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FORM 2

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CLEARINGHOUSE REPORT TO AGENCY

[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 00-070

AN ORDER to create IB 2.04, relating to investment board title holding companies.

Submitted by **STATE OF WISCONSIN INVESTMENT BOARD**

04-06-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-28-00 REPORT SENT TO AGENCY.

RNS:RW:rv;jal

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)]

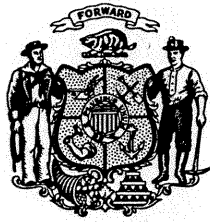
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-070

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.]

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

The term "independent managers" is used in the rule without further description or definition. The clarity of the provision would be improved if the phrase were modified to refer to "managers independent of the board" or if a separate definition were utilized.

Proposed Order for Creation of Administrative Rule

The State of Wisconsin Investment Board proposes an order to create IB 2.04, relating to Investment Board title holding companies.

Analysis

The proposed rule is promulgated under authority of s. 25.156 (1) and interprets ss. 25.17 (3) (a) and (7), 25.18 (1) (e), (f) and (m) and (2), and 620.22 of the Statutes. The rule would allow the Investment Board to purchase and hold title to investments through limited liability companies, a common and prudent practice among institutional investors. The rule would help to protect funds managed by the Board from liabilities arising out of the ownership of real property or other investments and provide greater flexibility in structuring investment transactions.

Limited liability companies have become the title holding vehicle of choice for institutional ownership of assets with significant liability risks. They provide a degree of protection from uninsured liabilities that is similar to corporations, yet allow pass-through tax status, which is important to the Investment Board as a tax-exempt entity. In addition, limited liability companies are subject to fewer formalities and reporting requirements than corporations and may be operated by either the owners or a separate manager. To avoid concerns about operation of a profit-making entity by a public agency, the rule requires use of company management independent from the Investment Board.

Impetus for the rule arose out of recent investment strategy adjustments made by the Investment Board that will increase the Board's direct real property ownership. Those adjustments have been reported to the Legislature under s. 25.17 (14r) of the Statutes. The proposed rule reflects statutory changes that were made several years ago in s. 25.18 (2), Stats., to allow the Investment Board to appoint employees, members, agents and other representatives to serve as managers, officers and directors of companies, including limited liability companies, in which SWIB owns an interest. It also reflects the of creation of ch. 183, Stats., authorizing Wisconsin limited liability companies, particularly recent amendment of s. 183.0201 to allow creation of single member limited liability companies.

1995 Act 274?
93 act 112?

Fiscal Estimate

It is anticipated that the proposed rule would benefit state and local funds managed by the Investment Board by protecting them from potentially catastrophic uninsured liabilities associated with ownership of real property and other investments. It is also anticipated that the rule will

enhance returns on Investment Board assets by providing opportunities for greater flexibility in structuring investment transactions. For example, the transfer of limited liability company interests may allow the Board to avoid payment of fees or taxes that would otherwise be imposed on the sale or purchase of underlying property owned by the title holding company.

Initial Regulatory Flexibility Analysis

The proposed rule is not expected to have an impact on small businesses.

Text of Proposed Rule

SECTION I. IB 2.04 is created to read:

IB 2.04 Title Holding Companies. The investment board may create and own limited liability companies through which it holds title to investments made with funds under its control as investments made in the name of the board. Primary operational responsibilities at such companies shall be vested in one or more independent managers, though investment board employees, members, agents or other representatives may serve as officers or directors upon advance approval by the investment board.

(End)