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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-021**

AN ORDER to renumber ETF 10.35; and to repeal and recreate ETF 10.31, relating to participation in the variable trust fund.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

- 01-31-00 RECEIVED BY LEGISLATIVE COUNCIL.
- 02-18-00 REPORT SENT TO AGENCY.

RS:RJC:rv;jal

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**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 00-021

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 1. Statutory Authority

a. The analysis to the rule refers to 1999 Wisconsin Act 11 withstanding judicial review. In fact, implementation of Act 11 has been enjoined. It is presumed that the changes the rule proposes will not be submitted for promulgation until such time as Act 11 is upheld by the Wisconsin Supreme Court. However, the rule only provides for a general effective date of the first day of the month following publication. If it is the department's intent to submit the rule for publication only after Act 11 is upheld, the analysis should indicate that fact. Otherwise, if the rule is promulgated prior to Act 11 being upheld, the changes made by the rule would be without any statutory basis.

b. The second sentence of s. ETF 10.31 (1) seems to imply that participants who canceled participation in the variable fund after January 1, 1999 may not elect to participate in the fund. Section 40.04 (7), Stats., as affected by 1999 Wisconsin Act 11, does not seem to provide authority for such treatment. The rule should identify its authority for this treatment.

#### 2. Form, Style and Placement in Administrative Code

The renumbering of s. ETF 10.35 should follow the repeal and recreation of s. ETF 10.31.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The "Authority for Rule" portion cites s. 227.24, Stats. That provision governs emergency rule-making. This rule is not an emergency rule. This citation should be revised to one that provides the department with authority for this rule. Perhaps the citation should be to s. 227.11 (2) (a), Stats.

b. It might be helpful if notes were added to the rule in s. ETF 10.31 (3) identifying the statutory conditions specified in s. 40.04 (7) (a) 1. and 2.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The notice of the hearing attached to the rule indicates that the public record on the "emergency rule" will be held open. The rule submitted to the Clearinghouse is not an emergency rule. The notice should not refer to an emergency rule.

b. In several places, the analysis to the rule refers to "1999 WA 11." It should refer to "1999 Wisconsin Act 11."

c. The title to s. ETF 10.31 (1) does not seem to fit with the substance of the subsection, in that a "purpose" section typically identifies what the purpose of the provision is. [See, for example, s. ETF 11.01 (1).] A more accurate title may help make the rule more clear for readers not familiar with the rule.

d. The first sentence of s. ETF 10.31 (1) is awkward and, apparently, partially redundant. To clarify the sentence, the first portion could be rewritten substantially as follows: "Pursuant to s. 40.04 (7), Stats., an election to participate, or to cancel participation, in the variable trust fund shall . . ." In addition, in light of the last sentence of the subsection, it appears that the material following the first use of the word "department" in the first sentence can be deleted. If necessary, the last sentence could be modified to more clearly apply to future contributions. Also, the phrase "Participants that" in the second sentence should be changed to "Participants who."

e. In s. ETF 10.31 (3) (a), the term "elected" should be changed to "elects" and the term "cannot" should be changed to "may not." In par. (b) (intro.), the phrase "one of the following bases" should be inserted before the colon. In subd. 1., "; or" should be replaced by a period. Also, because of the "exception" in par. (a), par. (c) may be clarified by replacing the term "cannot" with "may" and the word "unless" with "only if." Finally, the word "become" in par. (c) should be changed to "becoming."

f. The rule renumbers s. ETF 10.35, which refers to an election to "terminate" participation. The portion of the rule into which that provision is renumbered, however, refers consistently to an election to "cancel" participation. Is there a difference between terminating and canceling participation? If not, consistent terminology should be used throughout the rule.

**State of Wisconsin**  
**DEPARTMENT OF EMPLOYE TRUST FUNDS**  
and  
**EMPLOYE TRUST FUNDS BOARD**  
**WISCONSIN RETIREMENT BOARD**  
**TEACHER RETIREMENT BOARD**

**PROPOSED RULE:** renumbering ETF 10.35 and repealing and recreating ETF 10.31, Wisconsin Administrative Code, relating to participation in the variable trust fund.

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**NOTICE OF HEARING AND PROPOSED RULE**

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**NOTICE OF HEARING**

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review the proposed rule, which renumbers ETF 10.35 and repeals and recreates ETF 10.31, Wisconsin Administrative Code, relating participation in the variable trust fund in accordance with the provisions of s. 227.16 (1), Wisconsin Statutes. The public hearing will be held on Tuesday, February 29, 2000 at 9:00 a.m. at the Department of Employee Trust Funds, Room 2B, 801 West Badger Road, Madison, Wisconsin.

The public record on the emergency rule will be held open until 4:30 p.m. on Wednesday, March 1, 2000 to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Shelly Schueller, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

**Analysis Prepared by the Wisconsin Department of Employee Trust Funds**

Wis. Stat. § 40.04 (7) (a) closed the Variable Trust Fund to new enrollments effective April 29, 1980. Participants who elected to join the Variable Trust prior to that date remain in the program unless they elect to cancel their participation. Once a participant has cancelled participation in the Variable Trust Fund, until 1999 WA 11 is enacted there is no opportunity to re-elect variable participation.

Section 14 of 1999 Wisconsin Act 11 [introduced as 1999 Assembly Bill 495] amended Wis. Stat. § 40.04 (7) (a) to permit all participating employees on or after 1/1/2001 to elect to have 50% of their future and additional contributions deposited in the Variable Trust Fund. 1999 WA 11 also permits former Variable Trust Fund participants who have cancelled their original variable participation to re-enroll. The new election would apply only to future employee, employer and additional contributions; participants would not be eligible to transfer contributions balances into the Variable Trust Fund.

} rewrite  
X

Wis Act

Conditional upon 1999 WA 11 withstanding review by the courts, § ETF 10.31 must be revised to clarify when and how a participant may elect to participate in the Variable Trust and to cancel variable participation, the effective date of such an election, and the irrevocability of an election once received by the Department. Under the proposed rule revision, an election to participate in the Variable Trust Fund would be effective on January 1 of the year after the year in which the Department receives such an election, and would first apply to contributions for the year in which the election is effective. Any participating employee who participates in the Variable Trust Fund (including participants who are already Variable Trust Fund participants based on an election prior to April 29, 1980) would have one opportunity to cancel their Variable Trust Fund participation, and once they elect to cancel their participation, there would be no opportunity to re-enroll unless the participant closes his or her WRS account by withdrawing his or her account balance and is no longer a participant, then returns to work for a WRS participating employer and again becomes a participating employee.

**Authority for Rule**

Wis. Stat. s. 227.24; s. 40.03 (2) (i)

*emergency rule*

*Need stats interpreted SECTION*

**Initial Fiscal Estimate**

The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule itself has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employee Trust Funds.

**Initial Regulatory Flexibility Analysis**

The Department anticipates that the provisions of this emergency rule will have no direct adverse effect on small businesses.

**Copies of Rule and Contact Persons**

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 266-1071. For questions about this rule making, please call Shelly Schueller, Policy Analyst for the Division of Retirement Services, at (608) 266-6611.

**TEXT OF PROPOSED RULE**

**SECTION 1 / ETF 10.35 IS RENUMBERED ETF 10.31(4)**

**SECTION 2 / ETF 10.31 IS REPEALED AND RECREATED TO READ:**



**ETF 10.31 Variable trust fund participation**

(1) **PURPOSE**. Pursuant to s. 40.04 (7), Stats., an election [to participate or cancel variable trust fund participation] shall be made on a form provided by the department and shall be effective, for future contributions, on the January 1 following receipt of the form by the department.

Participants <sup>who</sup> that elected to cancel participation in the variable trust fund effective on or before January 1, 1999 may elect to participate in the variable trust fund as provided in this section.

Except as provided in sub. (2), the election to participate in the variable trust fund shall become effective on the January 1 following receipt of the form by the department.

**Note:** Election forms can be obtained from the following address: Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.

(2) **VARIABLE TRUST FUND PARTICIPATION FOR NEW PARTICIPANTS.** A person becoming a new participant on or after January 1, 2001 may elect immediate participation in the variable trust fund providing that the department receives the form no later than 30 calendar days after the start of the employee's participating employment. Initial elections to participate in the variable trust fund that are received by the department after this opportunity expires shall be effective on the January 1 following receipt of the form by the department.

(3) **CANCELING PARTICIPATION IN THE VARIABLE TRUST FUND.**

(a) Except as provided in par. (c), a participant who elected to cancel participation in the variable trust fund on or after January 1, 2001 cannot re-elect to participate.

(b) A participant may elect to cancel participation in the variable trust fund and transfer the participant's variable annuity contribution accumulations to the fixed division on:

1. An unconditional basis effective the January 1 following receipt of the form by the department; or

2. A conditional basis as follows:

a. For annuitants, effective the first January 1 after receipt of the form by the department on

*Doesn't seem appropriate*

*an election to participate or cancel participation in the variable trust fund*

*why the rule*

*revised*

*10.35 cases to determine*

X

X

*one of the following bases*

which the condition under s. 40.04 (7) (a) 1., Stats., is satisfied.

b. For all other participants, effective the first January 1 after receipt of the form by the department on which the condition under s. 40.04 (7) (a) 2., Stats., is satisfied.

(c) A participant who elects to cancel participation in the variable trust fund <sup>may</sup> cannot re-elect to participate in the variable trust fund <sup>only if</sup> unless the participant ceases to be a participant by closing the participant's account through taking a benefit under s. 40.25, Stats., and subsequently become <sup>in</sup> a new participating employee.

(5) END OF CALENDAR YEAR DETERMINATIONS. For purposes of this section, whenever the last day of the year falls on a Saturday, Sunday or holiday when state offices are closed, an election to participate or cancel variable participation or to transfer variable annuity contribution accumulations to the fixed division which is received on the next succeeding working day shall be deemed to have been received within the preceding calendar year.

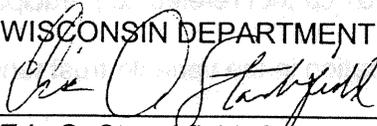
(END OF RULE TEXT)

#### **Proposed Effective Date**

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Wis. Stats.

Signed at Madison, Wisconsin this 31 day of January, 2000.

WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS

  
Eric O. Stanchfield, Secretary

**STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYEE TRUST FUNDS**

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**FINAL DRAFT REPORT ON CLEARINGHOUSE RULE 00-021**

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<b>AN ADMINISTRATIVE RULE</b>	<b>repealing and recreating ETF 10.31 and renumbering ETF 10.35, Wisconsin Administrative Code, relating to participation in the variable trust fund.</b>	
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<b>Agency Person to Be Contacted for Substantive Questions</b>		<b>2</b>
<b>Statement Explaining Need for Rule</b>		<b>2</b>
<b>Analysis Prepared by the Department of Employee Trust Funds</b>		<b>2</b>
<b>Authority for rule</b>		<b>2</b>
<b>Legislation interpreted</b>		<b>2</b>
<b>Fiscal Estimate</b>		<b>3</b>
<b>Final Regulatory Flexibility Analysis</b>		<b>3</b>
<b>Rule Text</b>		<b>4</b>
<b>Effective Date</b>		<b>6</b>
<b>Explanation of Modifications as a Result of Testimony at Public Hearing</b>		<b>6</b>
<b>List of persons appearing or registering for or against the rule</b>		<b>6</b>
<b>Legislative Council Staff Clearinghouse Report on CR #00-021</b>		<b>7</b>
<b>Response to Legislative Council Staff Recommendations</b>		<b>11</b>

**Agency Person to Be Contacted for Substantive Questions**

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For information about this rule, please contact: Shelly Schueller, Benefit Plan Policy Analyst, Division of Retirement Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707-7931. Telephone: (608) 266-6611.

**Statement Explaining Need for Rule**

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The rule is intended to clarify the Department's administrative policy and procedures regarding election and termination of participation in the Variable Trust Fund. If 1999 Wisconsin Act 11 is upheld by the courts and the ETF Board takes no action to revise the existing administrative rule, the result will be uncertainty and confusion regarding when a participant may elect or terminate participation in the Variable Trust Fund and the effective date of such an election.

**Analysis Prepared by Department of Employee Trust Funds**

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**Authority for rule:** Wis. Stat. § 227.11 (2) (a)

**Legislation interpreted:** 1999 Wis. Act 11, § 14, a statutory provision concerning participation in the Variable Trust Fund.

Wis. Stat. § 40.04 (7) (a) closed the Variable Trust Fund to new enrollments effective April 29, 1980. Participants who elected to join the Variable Trust prior to that date remain in the program unless they elect to terminate their participation. Once a participant has terminated participation in the Variable Trust Fund, until 1999 Wisconsin Act 11 is implemented there is no opportunity to re-elect variable participation.

1999 Wisconsin Act 11 amends Wis. Stat. § 40.04 (7) (a) to permit all participating employees on or after January 1, 2001 to elect to have 50% of their future and additional contributions deposited in the Variable Trust Fund. 1999 Wisconsin Act 11 also provides former Variable Trust Fund participants who have terminated their original variable participation with one option to re-enroll. The new election would apply only to future employee, employer and additional contributions; participants would not be eligible to transfer contributions balances into the Variable Trust Fund.

Implementation of 1999 Wisconsin Act 11 was enjoined by the courts on December 29, 1999. Until the legal review of 1999 Wisconsin Act 11 is complete, the existing language in § ETF 10.31 regulates participation in the Variable Trust Fund. However, if 1999 Wisconsin Act 11 withstands review by the courts and must be implemented, then § ETF 10.31 must be revised to reflect the re-opening of the Variable Trust Fund to active WRS participants. The rule must clarify when and how a participant may elect or terminate participation in the Variable Trust

Fund, the effective date of such an election, and the irrevocability of an election once received by the Department. The proposed revisions to § ETF 10.31 will be promulgated and submitted for publication and will be repealed if 1999 Wisconsin Act 11 is not upheld by the courts.

Under the proposed revisions to § ETF 10.31, an election to participate in the Variable Trust Fund would be effective on January 1 of the year after the year in which the Department receives such an election, and would first apply to contributions for the year in which the election is effective. Pursuant to s. 40.04 (7)(b), Stats., any participating employee who participates in the Variable Trust Fund (including participants who are already Variable Trust Fund participants based on an election prior to April 29, 1980) have one opportunity to cancel their Variable Trust Fund participation, and once they elect to terminate their participation, no opportunity to re-enroll exists unless the participant closes his/her WRS account by withdrawing his/her account balance and is no longer a participant, then returns to work for a WRS participating employer and again becomes a participating employee.

### **Fiscal Estimate**

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The rule has no fiscal impact on county, city, village, town, school district, technical college district and sewerage district fiscal liabilities and revenues. This rule has no anticipated state fiscal effect during the current biennium and no future effect on state funds, which do not include the Public Employee Trust Funds.

The Department of Employee Trust Funds anticipates some cost to the Public Employee Trust Funds in administering this rule. These costs include one-time costs for revising participant brochures and forms and reprogramming computer systems to handle the new variable program, and on-going costs to process election forms and provide participants with information.

### **Final Regulatory Flexibility Analysis**

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This rule does not affect small businesses.

**Text of Proposed Rule**

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(BEGINNING OF RULE TEXT)

SECTION 1 ETF 10.31 IS REPEALED AND RECREATED TO READ:

**ETF 10.31 Variable trust fund participation**

**(1) EFFECTIVE DATES OF PARTICIPATION.** Pursuant to s. 40.04 (7), Stats., an election to participate, or terminate participation, in the variable trust fund shall be made on a form provided by the department. Except as provided in sub. (2), the election to participate in the variable trust fund shall become effective for future contributions on the January 1 following receipt of the form by the department. Participants who elected to terminate participation in the variable trust fund effective on or before January 1, 1999 may elect to participate in the variable trust fund as provided in this section. Pursuant to s. 40.04 (7)(b), Stats., participants who elected to terminate participation in the variable trust fund with an effective date of January 1, 2001 may not re-elect to participate in the variable trust fund.

**Note:** Election forms can be obtained from the following address: Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707-7931.

**(2) VARIABLE TRUST FUND PARTICIPATION FOR NEW PARTICIPANTS.** A person becoming a new participant on or after January 1, 2001 may elect immediate participation in the variable trust fund providing that the department receives the form no later than 30 calendar days after the start of the employe's participating employment. Initial elections to participate in the variable trust fund that are received by the department after this opportunity expires shall be effective on the January 1 following receipt of the form by the department.

**(3) TERMINATING PARTICIPATION IN THE VARIABLE TRUST FUND.**

(a) Except as provided in par. (c), a participant who elects to terminate participation in the variable trust fund on or after January 1, 2001 may not re-elect to participate.

(b) A participant may elect to terminate participation in the variable trust fund and transfer the participant's variable annuity contribution accumulations to the fixed division on one of the following bases:

1. An unconditional basis effective the January 1 following receipt of the form by the department.

2. A conditional basis as follows:

a. For annuitants, effective the first January 1 after receipt of the form by the department on which the condition under s. 40.04 (7) (a) 1., Stats., is satisfied.

b. For all other participants, effective the first January 1 after receipt of the form by the department on which the condition under s. 40.04 (7) (a) 2., Stats., is satisfied.

(c) A participant who elects to terminate participation in the variable trust fund on or after January 1, 2001 may re-elect to participate in the variable trust fund only if the participant ceases to be a participant by closing the participant's account through taking a benefit under s. 40.25, Stats., and subsequently becoming a new participating employe.

**(5) END OF CALENDAR YEAR DETERMINATIONS.** For purposes of this section, whenever the last day of the year falls on a Saturday, Sunday or holiday when state offices are closed, an election to participate or terminate variable participation or to transfer variable annuity contribution accumulations to the fixed division which is received on the next succeeding working day shall be deemed to have been received within the preceding calendar year.

SECTION 2 ETF 10.35 IS RENUMBERED ETF 10.31(4)

(END OF RULE TEXT)

**Effective Date**

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This rule shall take effect on the first day of the month commencing after the date of publication as provided by Wis. Stat. § 227.22 (2) (a).

**Explanation of Modifications as Result of Testimony at Public Hearing**

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No modifications were made to the proposed rule as a result of testimony received at the public hearing.

**List of persons appearing or registering for or against the rule**

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A public hearing on this proposed rule was held on February 29, 2000, at 9:00 a.m. in Conference Room 2B at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. No persons attended the hearing. The record of the hearing was held open until 4:30 p.m. on Wednesday, March 1, 2000, to permit persons who were unable to attend the public hearing in person to submit written comments on the proposed rule. No written comments on the rule were received.

## **Response to Legislative Council Staff Recommendations**

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The Legislative Council Staff recommendations have been implemented with the exception of the second *Adequacy of References to Related Statutes, Rules and Forms* recommendation. This recommendation was to add a note to s. ETF 10.31(3) identifying the statutory conditions specified in s. 40.04(7) (a) 1. and 2. In the repeal and recreation of s. ETF 10.31, s. ETF 10.31(3) was not modified from the existing rule except to renumber it from s. ETF 10.31(2) to s. ETF 10.31(3). The complex conditional bases for terminating participation in the variable trust fund remain unchanged from the existing rule.

The Legislative Council Staff recommendations have been implemented as follows:

### *Statutory Authority*

- a. The analysis of the rule now includes more detail on when the rule will be submitted for publication in relationship to implementation of 1999 Wisconsin Act 11.
- b. The rule identifies s. 40.04 (7)(b), Stats., as the authority prohibiting participants who elected to terminate participation in the variable trust fund with an effective date of January 1, 2000 from re-electing participation in the variable trust fund.

### *Form Style and Placement*

- a. The renumbering of s. ETF 10.35 has been moved and now follows the repeal and recreation of s. ETF 10.31

### *Adequacy of References to Related Statutes, Rules and Forms*

- a. The "Authority for Rule" citation has been corrected to s. 227.11(2)(a).

### *Clarity, Grammar, Punctuation and Use of Plain Language*

- a. The hearing notice reference has been changed to delete the word "emergency."
- b. 1999 Wisconsin Act 11 is spelled out whenever it is used.
- c. The title to s. ETF 10.31(1) has been changed from "Purpose" to "Effective Dates of Participation."
- d. In s. 10.31(1), the sentences have been revised and reordered to clarify the section. Where used, the phrase "participants that" has been changed to "participants who."
- e. In s. ETF 10.31(3)(a), the term "elected" has been changed to "elects," and the term "cannot" has been changed to "may not." A colon has been inserted as recommended in par. (b) (intro.) and in subd. 1, "; or" was replaced by a period. Par. (c) was clarified by replacing the term "cannot" with "may" and the word "unless" with "only if." Finally, the word "become" in par. (c) was changed to "becoming."
- f. By changing the word "cancel" to "terminate" whenever it is used within the rule, the terminology is made consistent throughout the rule.

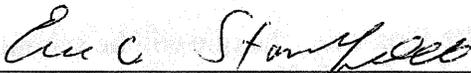
**Board Authorizations for Promulgation**

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The Employe Trust Funds Board, at its meeting on March 10, 2000, and both the Teacher Retirement and Wisconsin Retirement Boards, at their respective meetings on March 9, 2000, duly approved this final draft report on Clearinghouse Rule #00-021 for submission to the Legislature and for promulgation.

Respectfully Submitted,

DEPARTMENT OF EMPLOYE TRUST FUNDS



Eric O. Stanchfield, Secretary  
Wisconsin Department of Employee Trust Funds



**Judith B. Robson**  
Wisconsin State Senator

March 27, 2000

Senator James Baumgart, Room 306 South  
Representative Steve Wieckert, Room 9 North

Re: Clearinghouse Rule 00-021 (ETF 10, participation in the variable trust fund)

Dear Senator Baumgart and Representative Wieckert:

I am writing in regards to Clearinghouse Rule 00-021, relating to participation in the variable trust fund. This rule was recently referred to your committees. Please give it careful scrutiny, especially the comments of the Legislative Clearinghouse regarding the statutory authority of the rule.

This rule is based on 1999 Act 11. The courts have enjoined this act pending review by the state Supreme Court. Until the act is implemented, there is no authority for the rule.

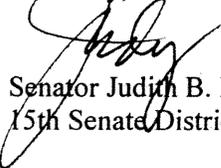
The department is proposing to promulgate the rule and then repeal it if the Supreme Court does not uphold the statute. This is improper. Promulgation of the rule should not occur if the statute on which it is based has not yet gone into effect.

A better procedure would be to allow the rule to go through the legislative process with a commitment from the agency that the agency will not file the rule with the Revisor of Statutes and the Secretary of State until Act 11 is upheld by the courts. Then, if the law is overturned, the rule could be withdrawn by the agency.

I am sure that you agree with me that the legislature needs to be diligent in its review of administrative rules. Rules are an extension of the statutes, which only the legislature has authority to create. Allowing a rule that has no basis in the statutes to go into effect is an assault on the integrity of the legislature.

I urge you to negotiate with the agency regarding CR 00-021 in order to ensure that the rule is not promulgated until the statute on which it is based actually becomes law.

Sincerely,



Senator Judith B. Robson  
15th Senate District

JBR:da