order for Wisconsin's procedures and requirements to be consistent with recent changes made nationally that are binding on each state which mandates that all license application filings for investment adviser representatives must now be made with the Central Registration Depository ("CRD"), whereas license application filings for investment advisory firms will continue to be required to be made with the Investment Adviser Registration Depository ("IARD"). The Division adopted a comprehensive series of rules during 2001 to adopt for use in Wisconsin (concurrently with its first availability for use nationally), the electronic filing/licensing mechanism of the Investment Adviser Registration Depository. Initially, all license application filings by both investment advisory firms and investment adviser representatives were to be made with the IARD; however, during 2002, the CRD and NASAA began providing that licensing-related applications and filings by investment adviser representatives after March 18, 2002 would be made on the CRD. The specific amendment to this (renumbered) rule subsection DFI-Sec 5.01(1)(a)1 deletes the reference to "investment adviser representatives" because new rule DFI-Sec 5.01(1)(a)2 created in the following Section provides that the license application filing for investment adviser representatives must be made through the Central Registration Depository.

SECTION 13. DFI-Sec 5.01(1)(a)2. is created to read:

DFI-Sec 5.01(1)(a)2. The central registration depository operated by the national association of securities dealers shall receive and maintain filings on forms established for the central registration depository and collect related fees from investment adviser representatives on behalf of the division.

ANALYSIS : As discussed in the Analysis to Section 12, this Section creates a new rule to provide that license application filings for investment adviser representatives will be received through the Central Registration Depository.

SECTION 14. DFI-Sec 5.01(1)(b) is renumbered DFI-Sec 5.01(1)(b)1. and amended to read:

DFI-Sec 5.01 Licensing procedure. (1)(b)1. Unless otherwise provided under sub. ~~(11)~~ (8), or DFI-Sec 5.10, or by order of the division, applications for initial and renewal licenses of investment advisers ~~and investment adviser representatives~~, as well as amendments, reports, notices, related filings and fees, shall be filed with the investment adviser registration depository.

ANALYSIS: This Section and the following Section contain equivalent changes to those set forth in Sections 12 and 13 above. Namely, the specific amendment to this (renumbered) rule subsection DFI-Sec 5.01(1)(b)1 deletes the reference to “investment adviser representatives” because new rule DFI-Sec 5.01(1)(b)2 created in the following Section requires that all licensing-related filings for investment adviser representatives must be made through the Central Registration Depository. The Section also contains a correction to the rule section cross-referenced therein [to read (8)], and adds a cross-reference to rule DFI-Sec 5.10 which provides that if any documents or fees cannot be accepted by the IARD, they should be filed directly with the Division.

SECTION 15. DFI-Sec 5.01(1)(b)2. is created to read:

DFI-Sec 5.01(1)(b)2. Unless otherwise provided under sub. (8) or by order of the division, applications for initial and renewal licenses of investment adviser representatives, as well as amendments, reports, notices, related filings and fees, shall be filed with the central registration depository.

ANALYSIS: See the Analysis to Section 14.

SECTION 16. DFI-Sec 5.01(2)(a) is amended to read:

DFI-Sec 5.01(2)(a). A licensing application for purposes of s. 551.32 (1) (a), Stats., consists of all information required by the form prescribed under sub. (1) (c), any additional information required by the division and all required fees. Any documents or fees required to be filed with the division that are not permitted to be filed with or cannot be accepted by the investment adviser registration depository or the central registration depository shall be filed directly with the division.

ANALYSIS: Reflecting the revisions in preceding Sections, the amendment to this rule (that defines what constitutes a licensing "application"), adds a reference to the Central Registration Depository where investment adviser representatives now must make their licensing-related filings.

SECTION 17. DFI-Sec 5.01(2)(c) is amended to read:

DFI-Sec 5.01(2)(c). An application for initial license or for renewal of a license as an investment adviser representative for an investment adviser licensed under this chapter consists of the payment of Wisconsin investment adviser representative license or renewal fees to the ~~investment adviser~~ central registration depository. An application for initial license as an investment adviser representative under this paragraph shall be deemed filed under s. 551.32 (1) (a), Stats., on the date when the application is designated ready for approval on the records of the ~~investment adviser~~ central registration depository. An application for renewal of a license as an investment adviser representative under this

paragraph shall be deemed "filed" under s. 551.32 (1) (a), Stats., when the fee on deposit with the ~~investment adviser~~ central registration depository has been allocated to the division.

ANALYSIS: Paralleling amendments to other Sections above, the amendments to this rule (which defines when a license application for an investment adviser representative is deemed "filed"), provide that such filings be made to the CRD.

SECTION 18. DFI-Sec 5.01(2)(d)3. is amended to read:

DFI-Sec 5.01(2)(d)3. Each investment adviser representative and his or her employing investment adviser or federal covered adviser shall update information contained in an investment adviser representative's application by filing an amendment to Form U-4 with the ~~investment adviser~~ central registration depository within 30 days of the date of the event that requires filing of the amendment.

ANALYSIS: See Analysis to Section 17.

SECTION 19. DFI-Sec 5.01(2)(e) is amended to read:

DFI-Sec 5.01(2)(e). An electronic signature affixed to any filing made in compliance with the requirements of the investment adviser registration depository or the central registration depository shall constitute irrefutable evidence of legal signature by any individual whose name is typed on the filing.

ANALYSIS: Reflecting revisions in prior Sections, the amendment makes this electronic signature rule applicable

to licensing filings made under the CRD as well as filings under the IARD.

SECTION 20. DFI-Sec 5.04(7) and (8) are repealed.

ANALYSIS: This Section repeals two reporting requirement rules that required investment advisers and federal covered advisers, respectively, to file with the Division at prescribed times, copies of their Schedule I to Form ADV. The repeals are warranted because Schedule I is no longer a separate part of the Form ADV filed on the IARD, and the Schedule I information is now incorporated into Part 1 of Form ADV.

SECTION 21. DFI-Sec 5.05(14) is repealed.

ANALYSIS: This investment adviser Rule of Conduct provision (that establishes a customer brochure delivery requirement) is repealed because it was superseded by a separate rule on the subject adopted as part of the Division's 2001 Annual Rules Revision and set forth in DFI-Sec 5.05(8).

SECTION 22. DFI-Sec 5.07(1) is amended to read:

~~DFI-Sec 5.07(1)-Prior to January 1, 2002, the license of an investment adviser expires on April 30. Effective January 1, 2002, the~~ The license of an investment adviser expires on December 31 of each year. Each licensed investment adviser seeking renewal of its license shall file for renewal with the investment adviser registration depository according to the depository's schedule.

ANALYSIS: This amendment deletes now-outdated interim language that was inserted in the Division's original IARD rule adoption in 2001 (effective August 1, 2001) to deal with filings made with the IARD by investment

advisers between the August 1, 2001 effective date of the rule and December 31, 2001.

SECTION 23. DFI-Sec 5.07(2) is renumbered DFI-Sec 5.07(2)(a) and amended to read:

DFI-Sec 5.07(2)(a) The license of an investment adviser representative expires on the same day as the expiration of the license of the investment adviser or the notice filing of the federal covered adviser which the person represents. The license of an investment adviser representative is not effective during any period when the investment adviser which that person represents is not licensed, or when the federal covered adviser that the person represents does not have an effective notice filing with the division, or during any period when the representative is not employed either by a specified investment adviser licensed under ch. 551, Stats., or a federal covered adviser that has filed a notice with the division under s. 551.32 (1m) (a), Stats. Each licensed investment adviser representative seeking renewal of his or her license shall file for renewal with the ~~investment adviser~~ central registration depository according to the depository's schedule.

ANALYSIS: The amendment to this rule parallels amendments in previous Sections to provide that license-related filings for investment adviser representatives now must be submitted to the CRD.

SECTION 24. DFI-Sec 5.07(2)(b) is created to read:

DFI-Sec 5.07(2)(b) An agent who is qualified to perform the functions of an investment adviser representative on behalf of a broker-dealer under DFI-Sec. 4.01(10), may not perform those functions during any period when the agent's status with the

national association of securities dealers or a national securities exchange is deficient for failure to meet continuing education requirements.

ANALYSIS: This new rule, which parallels an identical rule applicable to securities agents created as DFI-Sec 4.07(2)(b) in Section 9 above, similarly provides that the license of an agent qualified to perform the functions of an investment adviser representative on behalf of a broker-dealer is not effective if the agent's status with the NASD or a national securities exchange is deficient for failure to meet the agent's continuing education requirements.

SECTION 25. DFI-Sec 5.08(2) is amended to read:

DFI-Sec 5.08(2) An application for withdrawal from the status of a licensed investment adviser representative shall be filed with the ~~investment adviser~~ central registration depository on Form U-5 within 15 days of the termination of the representative's employment pursuant to s. 551.31 (4) (c), Stats.

ANALYSIS: The amendment to this rule parallels amendments in previous Sections to provide that license-related filings for investment adviser representatives now must be submitted to the CRD.

SECTION 26. DFI-Sec 5.10 is amended to read:

DFI-Sec 5.10 Electronic filing. The electronic filing of any particular document and the collection of related processing fees shall not be required until such time as the investment adviser registration depository or the central registration depository provides for receipt of such filings and fees and the division provides 30 days notice of the change. Any documents or fees required to be filed with the division that are not permitted to be

filed with, or cannot be accepted by, the investment adviser registration depository or the central registration depository shall be filed directly with the division.

ANALYSIS: These amendments parallel those in prior Sections to make this electronic filing rule applicable to licensing filings made under the CRD as well as filings under the IARD.

SECTION 27. DFI-Sec 5.11(3) is amended to read:

~~DFI-Sec 5.11(3) Prior to January 1, 2002, the notice filing of a federal covered adviser that has filed a notice with the division under s. 551.32(1m)(a), Stats., expires on April 30. Each federal covered adviser seeking renewal of its notice filing shall file with the division a notice accompanied by the notice filing fee pro-rated from May 1 to December 31, 2001. Effective January 1, 2002, each Each federal covered adviser seeking renewal of its notice filing shall file for renewal with the investment adviser registration depository according to the depository's schedule and instructions. An application for renewal of a notice filing under this paragraph shall be deemed filed under s. 551.32 (1m), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.~~

ANALYSIS: Similar to the amendments in Section 22 above, these amendments delete now-outdated interim language that was inserted in the Division's original IARD rule adoption in 2001 (effective August 1, 2001) to deal with filings made with the IARD by federal covered advisers between the August 1, 2000 effective date of the rule and December 31, 2001.

SECTION 28. DFI-Sec 5.12(4) is amended to read:

DFI-Sec 5.12(4) Each investment adviser representative licensed or required to be licensed in this state shall resubmit its Form U-4 electronically with the ~~investment adviser~~ central registration depository not later than a date prescribed by separate rule or order of the division, unless a hardship exemption has been granted by the division.

ANALYSIS: Consistent with amendments in previous Sections, the amendment to this rule provides that license-related filings for investment adviser representatives now must be submitted to the CRD.

SECTION 29. DFI-Sec 9.01(1)(b)7. and 8. are repealed.

ANALYSIS: This Section deletes the two licensing forms in DFI-Sec 9.01(1)(b)7. and 8. (relating to broker-dealer supervisors) because the filing requirements relating to such forms were repealed as part of the Division's 2001 Annual Rules Revision.

SECTION 30. DFI-Sec 9.01(1)(b)9. to 17. are renumbered DFI-Sec 9.01(1)(b)

7. to 15.

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal of DFI-Sec 9.01(1)(b) 7. and 8. in the preceding Section.

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