

**PROPOSED ORDER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN
ADOPTING RULES**

To repeal and recreate DFI-Sec 5.01(1) and (2), DFI-Sec 5.05(8), DFI-Sec 5.07 and DFI-Sec 5.08, and to create DFI-Sec 1.02(18) to (21), DFI-Sec 5.01(8), DFI-Sec 5.03(1)(p) and (q), DFI-Sec 5.10, DFI-Sec 5.11, and DFI-Sec 5.12 under the Wisconsin Uniform Securities Law relating to adopting for use in Wisconsin the Investment Adviser Registration Depository

Analysis Prepared by the Department of Financial Institutions, Division of Securities

Statutory Authority: Sections 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), and 551.63(2), Wis. Stats.

Statutes Interpreted: Section 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), Wis. Stats.

These proposed permanent rules are being implemented to be in effect upon expiration of emergency rules issued by the Division on December 26, 2000 to implement in Wisconsin, the Investment Adviser Registration Depository ("IARD"). The emergency rules became effective on January 1, 2001 upon prior publication in the official state newspaper and compliance with other emergency rulemaking requirements.

The U.S. Securities and Exchange Commission ("SEC"), in conjunction with the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed the IARD as an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The IARD system permits investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD was set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, needed to take the necessary rule-making or other regulatory action to enable investment advisers to make their licensing filings electronically after that date. The proposed permanent rules, as did the emergency rules, make the necessary changes to the Division's investment adviser license filing provisions that are needed to adopt and implement the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an equivalent electronic filing system (the Central Registration Depository or "CRD") for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein are patterned after the NASAA Model Rules.

The proposed permanent rules, as did the emergency rules, provide for: (1) a revised Licensing Procedure section in DFI-Sec 5.01(1) and (2); (2) temporary and permanent hardship exemption provisions in DFI-Sec 5.01(8); (3) a revised brochure rule in DFI-Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in DFI-Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in DFI-Sec 5.11; and (6) a specific section in DFI-Sec 5.12 dealing with transition filings.

The one substantive change in the proposed permanent rules from their emergency rule form is the deletion of emergency rule provision DFI-Sec 5.11(2) which had required a federal covered adviser to submit a paper copy of its Part 2 of Form ADV to the Division at the time of the federal covered adviser's initial filing with the IARD.

Separate from the emergency rules and the permanent rules, the Division issued General Orders on February 1 and 2, 2001 to further implement timing for various categories of filers, and which provided partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

Text of Proposed Permanent Rules

Section 1. DFI-Sec 1.02(18) ^{to} through (21) are created to read:

(18) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments, prepared on Part 2 of Form ADV as revised in 2001.

DFI-Sec 1.02

delegation?

(19) "Sponsor" for purposes of a wrap fee program means a broker-dealer or investment adviser that is compensated under a wrap fee program for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(20) "Wrap fee program" means a program under which a specified fee or fees, not based directly upon transactions in a client's account, ^{RCC} is charged for investment advisory and brokerage services, which may include portfolio management or advice concerning the selection of other investment advisers and the execution of client transactions. X

(21) "Entering into" for purposes of an investment advisory contract, does not include an extension or renewal of an existing contract that does not contain any material changes.

Section 2. DFI-Sec 5.01(1) and (2) are repealed and recreated to read:

DFI-Sec 5.01 Licensing procedure. (1) (a) 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. X

(b) Unless otherwise provided under sub. (11) 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.

(c) Except as provided in par. (a), applications for initial or renewal licenses of investment adviser representatives shall be filed on forms prescribed in section DFI-Sec 9.01(1).

(2) (a) A licensing ^{of} application ^{of} for purposes of s. 551.32 (1) (a), Stats., consists of all information required by the form prescribed under sub. (1), 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 shall be filed directly with the division.

(b) An application for initial license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., on the date the application is transferred from "NO STATUS" to "PENDING" on the records of the investment adviser registration depository. An application for renewal of a license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

(c) An ^{of} application ^{of} 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

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 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 registration depository has been allocated to the division.

(d)1. Each investment adviser shall file an amendment to its application with the investment adviser registration depository within 30 days of any material change to information included in its application in accordance with the instructions to Form ADV.

2. Each investment adviser shall file a complete, updated Form ADV with the investment adviser registration depository within 90 days of the end of its fiscal year.

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 registration depository within 30 days of the date of the event that requires filing of the amendment.

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

Section 3. DFI-Sec 5.01(8) is created to read:

DFI-Sec 5.01(8) (a) Investment advisers licensed or required to be licensed who experience unanticipated technical difficulties that prevent submission of an electronic filing to the investment adviser registration depository may request a temporary hardship exemption from the requirements to file electronically. An investment adviser whose principal place of business is located in this state may request a temporary hardship exemption by doing all of the following:

1. Filing Form ADV-H in paper format with the division not later than one business day after the due date for the type of filing that is the subject of the Form ADV-H.

2. Submitting the filing that is the subject of the Form ADV-H in electronic format to the investment adviser registration depository not later than seven business days after the due date for the type of filing that is the subject of the Form ADV-H.

(b) The temporary hardship exemption will be deemed effective upon receipt by the division of the completed Form ADV-H within the filing deadline provided in par. (a). Multiple temporary hardship exemption requests by an investment adviser within the same calendar year may be disallowed by the division.

(c) A continuing hardship exemption will be granted only if an investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. An investment adviser whose principal place of business is located in this state may request a continuing hardship exemption by filing Form ADV-H in paper format with the division at least twenty business days before the due date for the type of filing that is the subject of the Form ADV-H. The division shall grant or deny the request within ten business days after the filing of Form ADV-H.

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(d) The continuing hardship exemption is effective upon approval by the division for a time period not longer than one year after the date on which the Form ADV-H is filed. If the division approves the request, and for the period of time for which the exemption is granted, the investment adviser shall, not later than five business days after the exemption approval date, submit filings in paper format, along with the appropriate processing fees, to the division as prescribed by separate rule or order.

(e) An investment adviser whose principal place of business is located in another state may claim a hardship exemption from the electronic filing requirement in this state if that investment adviser has received a hardship exemption in the state where its principal office is located.

Section 4. DFI-Sec 5.03(1)(p) and (q) are created to read:

(p)1. A copy of each brochure and supplement and each amendment or revision to the brochure or supplement, given or sent to any client or prospective client of the investment adviser as required by s. DFI-Sec 5.05(8);

2. A summary of material changes that are required by Part 2 of Form ADV, but are not contained in the brochure or supplement; and

3. A record of the dates that each brochure and supplement, each amendment or revision thereto, and each summary of material changes, was given or offered to any client or to any prospective client who subsequently becomes a client.

(q) Copies bearing signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to the disclosure reporting pages of Form U-4, *These docs* must be retained by the investment adviser who prepared the filing on behalf of the investment adviser representative.

Section 5. DFI-Sec 5.05(8) is repealed and recreated to read:

5.05(8)(a) Unless otherwise provided in this rule, each investment adviser shall offer and deliver to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and any required supplement shall contain all information required by Part 2 of Form ADV and such other information as the division may require.

(b)1. Each investment adviser shall deliver the current brochure required by this section, and the current brochure supplement for each investment adviser representative who will provide advisory services, to a client or prospective client.

2. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services for a client if the investment adviser representative does any of the following:

- a. Regularly communicates investment advice to that client.
- b. Formulates investment advice for assets of that client.
- c. Makes discretionary investment decisions for assets of that client.
- d. Solicits, offers or negotiates for the sale of or sells investment advisory services.

3. The documents required in subd. (b)1. above shall be delivered at the following times:

a. Not less than 48 hours prior to entering into any investment advisory contract with a client or prospective client.

b. At the time of entering into any contract, if the contract specifically provides that the client has a right to terminate the contract without penalty within five business days after entering into the contract.

(c) Each investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by par. (a). If a clients accepts the written offer, the investment adviser shall send to that client the current brochure and supplements not later than seven days after the investment adviser is notified of the acceptance.

(d) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection, the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a separate client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership is also considered to be a limited partnership *de*

(e)1. Each investment adviser that is a sponsor of a wrap fee program shall deliver to a client or prospective client in lieu of the brochure required in par. (b), a wrap fee brochure containing all information required by Form ADV. All information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors. X

2. An investment adviser is not required to offer or deliver the wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap

fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.

3. A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to deliver under par. (b)1.

(f) Each investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients not more than 30 days from the date that the information contained in the brochure or brochure supplement becomes materially inaccurate. The investment adviser shall comply with the instructions to Part 2 of Form ADV regarding updating and delivery.

(g) Each investment adviser that renders substantially different types of investment advisory services to different clients may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable to only a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Nothing in this ~~rule~~ ^{section (or brochure)} shall relieve any investment adviser from any obligation pursuant to any provision of this chapter ~~or any rules thereunder~~ or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this ~~rule~~ ^{the}.

(i) Each investment adviser shall deliver to each of its clients its current brochure and all required brochure supplements not later than January 1, 2002.

Section 6. DFI-Sec 5.07 and 5.08 are repealed and recreated to read:

DFI-Sec 5.07 License and notice filing period. (1) Prior to January 1, 2002, the license of an investment adviser expires on April 30. Effective January 1, 2002, 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.

(2) 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 registration depository according to the depository's schedule.

DFI-Sec 5.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed investment adviser under s. 551.32(9)(a), Stats., shall be filed with the investment adviser registration depository on Form ADV-W.

(2) An application for withdrawal from the status of a licensed investment adviser representative shall be filed with the investment adviser 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.

NOTE: where forms available

Section 7. DFI-Sec 5.10, 5.11 and 5.12 are created 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 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 shall be filed directly with the division.

DFI-Sec 5.11 Federal covered adviser notice filing procedure. (1) The notice filing for a federal covered adviser pursuant to s. 551.32(1m), Stats., shall be filed with the investment adviser registration depository on Form ADV. A notice filing for a federal covered adviser shall be deemed filed when the fee on deposit with the investment adviser registration depository has been allocated to the division. 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 shall be filed directly with the division.

(2) A federal covered adviser shall file all amendments to its Form ADV with the investment adviser registration depository according to the instructions to Form ADV.

(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, 2000. Effective January 1, 2002, 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.

DFI-Sec 5.12 Transition filing. (1) Each investment adviser licensed or required to be licensed in this state shall make its initial transition filing electronically with the investment adviser registration depository not later than June 1, 2001, unless a hardship exemption has been granted by the division.

(2) Each investment adviser licensed or required to be licensed in this state shall resubmit its Part 1 of Form ADV electronically with the investment adviser registration depository not later than August 31, 2001, unless a hardship exemption has been granted by the division.

(3) Amendments to an investment adviser's Form ADV that are made after its transition filing is completed pursuant to subs. (1) and (2) must be filed electronically with the investment adviser registration depository, unless a hardship exemption has been granted by the division. X

(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 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.

The rules contained in this Order shall take effect as provided in sec. 227.22(2), Wis. Stats., on the first day of the month commencing after publication of the rules in the Wisconsin Administrative Register.

Dated at Madison, Wisconsin, this _____ day of _____, 2001.

[SEAL]

Patricia D. Struck
Administrator



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, Governor

John F. Kundert, Secretary

MEMORANDUM

To: All Members of the Wisconsin Senate and Assembly

From: Patricia D. Struck *PS*
Securities Division Administrator

Date: December 29, 2000

Subject: Notification of Emergency Rule Promulgation and
Fiscal Estimate Relating to Emergency Rules

Pursuant to sec. 227.24(3), Wis. Stats., enclosed is a copy of an Order Adopting Emergency Rules issued December 26, 2000, by the Department of Financial Institutions, Division of Securities, that was published today, December 29, 2000 in the official state newspaper, *The Wisconsin State Journal*, for subsequent effectiveness on January 1, 2001.

The emergency rules adopt for use in Wisconsin the Investment Adviser Registration Depository ("IARD"), an electronic filing system for licensure of securities investment advisers that just recently has been developed and becomes available for use on a uniform basis in all 50 states on January 1, 2001. The IARD replaces a paper filing system that heretofore has been used in all states.

Certified copies of the Order are being filed on this date with the Secretary of State and the Revisor of Statutes, and copies are being provided to the Chief Clerk of each house of the legislature. A copy of a Fiscal Estimate for the emergency rules required under sec. 227.24(1)(e)2, Wis. Stats., is also enclosed.

Attachments (2)



Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768
Voice: (608) 266-1064

Fax: (608) 256-1259

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703
TTY: (608) 266-8818
Internet: www.wdfi.org

**ORDER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN
ADOPTING EMERGENCY RULES**

To repeal and recreate DFI-Sec 5.01(1) and (2), 5.05(8), 5.07 and 5.08, and to create DFI-Sec 5.01(11), 5.03(1)(p) and (q), 5.10, 5.11, and 5.12 of the Rules of the Division of Securities relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

Statutory Authority: Sections 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), and 551.63(2), Wis. Stats.

Statutes Interpreted: Section 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), Wis. Stats.

FINDING OF EMERGENCY AND ANALYSIS

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The U.S. Securities and Exchange Commission ("SEC"), in conjunction with the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The system, the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD has been set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, need to take the necessary rule-making or other regulatory action by January 1, 2001 to enable investment advisers to make their licensing filings electronically. The attached Emergency Rules make the necessary changes to the Division's investment adviser license filing provisions that are immediately needed to adopt the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an equivalent electronic filing system (the Central Registration

Depository or "CRD") for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein follow the NASAA Model Rules.

The Emergency Rules provide for: (1) a revised Licensing Procedure section in DFI-Sec 5.01(1) and (2); (2) temporary and permanent hardship exemption provisions in DFI-Sec 5.01(11); (3) a revised brochure rule in DFI-Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in DFI-Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in DFI-Sec 5.11; and (6) a specific section in DFI-Sec 5.12 dealing with transition filings. Separate from these Emergency Rules, the Division will be issuing General Orders to further implement timing for various categories of filers, and which will provide partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

Pursuant to sections 551.32(1)(a), (b) and (c), (1m), (1s) and (8), and 551.63(2), Wis. Stats., the Division of Securities of the Department of Financial Institutions adopts emergency rules as follows:

Section 1. DFI-Sec 1.02(18) through (21) are created to read:

(18) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments, prepared on Part 2 of Form ADV as revised in 2001.

(19) "Sponsor" for purposes of a wrap fee program means a broker-dealer or investment adviser that is compensated under a wrap fee program for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, other

investment advisers in the program.

(20) "Wrap fee program" means a program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory and brokerage services, which may include portfolio management or advice concerning the selection of other investment advisers and the execution of client transactions.

(21) "Entering into" for purposes of an investment advisory contract, does not include an extension or renewal of an existing contract that does not contain any material changes.

Section 2. DFI-Sec 5.01(1) and (2) are repealed and recreated to read:

DFI-Sec 5.01 Licensing procedure. (1) (a) 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.

(b) Unless otherwise provided under sub. (11) 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.

(c) Except as provided in par. (a), applications for initial or renewal licenses of investment adviser representatives shall be filed on forms prescribed in section DFI-Sec 9.01(1).

(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), 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 shall be filed directly with the division.

(b) An application for initial license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., on the date the application is transferred from "NO STATUS" to "PENDING" on the records of the investment adviser registration depository. An application for renewal of a license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

(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 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 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 registration depository has been allocated to the division.

(d)1. Each investment adviser shall file an amendment to its application with the investment adviser registration depository within 30 days of any material change to information included in its application in accordance with the instructions to Form ADV.

2. Each investment adviser shall file a complete, updated Form ADV with the investment adviser registration depository within 90 days of the end of its fiscal year.

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 registration depository within 30 days of the date of the event that requires filing of the amendment.

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

Section 3. DFI-Sec 5.01(11) is created to read:

DFI-Sec 5.01(11) (a) Investment advisers licensed or required to be licensed who experience unanticipated technical difficulties that prevent submission of an electronic filing to the investment adviser registration depository may request a temporary hardship exemption from the requirements to file electronically. An investment adviser whose principal place of business is located in this state may request a temporary hardship exemption by doing all of the following:

1. Filing Form ADV-H in paper format with the division not later than one business day after the due date for the type of filing that is the subject of the Form ADV-H.

2. Submitting the filing that is the subject of the Form ADV-H in electronic format to the investment adviser registration depository not later than seven business days after the due date for the type of filing that is the subject of the Form ADV-H.

(b) The temporary hardship exemption will be deemed effective upon receipt by the division of the completed Form ADV-H within the filing deadline provided in par. (a). Multiple temporary hardship exemption requests by an investment adviser within the same calendar year may be disallowed by the division.

(c) A continuing hardship exemption will be granted only if an investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. An investment adviser whose principal place of business is located in this state may request a continuing hardship exemption by filing Form ADV-H in paper format with the division at least twenty business days before the due date for the type of filing that is the subject of the Form

ADV-H. The division shall grant or deny the request within ten business days after the filing of Form ADV-H.

(d) The continuing hardship exemption is effective upon approval by the division for a time period not longer than one year after the date on which the Form ADV-H is filed. If the division approves the request, and for the period of time for which the exemption is granted, the investment adviser shall, not later than five business days after the exemption approval date, submit filings in paper format, along with the appropriate processing fees, to the division as prescribed by separate rule or order.

(e) An investment adviser whose principal place of business is located in another state may claim a hardship exemption from the electronic filing requirement in this state if that investment adviser has received a hardship exemption in the state where its principal office is located.

Section 4. DFI-Sec 5.03(1)(p) and (q) are created to read:

(p)1. A copy of each brochure and supplement and each amendment or revision to the brochure or supplement, given or sent to any client or prospective client of the investment adviser as required by s. DFI-Sec 5.05(8);

2. A summary of material changes that are required by Part 2 of Form ADV, but are not contained in the brochure or supplement; and

3. A record of the dates that each brochure and supplement, each amendment or revision thereto, and each summary of material changes, was given or offered to any client or to any prospective client who subsequently becomes a client.

(q) Copies bearing signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to the disclosure reporting pages of Form U-4, must be retained by the investment adviser who prepared the filing on behalf of the investment adviser representative.

Section 5. DFI-Sec 5.05(8) is repealed and recreated to read:

5.05(8)(a) Unless otherwise provided in this rule, each investment adviser shall offer and deliver to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and any required supplement shall contain all information required by Part 2 of Form ADV and such other information as the division may require.

(b)1. Each investment adviser shall deliver the current brochure required by this section, and the current brochure supplement for each investment adviser representative who will provide advisory services, to a client or prospective client.

2. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services for a client if the investment adviser representative does any of the following:

- a. Regularly communicates investment advice to that client.
 - b. Formulates investment advice for assets of that client.
 - c. Makes discretionary investment decisions for assets of that client.
 - d. Solicits, offers or negotiates for the sale of or sells investment advisory services.
3. The documents required in subd. (b)1. above shall be delivered at the following times:
- a. Not less than 48 hours prior to entering into any investment advisory contract with a client or prospective client.
 - b. At the time of entering into any contract, if the contract specifically provides that the client has a right to terminate the contract without penalty within five business days after entering into the contract.
 - (c) Each investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by par. (a). If a clients accepts the written offer, the investment adviser shall send to that client the current brochure and supplements not later than seven days after the investment adviser is notified of the acceptance.
 - (d) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection, the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a separate client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership is also considered to be a "limited partnership."
 - (e)1. Each investment adviser that is a sponsor of a wrap fee program shall deliver to a client or prospective client in lieu of the brochure required in par. (b), a wrap fee brochure containing all information required by Form ADV. All information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.
2. An investment adviser is not required to offer or deliver the wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.
3. A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to deliver under par. (b)1.
- (f) Each investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients not more than 30 days from the date that the information contained in

the brochure or brochure supplement becomes materially inaccurate. The investment adviser shall comply with the instructions to Part 2 of Form ADV regarding updating and delivery.

(g) Each investment adviser that renders substantially different types of investment advisory services to different clients may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable to only a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of this chapter or any rules thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(i) Each investment adviser shall deliver to each of its clients its current brochure and all required brochure supplements not later than January 1, 2002.

Section 6. DFI-Sec 5.07 and 5.08 are repealed and recreated to read:

DFI-Sec 5.07 License and notice filing period. (1) Prior to January 1, 2002, the license of an investment adviser expires on April 30. Effective January 1, 2002, 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.

(2) The license of an investment adviser representative expires on the same day as 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 registration depository according to the depository's schedule.

DFI-Sec 5.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed investment adviser under s. 551.32(9)(a), Stats., shall be filed with the investment adviser registration depository on Form ADV-W.

(2) An application for withdrawal from the status of a licensed investment adviser representative shall be filed with the investment adviser 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.

Section 7. DFI-Sec 5.10, 5.11 and 5.12 are created 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 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 shall be filed directly with the division.

DFI-Sec 5.11 Federal covered adviser notice filing procedure. (1) The notice filing for a federal covered adviser pursuant to s. 551.32(1m), Stats., shall be filed with the investment adviser registration depository on Form ADV. A notice filing for a federal covered adviser shall be deemed filed when the fee on deposit with the investment adviser registration depository has been allocated to the division. 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 shall be filed directly with the division.

(2) Until the investment adviser registration depository provides for the filing of Part 2 of Form ADV, a federal covered adviser shall submit a paper copy of its Part 2 of Form ADV to the division at the time of its initial filing with the investment adviser registration depository.

(3) A federal covered adviser shall file all amendments to its Form ADV with the investment adviser registration depository according to the instructions to Form ADV.

(4) 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, 2000. Effective January 1, 2002, 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.

DFI-Sec 5.12 Transition filing. (1) Each investment adviser licensed or required to be licensed in this state shall make its initial transition filing electronically with the investment adviser registration depository not later than June 1, 2001, unless a hardship exemption has been granted by the division.

(2) Each investment adviser licensed or required to be licensed in this state shall resubmit its Part 1 of Form ADV electronically with the investment adviser registration depository not later than August 31, 2001, unless a hardship exemption has been granted by the division.

(3) Amendments to an investment adviser's Form ADV that are made after its transition filing is completed pursuant to subs. (1) and (2) must be filed electronically with the investment adviser registration depository, unless a hardship exemption has been granted by the division.

(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 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.

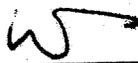
* * * * *

EFFECTIVE DATE

The emergency rules adopted by this Order shall take effect at 12:01 a.m. on January 1, 2001, which is subsequent to publication of the rules in the official state newspaper pursuant to the provisions of sec. 227.24, Wis. Stats.

Dated at Madison, Wisconsin, this 26th day of December, 2000.

[SEAL]



Patricia D. Struck
Administrator



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, **Governor**

John F. Kundert, **Secretary**

December 29, 2000

Joint Committee for Review
of Administrative Rules

✓ c/o Senate Co-Chair Judy Robson

15 South Capitol

Madison WI 53702

c/o Assembly Co-Chair Glenn Grothman

15 North Capitol

Madison WI 53702

Re: Filing of Copy of Order Adopting Emergency Rules/
DFI-Sec 5.01(1) and (2) to 5.12/Rules of the Division of Securities

Dear JCRAR Co-Chairs:

Pursuant to the statutory requirements in Chapter 227, Wis. Stats., for adopting emergency rules, a copy is herewith filed with the Co-Chairs of the JCRAR of an Order Adopting Emergency Rules issued by this Division as published in the official state newspaper on this date, December 29, 2000, for subsequent effectiveness on January 1, 2001.

The emergency rules adopt for use in Wisconsin the Investment Adviser Registration Depository ("IARD"), an electronic filing system for licensure of securities investment advisers that just recently has been developed and becomes available for use on a uniform basis in all 50 states on January 1, 2001. The IARD replaces a paper filing system that heretofore has been used in all states, including Wisconsin.

Certified copies are being filed concurrently with the Secretary of State and the Revisor of Statutes, and copies are also being filed with the Chief Clerk of each house of the legislature. Additionally, the Senate Sergeant-at-Arms and the Assembly Sergeant-at-Arms have been provided with sufficient copies of the Order Adopting Emergency Rules, together with a cover memo and fiscal estimate, to make the required distribution under sec. 227.24(3), Wis. Stats., of the materials to all members of the legislature.

If you have any comments or questions, please call me at 266-3414.

Very truly yours,

Randall E. Schumann

Legal Counsel for the Division

enclosure

cc: Patricia D. Struck, Division Administrator
Mark Schlei, DFI Deputy General Counsel



Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768

Voice: (608) 266-1064

Fax: (608) 256-1259

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: www.wdfi.org

**ORDER OF THE
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
STATE OF WISCONSIN
ADOPTING EMERGENCY RULES**

To repeal and recreate DFI-Sec 5.01(1) and (2), 5.05(8), 5.07 and 5.08, and to create DFI-Sec 5.01(11), 5.03(1)(p) and (q), 5.10, 5.11, and 5.12 of the Rules of the Division of Securities relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

Statutory Authority: Sections 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), and 551.63(2), Wis. Stats.

Statutes Interpreted: Section 551.32(1)(a), (b), (c), 551.32(1m), 551.32(1s) and (8), Wis. Stats.

FINDING OF EMERGENCY AND ANALYSIS

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The U.S. Securities and Exchange Commission ("SEC"), in conjunction with the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The system, the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD has been set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, need to take the necessary rule-making or other regulatory action by January 1, 2001 to enable investment advisers to make their licensing filings electronically. The attached Emergency Rules make the necessary changes to the Division's investment adviser license filing provisions that are immediately needed to adopt the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an equivalent electronic filing system (the Central Registration

Depository or "CRD") for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein follow the NASAA Model Rules.

The Emergency Rules provide for: (1) a revised Licensing Procedure section in DFI-Sec 5.01(1) and (2); (2) temporary and permanent hardship exemption provisions in DFI-Sec 5.01(11); (3) a revised brochure rule in DFI-Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in DFI-Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in DFI-Sec 5.11; and (6) a specific section in DFI-Sec 5.12 dealing with transition filings. Separate from these Emergency Rules, the Division will be issuing General Orders to further implement timing for various categories of filers, and which will provide partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

Pursuant to sections 551.32(1)(a), (b) and (c), (1m), (1s) and (8), and 551.63(2), Wis. Stats., the Division of Securities of the Department of Financial Institutions adopts emergency rules as follows:

Section 1. DFI-Sec 1.02(18) through (21) are created to read:

(18) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments, prepared on Part 2 of Form ADV as revised in 2001.

(19) "Sponsor" for purposes of a wrap fee program means a broker-dealer or investment adviser that is compensated under a wrap fee program for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, other

investment advisers in the program.

(20) "Wrap fee program" means a program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory and brokerage services, which may include portfolio management or advice concerning the selection of other investment advisers and the execution of client transactions.

(21) "Entering into" for purposes of an investment advisory contract, does not include an extension or renewal of an existing contract that does not contain any material changes.

Section 2. DFI-Sec 5.01(1) and (2) are repealed and recreated to read:

DFI-Sec 5.01 Licensing procedure. (1) (a) 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.

(b) Unless otherwise provided under sub. (11) 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.

(c) Except as provided in par. (a), applications for initial or renewal licenses of investment adviser representatives shall be filed on forms prescribed in section DFI-Sec 9.01(1).

(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), 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 shall be filed directly with the division.

(b) An application for initial license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., on the date the application is transferred from "NO STATUS" to "PENDING" on the records of the investment adviser registration depository. An application for renewal of a license as an investment adviser under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

(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 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 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 registration depository has been allocated to the division.

(d)1. Each investment adviser shall file an amendment to its application with the investment adviser registration depository within 30 days of any material change to information included in its application in accordance with the instructions to Form ADV.

2. Each investment adviser shall file a complete, updated Form ADV with the investment adviser registration depository within 90 days of the end of its fiscal year.

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 registration depository within 30 days of the date of the event that requires filing of the amendment.

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

Section 3. DFI-Sec 5.01(11) is created to read:

DFI-Sec 5.01(11) (a) Investment advisers licensed or required to be licensed who experience unanticipated technical difficulties that prevent submission of an electronic filing to the investment adviser registration depository may request a temporary hardship exemption from the requirements to file electronically. An investment adviser whose principal place of business is located in this state may request a temporary hardship exemption by doing all of the following:

1. Filing Form ADV-H in paper format with the division not later than one business day after the due date for the type of filing that is the subject of the Form ADV-H.

2. Submitting the filing that is the subject of the Form ADV-H in electronic format to the investment adviser registration depository not later than seven business days after the due date for the type of filing that is the subject of the Form ADV-H.

(b) The temporary hardship exemption will be deemed effective upon receipt by the division of the completed Form ADV-H within the filing deadline provided in par. (a). Multiple temporary hardship exemption requests by an investment adviser within the same calendar year may be disallowed by the division.

(c) A continuing hardship exemption will be granted only if an investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome. An investment adviser whose principal place of business is located in this state may request a continuing hardship exemption by filing Form ADV-H in paper format with the division at least twenty business days before the due date for the type of filing that is the subject of the Form

ADV-H. The division shall grant or deny the request within ten business days after the filing of Form ADV-H.

(d) The continuing hardship exemption is effective upon approval by the division for a time period not longer than one year after the date on which the Form ADV-H is filed. If the division approves the request, and for the period of time for which the exemption is granted, the investment adviser shall, not later than five business days after the exemption approval date, submit filings in paper format, along with the appropriate processing fees, to the division as prescribed by separate rule or order.

(e) An investment adviser whose principal place of business is located in another state may claim a hardship exemption from the electronic filing requirement in this state if that investment adviser has received a hardship exemption in the state where its principal office is located.

Section 4. DFI-Sec 5.03(1)(p) and (q) are created to read:

(p)1. A copy of each brochure and supplement and each amendment or revision to the brochure or supplement, given or sent to any client or prospective client of the investment adviser as required by s. DFI-Sec 5.05(8);

2. A summary of material changes that are required by Part 2 of Form ADV, but are not contained in the brochure or supplement; and

3. A record of the dates that each brochure and supplement, each amendment or revision thereto, and each summary of material changes, was given or offered to any client or to any prospective client who subsequently becomes a client.

(q) Copies bearing signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to the disclosure reporting pages of Form U-4, must be retained by the investment adviser who prepared the filing on behalf of the investment adviser representative.

Section 5. DFI-Sec 5.05(8) is repealed and recreated to read:

5.05(8)(a) Unless otherwise provided in this rule, each investment adviser shall offer and deliver to each client and prospective client a firm brochure and one or more supplements as required by this subsection. The brochure and any required supplement shall contain all information required by Part 2 of Form ADV and such other information as the division may require.

(b)1. Each investment adviser shall deliver the current brochure required by this section, and the current brochure supplement for each investment adviser representative who will provide advisory services, to a client or prospective client.

2. For purposes of this subsection, an investment adviser representative is deemed to provide advisory services for a client if the investment adviser representative does any of the following:

- a. Regularly communicates investment advice to that client.
 - b. Formulates investment advice for assets of that client.
 - c. Makes discretionary investment decisions for assets of that client.
 - d. Solicits, offers or negotiates for the sale of or sells investment advisory services.
3. The documents required in subd. (b)1. above shall be delivered at the following times:
- a. Not less than 48 hours prior to entering into any investment advisory contract with a client or prospective client.
 - b. At the time of entering into any contract, if the contract specifically provides that the client has a right to terminate the contract without penalty within five business days after entering into the contract.
 - (c) Each investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by par. (a). If a client accepts the written offer, the investment adviser shall send to that client the current brochure and supplements not later than seven days after the investment adviser is notified of the acceptance.
 - (d) If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this subsection, the investment adviser shall treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a separate client. For purposes of this subsection, a limited liability partnership or limited liability limited partnership is also considered to be a "limited partnership."
 - (e)1. Each investment adviser that is a sponsor of a wrap fee program shall deliver to a client or prospective client in lieu of the brochure required in par. (b), a wrap fee brochure containing all information required by Form ADV. All information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.
2. An investment adviser is not required to offer or deliver the wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.
3. A wrap fee brochure shall not be used in place of any brochure supplement that the investment adviser is required to deliver under par. (b)1.
- (f) Each investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients not more than 30 days from the date that the information contained in

the brochure or brochure supplement becomes materially inaccurate. The investment adviser shall comply with the instructions to Part 2 of Form ADV regarding updating and delivery.

(g) Each investment adviser that renders substantially different types of investment advisory services to different clients may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable to only a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of this chapter or any rules thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(i) Each investment adviser shall deliver to each of its clients its current brochure and all required brochure supplements not later than January 1, 2002.

Section 6. DFI-Sec 5.07 and 5.08 are repealed and recreated to read:

DFI-Sec 5.07 License and notice filing period. (1) Prior to January 1, 2002, the license of an investment adviser expires on April 30. Effective January 1, 2002, 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.

(2) The license of an investment adviser representative expires on the same day as 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 registration depository according to the depository's schedule.

DFI-Sec 5.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed investment adviser under s. 551.32(9)(a), Stats., shall be filed with the investment adviser registration depository on Form ADV-W.

(2) An application for withdrawal from the status of a licensed investment adviser representative shall be filed with the investment adviser 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.

Section 7. DFI-Sec 5.10, 5.11 and 5.12 are created 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 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 shall be filed directly with the division.

DFI-Sec 5.11 Federal covered adviser notice filing procedure. (1) The notice filing for a federal covered adviser pursuant to s. 551.32(1m), Stats., shall be filed with the investment adviser registration depository on Form ADV. A notice filing for a federal covered adviser shall be deemed filed when the fee on deposit with the investment adviser registration depository has been allocated to the division. 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 shall be filed directly with the division.

(2) Until the investment adviser registration depository provides for the filing of Part 2 of Form ADV, a federal covered adviser shall submit a paper copy of its Part 2 of Form ADV to the division at the time of its initial filing with the investment adviser registration depository.

(3) A federal covered adviser shall file all amendments to its Form ADV with the investment adviser registration depository according to the instructions to Form ADV.

(4) 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, 2000. Effective January 1, 2002, 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.

DFI-Sec 5.12 Transition filing. (1) Each investment adviser licensed or required to be licensed in this state shall make its initial transition filing electronically with the investment adviser registration depository not later than June 1, 2001, unless a hardship exemption has been granted by the division.

(2) Each investment adviser licensed or required to be licensed in this state shall resubmit its Part 1 of Form ADV electronically with the investment adviser registration depository not later than August 31, 2001, unless a hardship exemption has been granted by the division.

(3) Amendments to an investment adviser's Form ADV that are made after its transition filing is completed pursuant to subs. (1) and (2) must be filed electronically with the investment adviser registration depository, unless a hardship exemption has been granted by the division.

(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 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.

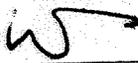
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EFFECTIVE DATE

The emergency rules adopted by this Order shall take effect at 12:01 a.m. on January 1, 2001, which is subsequent to publication of the rules in the official state newspaper pursuant to the provisions of sec. 227.24, Wis. Stats.

Dated at Madison, Wisconsin, this 26th day of December, 2000.

[SEAL]



Patricia D. Struck
Administrator