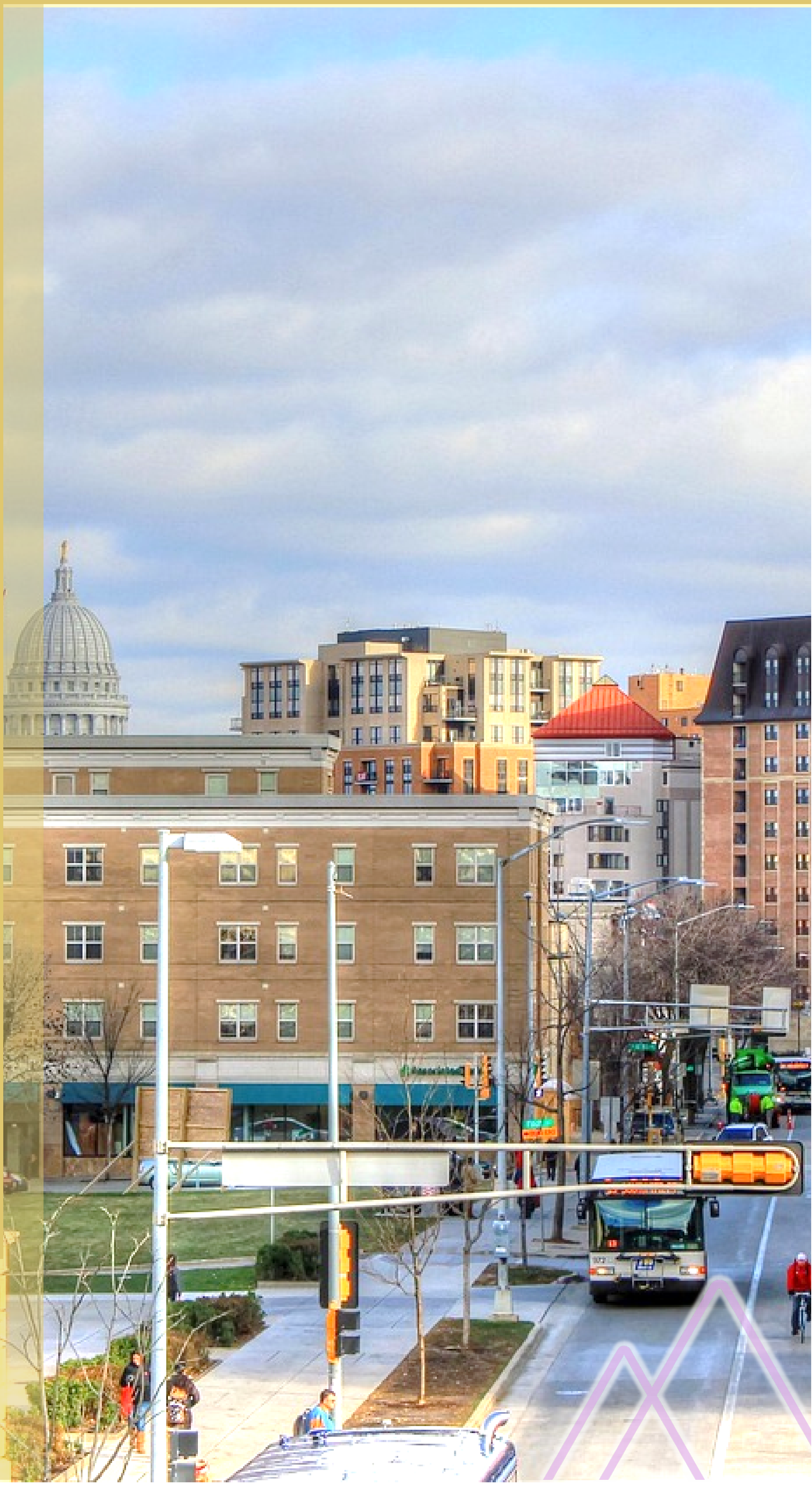
Investment Adviser Newsletter



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Contact Us

If you have questions, send us an email or give us a call.

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(608) 266-2139

Connect with DFI on Social Media

Visit the DFI’s Social media profiles on Facebook, LinkedIn and X (formally Twitter), for information on the agency’s activities, personal finance tips, investor education, scam warnings, and other timely news to help protect investors. Please feel free to share any content that you find useful, and “like” or “follow” our social media profiles so that you can receive future posts in your social media newsfeeds.

Meet DFI Secretary-designee Wendy K. Baumann

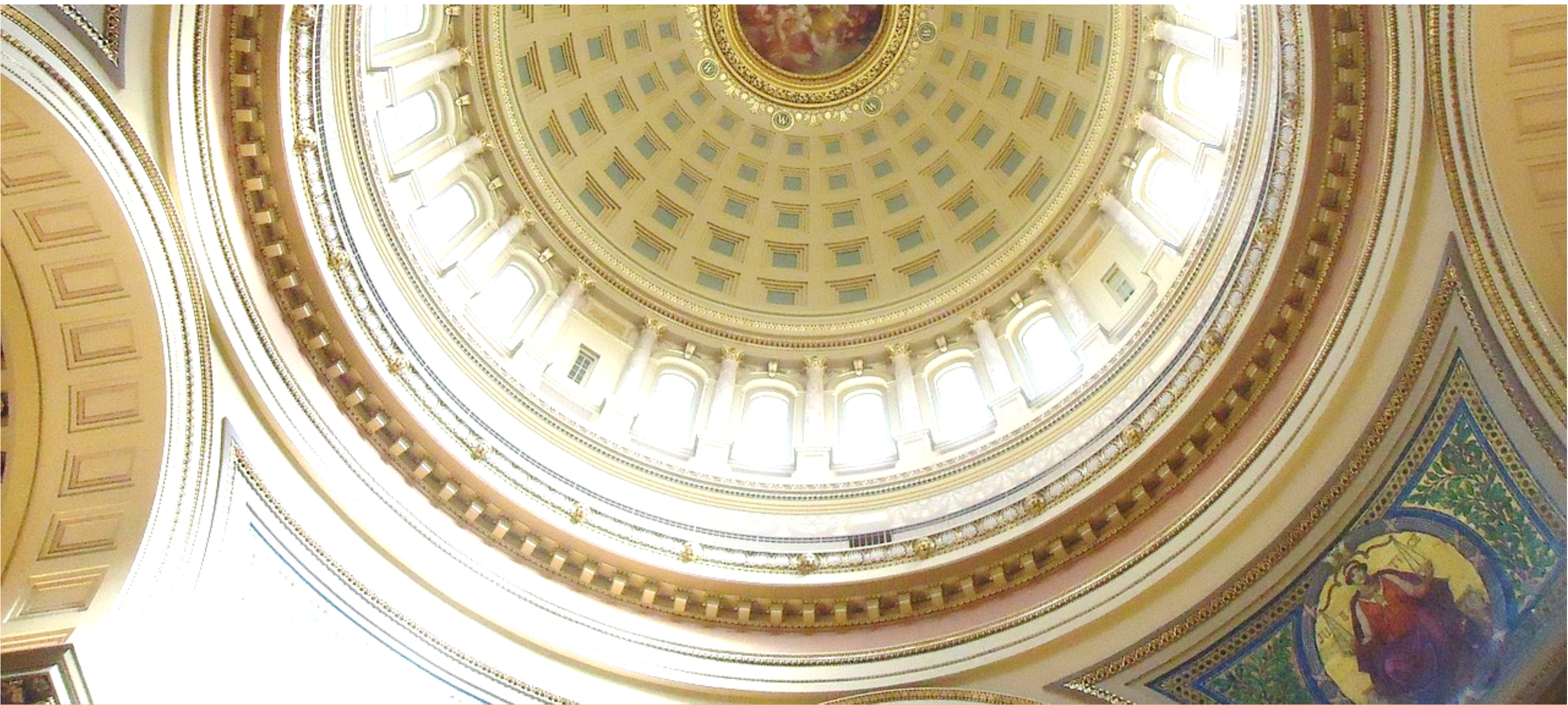
In January, Governor Tony Evers announced he appointed Wendy K. Baumann to serve as the secretary of the Wisconsin Department of Financial Institutions (DFI) following the retirement of former DFI Secretary Cheryll Olson-Collins. DFI Secretary-designee Baumann's tenure began on February 17, 2025.

Before taking on this role, Baumann served as the long-standing president and chief visionary officer of the Wisconsin Women's Business Initiative Corporation, a position she held for nearly three decades. In this capacity, she dedicated herself to empowering Wisconsin businesses owned by women, people of color, and low-to-moderate income individuals around the state.

Baumann has served on many boards, including the Association of Enterprise Opportunity, the Association of Women's Business Centers, the Consumer Federation of America- America Saves Initiative, and as chair of the Governor's Council on Financial Literacy and Capability.

Academically, Baumann holds a bachelor's degree from George Washington University and the University of Wisconsin-Milwaukee, as well as a master's degree in Exceptional Education from UW-Milwaukee.

The DFI is pleased to welcome Baumann to her new role.



National Continuing Education Program Enters Fourth Year

The investment advisor representative (IAR) continuing education (CE) requirement became effective in Wisconsin in 2023, which was the second calendar year of the national CE program as states adopted the North American Securities Administrators Association (NASAA) IAR CE model rule. In the first year (2022), just three states required CE and now, CE is required for IARs in 23 states. The program continues to grow in terms of state adoptions and the availability of courses that offer IAR CE credit. Currently, there are 64 active CE providers offering 705 courses with 1215 available credits.

Any IAR who currently has a CE status of “CE Inactive” is not eligible to renew their registration at the end of 2025 and should therefore not only catch up on the credits missing for 2024 but also complete the credits due in 2025. One national compliance consultant recommends that firms conduct a review mid-year and again in early December to ensure their IARs have completed all applicable IAR CE requirements for that calendar year.

All IARs should create a Financial Professional Gateway (FinPro) account for the purpose of monitoring the completion and reporting of CE credits, and to receive reminders regarding the CE deadline that are sent in about the last quarter of the year. It’s also important to keep residential addresses as shown on Form U4 updated through FinPro. The Division of Securities has noticed in sending letters regarding CE deficiencies that a significant volume of letters are returned to us because the home address is not current.

Note that CE credits must be reported by the provider to CRD prior to CRD shutting down for year end processing. CRD typically shuts down for the last week of the year and any CE credits reported during that period will not be applied before the end of the year. For instance, an IAR who is already “CE Inactive” and waits until the last few days of December to complete CE will find that the CE credits are not recorded until January 2nd. As a result, the IAR will fail to renew and be required to submit a new Form U4 to re-apply for IAR registration.

Immediately
IARs should create a FinPro account to monitor completed and reported credits and keep address current for notifications.

Mid-Year
Firms conduct a mid-year review to ensure IARs have completed CE requirements for that calendar year.

Early December
Firms conduct an end of year review to ensure IARs have completed CE requirements for that calendar year.

Mid-December
IARs complete any missing credits before CRD shuts down.

DFI Securities Examiner Carlo Offers His Perspective on Invoices

If this were a live event rather than a newsletter article, I would poll the audience of state-registered investment advisers to ask “How many of you have had an exam deficiency related to your invoices?” and I’m willing to bet most of you would raise your hand. Why is it so common for our advisers to get some aspect of their fees or invoices wrong? And more importantly, why do we care?

Let’s start with the language in the related rules for direct fee deduction and then we’ll cover direct invoicing.

Pursuant to DFI-Sec 5.035(1)(f)2.b., each time a fee is deducted from a client’s account, the adviser shall:

a. Send the qualified custodian notice of the amount of the fee to be deducted from the client’s account; and

b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

For simplicity of this discussion, we’re going to discuss this rule as it applies to asset-based fees as that is the most common fee structure among our advisers.

Often, the problems with invoices come from the itemization referenced above in paragraph (b). To simplify, you are using your invoices to tell your client these things:

1. The amount deducted from the client’s account (this should match the amount shown on the custodian’s account statement for the relevant period)
2. How you calculated the fee
3. The amount of assets the fee is based on
4. Which months/quarters/years are covered by the fee shown in the invoice

For Item 1 above, believe it or not, advisers get this wrong from time to time - the amount shown on the invoice is different from the amount deducted from the client’s account per the custodian’s account statement. Many things can cause this, but typically it results from the adviser making a calculation or input error, or a last-minute change to a client’s fee after the invoice was generated but before the fee was deducted.

We’ve encountered advisers lately with an issue in Item 2, how the fee was calculated. We’ve found that if you are using a third-party service to generate your fee calculations and invoices, those third parties may have built in assumptions about fee calculations that don’t match your own assumptions and disclosures. In this case, the fix could be as simple as updating the language in the ADV 2A and contracts to match the internal formulas and assumptions used by the third-party. Other advisers have found that their service provider allows a degree of customization that will allow them to show invoices consistent with the rule above. When that service is offered to you by a third party, you should carefully review their invoice templates, customization options, and if applicable, their internal fee calculation assumptions and methodology to see if they match what you are disclosing to your clients.

Carlo's Perspective on Invoices Continued

Item 3 is closely related to Item 2 in asset-based fee arrangements. In order to show how you calculated the fee, you need to show the amount of assets the fee is based on. We've seen issues arise here because a client may withdraw or add funds into their account over the billing period and the adviser will fail to handle this according to their disclosed methodologies. Whether you prorate withdrawals or deposits over the billing period should be disclosed in your ADV 2A and contracts. If you've adjusted your fee to account for cash flows, then you'll need to show the amount of assets that were prorated, and how they were prorated over the billing period.

Whether you bill monthly, quarterly, or over some other period, that billing period needs to be clearly shown in your invoice. For example, if you bill monthly then you should show "Monthly fee for April, 2025" or "Time period: April 1, 2025 – April 30, 2025". For a quarterly fee, you may show "Quarter 1, 2025". If you use quarters other than standard calendar quarters, then you should show the specific dates that span that quarter. For example, "April 15, 2025 – July 14, 2025".

Some advisers do not use direct fee deduction to bill their clients and instead request that the fee be paid via check or with a credit card. This is the type of arrangement we tend to see in a financial planning or consulting relationship. In that case, DFI Sec 5.05(13) applies.

> Pursuant to DFI-Sec 5.05(13), each investment adviser shall provide clients with a written notification or invoice of fees due for investment advisory services. The notification or invoice shall specify the time period covered by the fee for ongoing supervisory or management services or shall detail the services rendered for preparation of financial plans or analyses.

In this arrangement, it is important for advisers to highlight the services rendered. For example, was a financial plan delivered to the client? Was an hourly fee charged for a financial planning meeting? We've seen these types of invoices missing details for the services provided, especially in cases where the client is being charged an ongoing financial planning fee. If the adviser fails to justify an ongoing financial planning fee to an examiner, that fee may be found unreasonable under our prohibited conduct rules in DFI-Sec 5.06(15).

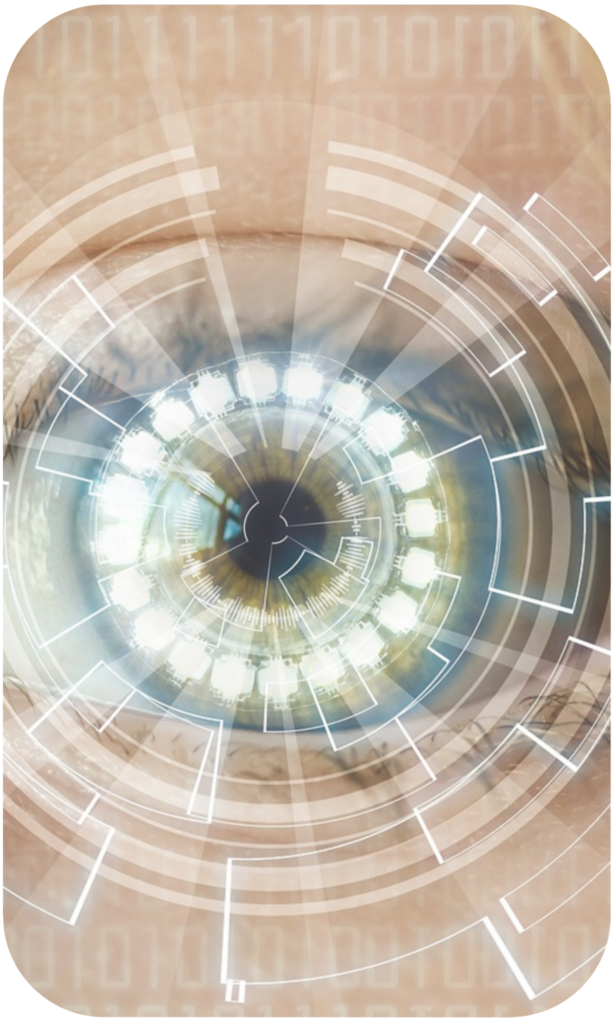
For as many state-registered advisers that exist, there are nearly just as many business models and nuances to their internal procedures. The exam process exists in part to help each unique firm achieve compliance with our securities statutes and rules. Clients place an enormous amount of trust in their advisers by giving them access to their accounts and permission to withdraw fees from their accounts. It is important that advisers get their billing process correct and do it in a manner compliant with Wisconsin rules. Errors in fees can compound over time, especially if it is a systematic error occurring firm wide. When your client is given a fully accurate and compliant invoice, they can work through the information and verify the fee has been calculated correctly according to the terms and conditions set out in their contract.

You can minimize the possibility of errors at your firm by regularly reviewing your ADV 2A, client contracts, and fee invoices. Compare those to how your third party service provider is calculating the fee. Once you've confirmed everything is accurate, consider updating your supervisory procedures to include a procedure for verifying fees are accurate and compliant with the appropriate rule.

Be Cautious When Using Artificial Intelligence

Artificial Intelligence (AI) and AI-based tools have been used in the securities industry for years and AI usage has seen a noticeable increase in recent years. Some firms are already using AI in their operations or are partnering with vendors that use AI. Securities regulators have observed firms using generative AI to improve internal functions, such as summarizing information from multiple sources or utilizing generative AI to retrieve relevant portions of policies and procedures.

DFI intends for our securities rules to be technology neutral – our rules apply whether or not firms choose to use any form of AI. We also realize AI could be used in many different functions of your firm's operations – from communications with customers to investment management and administrative functions.



The following considerations should be addressed before firms decide to use AI or AI-based tools in their operations:

- Your ability to keep client information private and confidential
- Your responsibility to vet and monitor third-party service providers that use AI
- Your process to review the use of generative AI in written communications to ensure its accuracy and to protect against regulatory violations such as misleading and exaggerated claims
- Your ongoing monitoring to ensure AI is not being used to place your firm's interests ahead of your client's interests
- Your supervision of the use of AI by other staff or financial advisers in your firm

AI is a changing and evolving technology that we will continue to learn about and understand. As part of our examination program, we may ask investment advisers if they use AI or AI-based tools to help us further understand their role in the industry.

Please feel free to call our Examiner of the Day phone line at (608) 266-2139 if you have any questions about the use of AI in your firm.

NASAA Identifies Top Investor Threats

Earlier this month, the North American Securities Administrators Association (NASAA) released the results from their annual survey of U.S. and Canadian securities regulators to highlight what appears as the top threats to investors in 2025.

Many of the threats that keep regulators up at night are the issues plaguing retail investors across our communities, including cryptocurrency fueled relationship investment scams, frauds perpetrated on social media, and the rise of scams turbocharged by technology such as artificial intelligence.

The most common crypto investment scam that the Division of Securities is seeing has been nicknamed "pig butchering." Operation Shamrock, an organization dedicated to raising awareness and preventing this scam, describes "pig butchering" as follows:

> "In the context of scams, this metaphor describes how victims are treated like pigs being "fattened up" before being slaughtered. Scammers "fatten" their targets by building trust, grooming them emotionally, and encouraging them to invest increasing amounts of money before ultimately "butchering" them by stealing all their funds."

Globally, the cryptocurrency tracing company Chainalysis estimated that pig butchering cost victims over 4 billion dollars in 2024.

Closer to home, since the Division of Securities has begun tracking and publishing scams on our Investment Scam Tracker, about 65% of the reported scams involve some elements of pig butchering.

A common theme throughout all investment fraud is how social media can be used to lure investors into scams. In addition to being a place that investors go to find more information about investments, social media is often how perpetrators communicate with their victims. The U.S. Securities and Exchange Commission Investor.gov notes:

> "Social media, such as Facebook, YouTube, Twitter, and LinkedIn, have become key tools for U.S. investors. Whether they are seeking research on particular stocks, background information on a broker-dealer or investment adviser, guidance on an overall investment strategy, up to date news or to simply want to discuss the markets with others, investors turn to social media. Social media also offers a number of features that criminals may find attractive. Fraudsters can use social media in their efforts to appear legitimate, to hide behind anonymity, and to reach many people at low cost."

Top Investor Threats Continued

Take for example, this narrative from a recent pig butchering scam posted on our Investment Scam Tracker:

> "A Madison, Wisconsin resident was contacted through Facebook by "Olivia Wyrzanowska." After a few conversations on Facebook, Olivia requested the conversation be moved to WhatsApp. Olivia presented herself as a Blockchain Manager for Wells Fargo Bank. Over time, Olivia developed a romantic relationship with the complainant and began to provide investment advice related to cryptocurrency. The complainant had no previous experience investing in cryptocurrency and was coached by Olivia who worked with the resident to liquidate approximately $84,000 from a retirement account. She instructed the complainant to open a Coinbase account and then coached them into investing his funds in www.nasdaqblock.com. After making the investment, the resident was able to view very large returns online, up to a total of $174,000. When the resident attempted to cash out the account, he was informed that he must pay large sums of money to withdraw his investment funds."

By moving the conversation from Facebook to WhatsApp, the scammer intends to evade the efforts of Facebook to monitor and prevent scams by going to a more private site in WhatsApp.

The DFI and NASAA are both keeping an eye out for investment scams turbocharged by artificial intelligence. Wisconsin Division of Securities Administrator and current NASAA President Leslie Van Buskirk notes:

> "The rapid growth of technology and the rise of artificial intelligence gives scam artists new tools to steal your money. AI investing is the latest technology to make waves in the investing landscape and fraudsters are pitching new investments that often have nothing to do with the latest tech developments and instead play on fear of missing out or get rich quick schemes along with other heightened emotions. In many cases, they are downplaying the need for due diligence and are pressuring investors to quickly part with their money."

As an investment adviser, you play a crucial role in your clients' financial well-being, especially when it comes to protecting them from scams. Given your close, trusted relationship with your clients, you're often in the best position to spot red flags and intervene before significant harm is done. And in the unfortunate event that your client does fall victim to a scam, your expertise and support can help them address the situation and recover more effectively.

If you ever have questions about the best course of action to pursue with a client involved in a potential scam, please contact the Division of Securities' Examiner of the Day phone line at (608) 266-2139.

Wisconsin Joins Multi-State Settlements

The DFI and several other states, along with the U.S. Securities and Exchange Commission (SEC), reached a settlement agreement with Vanguard Marketing Corporation and The Vanguard Group, Inc (Vanguard) for failing to supervise certain registered persons and failing to disclose potential tax consequences to investors following a change in investment minimums for certain target date retirement funds in 2020 and 2021

When Vanguard lowered the investment minimums for certain institutional target date funds, a large number of investors redeemed their investor fund shares to purchase the institutional fund shares. This triggered significant capital gains and tax consequences for the retail investors who continued to hold the investor fund shares, a consequence not disclosed by Vanguard.

The SEC is handling the remediation payments for affected clients through its Fair Fund program. Information relating to distributions will be sent to the clients at a later date. The SEC has collected the payments but has requested an extension until March 26, 2026 to establish a plan for the distribution. For more information, see the SEC Order and extension or DFI's news release and order.

The DFI also joined other states in a $17 million settlement with Edward D. Jones & Co., L.P. (Edward Jones) resulting from an investigation into the firm's supervision of customers paying commissions for mutual fund shares that were later moved to advisory accounts. The investigation revealed that Edward Jones was charging front-load commissions for investments in Class A mutual fund shares in situations where the customers sold or moved the shares early into fee-based investment advisory accounts.

Wisconsin will receive approximately $335,000 from the settlement which will be used for investor education and various programs for the state to enlighten financial literacy and education.

For more information about the Edward Jones settlement, see DFI's news release.

Enforcement News: The Division of Securities Continues Pursuing Digital Asset Cases

The Division of Securities continues to be unusually busy investigating complaints involving cryptocurrency and other digital assets. Cryptocurrency scams often start out with the victim receiving and responding to an unsolicited text message from the scammer. Then the scammer asks the victim to move the conversation to another social media application such as Facebook or WhatsApp. Once the scammer gains the trust of the victim, they start to introduce them to a fraudulent cryptocurrency investment opportunity.

Here is a summary of the most recent actions issued by the Division of Securities Enforcement Bureau where the respondents violated Wis. Stat. § 551.403(1) by transacting business as an investment adviser in Wisconsin without being registered or exempt from registration:

Elite Portfolio Partners was issued a Summary Order to Cease and Desist for holding itself out as an online cryptocurrency trading business offering a cryptocurrency platinum investment package that would provide up to 800 percent returns. Elite Portfolio Partners was transacting business in Wisconsin as an unregistered investment adviser because they were advising the investor about the advisability of investing in securities and making recommendations to purchase specific securities for compensation.

Ahavani.com was issued a Summary Order to Cease and Desist for operating a cryptocurrency trading platform that offers 60- to 120-second crypto trading intervals which can yield up to 30% profit for each trade. Ahavani.com, for compensation, engaged in the business of advising investors as to the value of securities and the advisability of investing in and purchasing securities in Wisconsin.

Jeremy Todd Lunn was issued a Final Order to Cease and Desist and for Restitution of $4,860.50 with interest for soliciting investors to invest in a crypto hedge fund. Lunn's commissions were to be derived from the people Lunn solicited to invest. Mr. Lunn transacted business as an investment adviser without being registered or exempt from registration.

The Enforcement Bureau continues to receive complaints regarding various types of investment scams and reports the scams in the Investment Scam Tracker DFI launched in 2024. Investment advisers can share the scam tracker link with clients to conduct their own research in the event they receive solicitations to invest in these or similar scams.

To view and search all enforcement actions, please visit our Enforcement Administrative Orders webpage.

Enforcement Administrative Orders

The following enforcement administrative orders were issued by the Wisconsin Department of Financial Institutions' Division of Securities to enforce various provisions of the Wisconsin Uniform Securities Law as found in Chapter 551 of the Wisconsin Statutes. Signed copies of the orders associated with the following persons or entities are available in PDF format in the list below. In the Respondent(s) column, the abbreviation "aka" stands for also known as, "fka" stands for formerly known as, "pka" stands for previously known as and "dba" stands for doing business as.

Issuance Date	Respondent(s)	Case Number	Administrative Action	More Information
2025-03-12	Arthur Espinoza	S-248322 (LX)	Summary Order	MORE INFO
2025-03-10	Vanguard Marketing Corporation The Vanguard Group, Inc.	S-245138 (LX)	Consent Order	MORE INFO
2025-02-04	Jeremy Todd Lunn	S-246889 (EX)	Final Order	MORE INFO