

CA 91-123

CERTIFICATE

STATE OF WISCONSIN)
OFFICE OF THE) ss.
COMMISSIONER OF SECURITIES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Wesley L. Ringo, Commissioner of the State of Wisconsin Office of the Commissioner of Securities, as custodian of the official records of said agency, do hereby certify that the annexed rules relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, relating to: definitions under the securities law; securities and franchise registration exemptions; securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; and various fee-related provisions under the securities law were duly approved and adopted by this agency on November 12, 1990.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the City of Madison, this 15th day of November, 1991.

[SEAL]



Wesley L. Ringo
Commissioner of Securities
State of Wisconsin

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NOV 15 1991
3:30 pm
Revisor of Statutes
Bureau

1-1-92

FINAL ORDER OF THE
OFFICE OF THE COMMISSIONER OF SECURITIES
STATE OF WISCONSIN
ADOPTING, AMENDING AND REPEALING RULES

To repeal SEC 2.02(6); to renumber SEC 2.01(3), 2.02(4)(d), 2.02(7) to (10), 5.03(4), 6.05(1)(a)1 to 4 and 6.05(1)(a)(Intro.); to renumber and amend SEC 1.07 and 4.04(8); to amend SEC 2.02(9)(f)6, 2.027(3) and (4), 2.03(1), 3.05, 3.11, 3.18, 4.03(3)(Intro.), 4.05(5), 5.03(1)(Intro.), 5.04(1)(a), 5.05(5), 6.05(1)(a)1.c., 7.01(5)(d), 7.01(7)(d), 32.05(1)(Intro.) and 35.02(2)(a)2; to repeal and recreate SEC 35.01(3); and to create SEC 1.02(7)(b), 2.01(3)(b), 2.02(4)(d), 3.01(2) and (3), 3.21(3), 4.04(8)(b) and (c), 4.05(11), 5.03(4) and (5), 5.04(5) and (6), 6.05(1)(a)2, 7.06(4) 35.01(1)(h) and 35.01(6) relating to: ~~definitions under the securities law, securities and franchise registration exemptions, securities registration and disclosure standards, requirements and procedures, securities broker-dealer, securities agent and investment adviser licensing requirements and procedures, and various fee-related provisions under the securities law and franchise law.~~

Pursuant to sections 551.63(1), (2) and (3), 551.22(7), 551.23(18), 551.27(10), 551.28(1)(e), 551.32(1)(a) and (b), 551.32(7), 551.33(1), (2) and (6), 551.52(3) and (4) and 553.72(3) and 553.75, Wis. Stats., the Office of the Commissioner of Securities repeals, amends and adopts rules interpreting those sections as follows:

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Revisor of Securities
Bureau

FINAL FORM OF
AMENDMENTS TO RULES OF THE
WISCONSIN COMMISSIONER OF SECURITIES

SECTION 1. SEC 1.02(7) is renumbered SEC 1.02(7)(a) and amended to read:

SEC 1.02(7)(a) "Branch office" for purposes of the broker-dealer provisions of ch. 551, Stats., and chs. SEC 1 to 9 means any branch office, sales office or office of supervisory jurisdiction registered under the rules of any national securities exchange or national securities association of which the broker-dealer is a member, or any place of business in this state of 3 or more licensed agents other than agents licensed for a broker-dealer as a result of the application of s. SEC 4.05(8).

ANALYSIS: This rule, which defines the term "branch office" for broker-dealer purposes only, is renumbered and amended to distinguish it from a separate definition created in the following SECTION that defines "branch office" for investment adviser purposes.

SECTION 2. SEC 1.02(7)(b) is created to read:

SEC 1.02(7)(b) "Branch office" for purposes of the investment adviser provisions of ch. 551, Stats., and chs. SEC 1 to 9 means any office in this state of an investment adviser that is held out to the public by any means as a business location of the investment adviser.

ANALYSIS: This rule creates a definition of "branch office" for investment adviser purposes to be any business location in this state that is held out to the public as a business location of the investment adviser. The definition is needed because of the creation in later sections of record-keeping and reporting requirements for investment advisers regarding their branch offices--requirements that parallel existing record-keeping and reporting rules for broker-dealers regarding their branch offices.

Modifications to this proposed rule were made as follows as a result of comments received: (1) The language "in this state" was added to clarify that the scope of the rule extends only to branch offices located in Wisconsin and does not apply to locations outside of Wisconsin; and (2) Language was deleted from the public comment draft form of the rule referring to an office of an investment adviser "where investment advice is normally provided to clients."

SECTION 3. SEC 2.01(3) is renumbered SEC 2.01(3)(a)

ANALYSIS: This renumbering of current rule SEC 2.01(3) (which has been the only rule adopted to date under the "exchange listing" registration exemption of sec. 551.22(7), Wis. Stats., and relates to NASDAQ/NMS securities) is necessary to

make room for a new paragraph (3)(b) created in the following SECTION that designates the Chicago Board Options Exchange as qualifying for exemption purposes under sec. 551.22(7), Wis. Stats.

SECTION 4. SEC 2.01(3)(b) is created to read:

SEC 2.01(3)(b) The Chicago Board Options Exchange is designated as a national securities exchange qualifying for registration exemption status under s. 551.22(7), Stats., subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), as contained in the Memorandum of Understanding dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

ANALYSIS: This rule designates the Chicago Board Options Exchange ("CBOE") as a national securities exchange qualifying for registration exemption status under sec. 551.22(7), Wis. Stats. The CBOE is the predominant options exchange in the United States and recently expanded its operations to include the listing and trading of stocks, warrants and other non-option instruments under rule changes approved by the U. S. Securities and Exchange Commission on October 19, 1990. Most of the CBOE rules mirror the rules of existing stock exchanges, including CBOE requirements relating to sales practices, customer protection, disclosure and antifraud protections. Additionally, for listing equity securities, as well as for maintaining listing status, CBOE will use the same standards employed both by the American Stock Exchange (which for some years has been an exchange specified in sec. 551.22(7)) and by the National Association of Securities Dealers NASDAQ/National Market System that was added to sec. 551.22(7) in legislation during 1990. The NASDAQ/NMS designation also was the subject of an administrative rule adopted incident to this agency's 1990 rule revision relating to a Memorandum of Understanding between the NASD and NASAA that provided the basis for the agency supporting the NASDAQ/NMS statutory exemption.

This rule also incorporates by reference the Memorandum of Understanding ("MOU") entered into in May 1991 between the Chicago Board Options Exchange ("CBOE") and the North American Securities Administrators Association, Inc. ("NASAA") which provides the basis for the grant (by means of this rule) of exemption status under s. 551.22(7), Wis. Stats., for CBOE securities.

The MOU provides the framework for consideration by individual NASAA member jurisdictions of a CBOE securities registration exemption on the basis that under the MOU:

- (1) The CBOE has established the listing and maintenance standards, as well as specified corporate governance provisions, for equity securities to qualify for trading on the CBOE that are equivalent to the standards and

requirements currently applied by the American Stock Exchange.

- (2) A decertification/termination process is established whereby the Commissioner can decertify/terminate the designation of the CBOE as qualifying for registration exemption status under sec. 551.23(18), Wis. Stats., by issuance of an order upon a determination that the CBOE requirements for designation or maintenance have been so changed or insufficiently applied that the protection of investors contemplated by the CBOE exemption designation no longer exists. Additionally, the Commissioner by order can deny or revoke exemption status with respect to a specific issue of securities or category of securities. The MOU establishes the procedure to be followed with respect to the decertification/termination process, including notice of, and opportunity for, hearing, written findings of fact and conclusions of law, and judicial review.

SECTION 5. SEC 2.02(4)(d) is renumbered SEC 2.02(4)(e)

ANALYSIS: This renumbering is necessary to make room for a new series of rules (in the following SECTION) which add certain categories of "Qualified Institutional Buyers" under federal rule 144A to the list of "institutional investors" for purposes of the securities registration exemption in sec. 551.23(8).

SECTION 6. SEC 2.02(4)(d) is created to read:

SEC 2.02(4)(d) Any of the following "qualified institutional buyer" entities, whether acting for its own account or the accounts of other qualified institutional buyers listed in sec. 230.144A under the securities act of 1933, that in the aggregate

owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

1. Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees.

2. Any employee benefit plan within the meaning of title I of the Employment Retirement Income Security Act of 1974.

3. Any business development company as defined in section 202(1)(22) of the investment advisers act of 1940 or in section 2(a)(48) of the investment company act of 1940.

4. Any organization described in section 501(c)(3) of the internal revenue code corporation (other than a bank as defined in section 3(1)(2) of the securities act of 1933 or a savings and loan association or other institution referenced in section 3(1)(5)(A) of the securities act of 1933 or a foreign bank or savings and loan association or equivalent institution).

5. Any partnership or Massachusetts or similar business trust.

ANALYSIS: These rule provisions add to the existing list of entities designated as "institutional investors" under the securities registration exemption in sec. 551.23(8), Wis. Stats., several categories of so-called "qualified institutional buyers" ("QIB's") designated in recently adopted U.S. Securities and Exchange Commission Rule 144A. That Rule provides a "safe harbor" securities registration exemption under the federal Securities Act of 1933 for immediate resales of private placements of securities to such designated QIB's--each of which to qualify must own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with such QIB.

The current Wisconsin "institutional investor" registration exemption, together with the listing in the current subsections of SEC 2.02(4) of additional entities constituting "institutional investors" already cover the majority of the QIB's listed under federal Rule 144A. In order to cover the 4 QIB categories not currently covered, this SECTION adds as additional "financial institutions or institutional investors" for purposes of the registration exemption under sec. 551.23(8), Wis. Stats., the following: (1) Employee benefit plans established and maintained by a state, its political subdivisions or any agency or instrumentality; (2) Any employee benefit plan covered by Title I of ERISA; (3) Any business development company defined under specified sections of the Investment Advisers Act of 1940 or the Investment Company Act of 1940; (4) Certain Internal Revenue Code 501(c)(3) entities; and (5) Any partnership or Massachusetts or other business trust.

SECTION 7. SEC 2.02(6) is repealed:

ANALYSIS: This rule (which sets forth the information required to be included with a notice filing to claim use of the securities registration exemption of sec. 551.23(12), Wis. Stats.) is

repealed as unnecessary in view of the rule provision of general applicability in SEC 2.03 that sets forth the informational requirements for all exemption notice filings under sec. 551.22 or 551.23, Wis. Stats.

SECTION 8. SEC 2.02(7) to (10) are renumbered SEC 2.02(6) to (9), respectively.

ANALYSIS: This renumbering is necessary to reflect the repeal of current rule SEC 2.02(6) in an earlier SECTION.

SECTION 9. SEC 2.02(9)(f)6 is amended to read:

SEC 2.02(9)(f)6. The plan meets the repurchase standards of s. SEC 2.01~~(5)~~-(6)(d);

ANALYSIS: This amendment corrects the citation to the rule cross-referenced to reflect a renumbering made in the 1990 rule revision process.

SECTION 10. SEC 2.027(3) and (4) are amended to read:

SEC 2.027(3) Neither the issuer, its officers, directors, general partners, controlling persons or affiliates, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. 551.23(19)(c), Stats.

(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed \$500,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502(a) of Regulation D under the securities act of 1933.

ANALYSIS: These amendments to two subparagraphs of the Wisconsin-issuer-registration-exemption-by-filing provision do the following: (1) amend the "bad boy disqualifier" language in sub. (3) to specifically cover the same additional categories of persons as are specified in the "bad boy disqualifier" subsection of the Regulation D exemption in sec. 551.23(19)(c)1.a., Wis. Stats.; and (2) clarify that the \$500,000 offering price provision in par. (4) is on a per offering/per use basis, but is subject to the U.S. Securities and Exchange Commission's rule 502(a) under Regulation D that determines whether a particular offering will be deemed integrated with other offerings by the issuer.

SECTION 11. SEC 2.03(1) is amended to read:

SEC 2.03 EXEMPTION PROCEEDINGS (1) -A If a notice is required to be filed in order to seek to claim registration of exemption status pursuant to s. 551.22 or 551.23, Stats., the notice shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. SEC 7.01(2), and a cover letter describing how the offering

will meet all the requirements for use of the exemption sought to be utilized.

ANALYSIS: These amendments clarify that the requirements of SEC 2.03 need to be complied with only for those securities registration exemptions under sec. 551.22 or 551.23 that necessitate a notice filing in order to seek to claim use of the exemption.

SECTION 12. SEC 3.01(2) and (3) are created to read:

SEC 3.01(2) With respect to redeemable securities of investment companies registered under the investment company act of 1940, the maximum selling commission or discount is presumed reasonable if it does not exceed 9% of the selling price of the securities, including the percentage amount of any redemption fee payable upon redemption of the securities.

(3) With respect to investment company shares or face amount certificates sold pursuant to a contractual plan or program payable in installments, the selling commission may be deemed unreasonable if more than a pro rata portion of the total selling commission payable over the period of the contract is payable in connection with any installment payment, or if any charge or penalty is assessed for failure to make any installment payment.

ANALYSIS: This SECTION reinstates two subsections of the securities registration guideline relating to selling expenses that were inadvertently repealed (due to an error in numbering) incident to the amendment of SEC 3.01(1) in the 1990 rule revision process.

SECTION 13. SEC 3.05 is amended to read:

SEC 3.05 PROMOTERS' INVESTMENT. The offer or sale of securities of an issuer in the promotional or developmental stage may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on ~~Existing--Capitalization~~ Promoter's Investment, adopted April 23, 1983, as amended effective January 1, 1988. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

Note: The Statement of Policy is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: This amendment reflects a name change made to this NASAA Statement of Policy by vote of NASAA members, including Wisconsin, effective January 1, 1988.

SECTION 14. SEC 3.11 and 3.18 are amended to read:

SEC 3.11 REAL ESTATE PROGRAMS. The offer or sale of interests in a limited partnership which will engage in real estate syndications may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy regarding real estate programs, adopted April 15, 1980, as amended effective March 30, 1982, April 23, 1983, April 27, 1984, January 1, 1986 and, January 1, 1988 and August 27, 1990, including comments. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

Note: The Statement of Policy is published in the CCH NASAA Reports published by commerce clearing house and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

SEC 3.18 COMMODITY POOL PROGRAMS. The offer or sale of interests in a limited partnership which will engage in the buying and selling of and trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North

American Securities Administrators Association Statement of Policy on Registration of Commodity Pool Programs, adopted September 21, 1983, as amended effective August 30, 1990. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4.

Note: The Guidelines are published in the CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: This SECTION contains the amendments necessary to be made to two incorporated-by-reference NASAA Statements of Policy (relating to real estate programs and to commodity pool programs) to reflect changes to these policies adopted at the NASAA 1990 Fall Conference by vote of member jurisdictions, including Wisconsin.

SECTION 15. SEC 3.21(3) is created to read:

SEC 3.21(3) In any offering for which a registration statement on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 has been filed by coordination with the commissioner, the requirement in s. 551.25(3)(a)2, Stats. that a registration statement be on file with the commissioner for at least 10 days is reduced to a requirement that the registration statement be on file with the commissioner for at least 7 days.

ANALYSIS: This rule is one of several revisions made for the purpose of accommodating and harmonizing Wisconsin's registration procedures and requirements with recent rules adopted May 30, 1991 by the U.S. Securities and Exchange Commission to develop a multi-jurisdictional disclosure system ("MJDS").

The federal MJDS provisions enable large, well-capitalized Canadian issuers whose securities are traded on major Canadian exchanges and meet certain other requirements, to satisfy U.S. federal securities law registration and reporting requirements by providing documents prepared in accordance with the requirements of Canadian securities regulatory authorities. Although securities offerings in the U.S. by Canadian issuers using MJDS thus will not be subject to a review process by the SEC, such offerings must still be filed in each state for review as part of the registration by coordination procedure.

The NASAA membership in 1990 adopted a resolution endorsing MJDS and called on NASAA state member jurisdictions to take all necessary steps to implement MJDS for purposes of their state law procedures and requirements. Additionally, NASAA recommended several specific steps that states could take to implement MJDS: (1) review MJDS registration-by-coordination filings within 7 calendar days of receipt to harmonize with Canadian registration review periods; (2) accept financial statements for MJDS filings prepared according to Canadian generally accepted accounting procedures; (3) accept Form F-7 in lieu of any prescribed state form to claim use of the "offer to existing securityholder of the issuer" state securities registration exemption; and (4) adopt a secondary trading exemption for any security of a Canadian issuer that has filed Form F-8, F-9 or F-10 with the SEC that has become effective. NASAA also developed several "model" administrative rules to be used by NASAA member states in adopting rules to implement MJDS.

The new rule created in this SECTION is based on the NASAA model rule relating to the minimum time period that a registration statement using MJDS filed on Form F-7, F-8, F-9 or F-10 must be on file with the Commissioner under the registration-by-coordination provisions of 551.25(3)(a)2. The new rule, adopted pursuant to the Commissioner's authority in sec. 551.25(3)(b) to waive by rule or order any of the conditions specified in par. (a), reduces to 7 days (down from 10 days) the minimum time period that an MJDS filing by a Canadian issuer is required to be on file with the Commissioner. The seven-day period corresponds to the minimum review period applicable under the Canadian securities regulatory requirements.

SECTION 16. SEC 4.03(3)(intro.) is amended to read:

SEC 4.03(3) Except as provided in par. (e), every branch office of a licensed broker-dealer, as defined in s. SEC 1.02(7)(a), shall prepare and keep current the following records:

ANALYSIS: This amendment is necessary to reflect the renumbering (made in an earlier SECTION) of the definition of "branch office" in rule SEC 1.02(7).

SECTION 17. SEC 4.04(8) is renumbered SEC 4.04(8)(a) and amended to read:

SEC 4.04(8)(a) Each broker-dealer shall notify the commissioner in writing at least 14 days prior to either the opening or closing the change of address in this state of any branch office as defined in s. SEC 1.02(7)(a). ~~The notification~~

~~shall include such information as the commissioner may request.~~

ANALYSIS: The amendments to this rule do the following: (1) Renumber the current rule to be par. (a) due to the creation of the additional paragraphs to sub. (8) in a following SECTION. (2) Delete from this provision the reference to "closing" a branch office because branch office closings are made the subject of a separate provision in SEC 4.04(8)(b) in a following SECTION; (3) Add a requirement to provide notification to the Commissioner when there is a relocation/change of address of a branch office; and (4) Delete the last sentence (which allows the Commissioner to request specific information) because a separate paragraph is created in a following SECTION that particularizes the information to be included.

SECTION 18. SEC 4.04(8)(b) and (c) are created to read:

SEC 4.04(8)(b) Each broker-dealer shall notify the commissioner in writing at least 14 days after the closing in this state of any "branch office" as defined in s. SEC 1.02(7)(a).

(c) The notification provided to the commissioner under pars. (a) or (b) shall include the address and telephone number of the branch office, the name of the supervisor at the branch office, the number of agents operating out of that branch office and any other information the commissioner may request.

ANALYSIS: These new subsections modify existing rule SEC 4.04(8) (relating to providing notice to the Commissioner of certain changes affecting a

"branch office" of a broker-dealer) in the following respects: (1) Creates a separate paragraph (b) dealing with providing notice of the closing of a branch office, and changes the notification from a 14-days-prior-to-the-closing requirement under the current rule to a 14-days-after-the-closing; (2) Specifies in paragraph (c) the various kinds of information to be provided in the notification to the Commissioner, which information is necessary to keep the agency's database of broker-dealer branch offices accurate for reporting purposes as well as for periodic branch office examination purposes.

SECTION 19. SEC 4.05(5) is amended to read:

SEC 4.05(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information form prescribed under s. SEC 4.03(1)(k), not later than 20 days after the customer's account is first established on the books and records of the broker-dealer. A copy of any material amendment to a customer's contract, agreement, or customer information form shall be provided to the customer within 20 days from the date of the material amendment. In this subsection, a material amendment is presumed to exist, without limitation, in the event the broker-dealer receives from the customer and records on the customer information form, changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the agent's ability to make

suitable recommendations for the customer as required under s. SEC

4.06(1)(c).

ANALYSIS: The existing rule in SEC 4.05(5) establishes a Rule of Conduct violation if a broker-dealer fails to provide a customer with a copy of any "material amendment" to the customer's contract, agreement, or customer information form. In a number of branch office examinations of broker-dealers, the agency staff has noted that copies of amended/updated customer new account forms were not provided to customers in what appeared to the staff to be obvious instances where they should have been provided. Because some firms have questioned the meaning of "material information" for purposes of the customer information form portion of this rule, this amendment provides a list of several categories of customer information form information, changes to which the Office would expect to trigger the requirement under the rule to provide a copy of the amended form.

Modifications to this proposed rule made as a result of comments received are as follows: (1) The language in the public comment draft form of the rule relating to "name and address" information was deleted; and (2) The language "the broker-dealer receives from the customer and records on the customer information form" was added to clarify that the rule does not establish a duty on a broker-dealer of ongoing inquiry into the customer's circumstances. Rather, the rule as modified requires a copy of the material amendment data to be furnished where the broker-dealer has been informed of the revised customer data by the customer and the broker-dealer has recorded such revised data on the customer information form.

SECTION 20. SEC 4.05(11) is created to read:

SEC 4.05(11) Each broker-dealer shall disclose in writing to customers at the time of opening an account, any custody fees, service fees, or maintenance fees that may be charged to the customer and the basis upon which the charges are determined. Customers shall receive written notice at least 45 days prior to the imposition of any new custody, service, maintenance or similar fees, or any changes to existing fees of that nature.

ANALYSIS: This new rule under the broker-dealer Rules of Conduct section requires broker-dealers to disclose in writing to each customer at the time an account is opened, prescribed information regarding certain custody, service, maintenance or similar fees that may be charged to the account. Additionally, because many broker-dealers over the last 12 months have imposed fees, with little or no advance warning (which range from \$30 to \$50 or more and may affect securities that are difficult to take delivery of or transfer to another firm), for holding customer funds and securities for customers (whose accounts do not generate a required minimum amount of commissions), the second part of this rule requires broker-dealers to provide customers with a 45-day prior notification before the imposition or amendment of any such fee. Such time period will provide customers a reasonable period of time to make changes in their accounts or take other action to avoid such fees.

SECTION 21. SEC 5.03(1)(intro.) is amended to read:

SEC 5.03 INVESTMENT ADVISERS' RECORDS. (1) Every licensed investment adviser shall maintain and keep current at its principal office the following books and records relating to its business:

ANALYSIS: This amendment clarifies that the record-keeping requirements in sub. (1) apply to the principal office of an investment adviser, and the added language is necessary to provide in this rule a contrast with the proposed new rules in a following SECTION that establish separate record-keeping requirements for branch offices of investment advisers.

SECTION 22. SEC 5.03(4) is renumbered SEC 5.03(6).

ANALYSIS: This renumbering is necessary to make room for two new rules created in the following SECTION relating to required branch office records. The two new rules need to follow in sequence the existing rules in SEC 5.03(1) to (3) relating to records required to be maintained at the principal office of an investment adviser.

SECTION 23. SEC 5.03(4) and (5) are created to read:

SEC 5.03(4). Every branch office of a licensed investment adviser, as defined in s. SEC 1.02(7)(b), shall prepare and keep current the records described in subs. (1)(c), (f), (g), (k), (L) and (2)(a).

(5) The records required in sub. (4) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place. Upon closing of the branch office, the records shall be transferred to the home office for the duration of the required retention period. The record may be retained by computer if a printed copy of the record can be

prepared immediately upon request. If a record has been preserved for the first year of the 3-year period required in this subsection, a microfilm copy may be substituted for the remainder of the required retention period.

ANALYSIS: These new rules specify what records must be maintained at each Wisconsin branch office of an investment adviser (as defined in new rule SEC 1.02(7)(b) created in SECTION 2 of those proposed final rules), and the applicable retention periods for such records. The language and requirements of these rules parallel the equivalent broker-dealer record-keeping and retention rules in SEC 4.03(3) and (4) for "branch offices" of broker-dealers.

Modifications were made to SEC 5.03(4) as a result of comments received, resulting in the deletion of several of the categories of records required under sub. (4) to be maintained at a branch office of an investment adviser. Specifically, the deletions were the records that had been listed as specified in paragraphs (1)(d), (h), (i), (j) and (2)(b). The records required to be maintained by a branch office of an investment adviser under the rule as now revised are those which would normally be expected to be prepared and be present reflecting the ordinary conduct of advisory activities at the branch office location (e.g., payments and disbursement records (par. (1)(c)), order tickets or memorandums (par. (1)(f)), correspondence with customers (par. (1)(g)), a copy of the advisory agreements with customers (par. (1)(k)), copies of advertisements (par. (1)(L), and records for each customer showing securities purchased or sold on advice of the advisor (par. (2)(a)).

SECTION 24. SEC 5.04(1)(a) is amended to read:

SEC 5.04 REPORTING REQUIREMENTS.(1)(a) Except as provided in par. (b), each investment adviser shall file annually with the commissioner within ~~60~~ 90 days after the end of its fiscal year, a copy of its balance sheet with accompanying notes including supporting schedules, which may be audited, prepared or compiled by an independent accountant on either a cash or accrual basis.

ANALYSIS: The amendment to this reporting requirement rule extends to 90 days after the end of its fiscal year, the time period for investment advisers to file a copy of their annual financial statements with the Commissioner. The increase to 90 days from the current 60 days will make the Wisconsin requirement consistent with the reporting period prescribed in the equivalent federal reporting requirement for investment advisers.

SECTION 25. SEC 5.04(5) is created to read:

SEC 5.04(5)(a) Each investment adviser shall notify the commissioner in writing at least 14 days prior to either the opening or the change of address in this state of any branch office as defined in s. SEC 1.02(7)(b).

(b) Each investment adviser shall notify the commissioner in writing at least 14 days after the closing in this state of any branch office as defined in s. SEC 1.02(7)(b).

(c) The notification provided to the commissioner under pars. (a) or (b) shall include the address and telephone number of the branch office, the name of the supervisor at the branch office, the number of representatives operating out of that branch office and any other information the commissioner may request.

ANALYSIS: These rules create reporting requirements for investment advisers who open or close branch offices, and establish the informational requirements that the notifications to the Commissioner must contain. These rules parallel equivalent reporting rules in SEC 4.04(8) currently applicable to broker-dealers and their branch offices, as amended in earlier SECTIONS.

SECTION 26. SEC 5.04(6) is created to read:

SEC 5.04(6) Each investment adviser shall file annually with the commissioner incident to its license renewal application, a report identifying each of its branch offices as defined by s. SEC 1.02(7)(b) that is located in this state.

ANALYSIS: This new rule establishes an annual reporting requirement for investment advisers to identify to the Commissioner each of its Wisconsin "branch offices" as defined in new rule SEC 1.02(7)(b) created in a previous SECTION. The language of this rule parallels an equivalent reporting rule in SEC 4.04(9) requiring each broker-dealer to annually identify to the Commissioner its Wisconsin "branch offices."

SECTION 27. SEC 5.05(5) is amended to read:

SEC 5.05(5) No licensed investment adviser may enter into, extend or renew any investment advisory contract with a customer in this state unless the contract is in writing and a copy of the contract is given to the customer within ~~15~~ 20 days after the execution of the contract.

ANALYSIS: This amendment (which lengthens from 15 to 20 days the time period within which a customer must receive a copy of an investment advisory contract), makes the time period in the providing-a-copy-of-the-contract-to-customer requirement for investment advisers identical to the time period prescribed in a similar rule for broker-dealers.

SECTION 28. SEC 6.05(1)(a)1 to 4 are renumbered SEC 6.05(1)(a)1 a to d, respectively.

ANALYSIS: The renumbering of these subdivisions under SEC 6.05(1)(a) of the "going-private" rule is necessary to enable a renumbering of par. (1)(a) in the following SECTION that will allow par. (a) to be divided into 2 subdivisions.

SECTION 29. SEC 6.05(1)(a)(Intro.) is renumbered SEC 6.05(1)(a)1.

ANALYSIS: The renumbering of this introductory paragraph of the "going-private" rule (which paragraph provides a "safe harbor" that a transaction is fair if all the conditions listed are met) is necessary to enable creation in a later SECTION of a new subdivision 2. The new subdivision will provide that the failure to meet one or more of the conditions creates no presumption as to the fairness or unfairness of the transaction.

SECTION 30. SEC 6.05(1)(a)1.c is amended to read:

SEC 6.05(1)(a)1.c. More than 50% of the securities held by persons not affiliated with the issuer approve the transaction; ~~provided the absence of one or more of the conditions under subdivisions 1 and 2 shall create no presumption as to the fairness or unfairness of the terms of the transaction;~~ and

ANALYSIS: This amendment makes the corresponding change to reflect the repositioning made in this subdivision to a new subdivision created in SEC 6.05(1)(a)2.

SECTION 31. SEC 6.05(1)(a)2 is created to read:

SEC 6.05(1)(a)2. The failure to meet one or more of the conditions in subd. 1 shall not create a presumption as to the fairness or unfairness of the transaction.

ANALYSIS: This SECTION creates a new subdivision 2. that repositions language contained in current SEC 6.05(1)(a)3 which provides that the failure to meet one or more of the listed presumed-fair conditions in subdivision (a)1 creates no presumption as to the fairness or unfairness of the transaction.

SECTION 32. SEC 7.01(5)(d) is amended to read:

SEC 7.01(5)(d) Copy of small corporate offering registration and prospectus disclosure form on Form U-7 ~~\$20~~ \$5

ANALYSIS: This amendment reduces to \$5 the cost to receive a copy of the Form U-7 disclosure form.

SECTION 33. SEC 7.01(7)(d) is amended to read:

SEC 7.01(7)(d) Delinquent filing of notice of broker-dealer or investment adviser branch office registration, renewal, relocation or closing.

ANALYSIS: This amendment adds as a basis for charging a delinquency fee under the rule, failure by a broker-dealer or an investment adviser to provide notice to the agency of the relocation of a branch office.

SECTION 34. SEC 7.06(4) is created to read:

SEC 7.06(4)(a) Financial statements and financial information that have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement that has been filed with the commissioner under s. 551.25 or 551.26, Stats., on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 and that complies with the following conditions applicable to the type of form being used for the offering:

1. The securities that are the subject of a registration statement designated as Form F-7 by the U.S. securities and exchange commission are offered for cash upon the exercise of rights granted to existing securityholders.

2. The securities that are the subject of a registration statement designated as Form F-8 by the U.S. securities and exchange commission are securities to be issued in an exchange offer, merger or other business combination.

3. The securities that are the subject of the registration statement designated as Form F-9 by the U.S. securities and exchange commission are either non-convertible preferred stock or non-convertible debt that are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

4. The securities that are the subject of a registration statement designated as Form F-10 by the U.S. securities and exchange commission are offered and sold pursuant to a prospectus in which the U.S. securities and exchange commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented.

(b) For purposes of this subsection, preferred stock and debt securities that are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of par. (a)3.

ANALYSIS: This SECTION contains additional rules to implement the multi-jurisdictional disclosure system (MJDS) as discussed at length in the SECTION creating new rule SEC 3.21(3). These rules provide that financial statements and financial information prepared in accordance with Canadian generally accepted accounting principles will be accepted for use in registration statements filed for

registration in Wisconsin by coordination or qualification by Canadian issuers in MJDS offerings on U.S. Securities and Exchange Commission Form F-7, F-8, F-9 or F-10. These rules are adopted pursuant to the authority granted to the Commissioner in sec. 551.63(3) to not only prescribe the form and content of financial statements required under the Wisconsin Uniform Securities Law, but also to permit financial statements to be prepared otherwise than in accordance with generally accepted accounting principles. The language of the rules corresponds to the NASAA model rules on this issue.

SECTION 35. SEC 32.05(1)(intro.) is amended to read:

SEC 32.05 EXEMPTIONS BY THE COMMISSIONER. (1) The following transactions, ~~in addition to those transactions exempted under s. SEC 32.01,~~ shall, ~~pursuant to s. 553.25, Stats.,~~ be exempted from s. 553.21, Stats., pursuant to s. 553.25, Stats.:

ANALYSIS: These amendments do the following: (1) Delete a cross-reference to administrative rule SEC 32.01 which previously contained a franchise registration exemption, but was repealed incident to this agency's 1988 rule revision (in which SEC 32.01 was repealed and recreated to be a procedural rule prescribing the information to be submitted in franchise exemption notice filings; and (2) Move the placement of the "pursuant to" clause to be more correct grammatically.

SECTION 36. SEC 35.01(1)(h) is created to read:

SEC 35.01(1)(h) Annual filing required to be made by a franchisor to maintain franchise registration exemption status under s. 553.22(5), Stats., or s. SEC 32.05(1)(c)6 \$200.00

ANALYSIS: This rule, promulgated pursuant to the authority granted to the Commissioner under sec. 553.72(3), Wis. Stats., (to prescribe fees for examination and review of any matter arising under the Wisconsin Franchise Investment Law), establishes an examination fee applicable to the annual filings of information (including an updated franchise disclosure document with current financial statements) required to be made by franchisors to maintain franchise registration exemption status under sec. 553.22(5) or SEC 32.05(1)(c)6 and which are reviewed by the staff. The examination fee of \$200 corresponds to the current examination fee of \$200 prescribed in SEC 35.01(1)(f) for staff review of franchise registration statement renewals that must be filed annually.

SECTION 37. SEC 35.01(3) is repealed and recreated to read:

SEC 35.01(3) Issuance of a certificate under s. 553.75(4), Stats., relating to the existence or non-existence of documents or entries on file or contained in the records of the commissioner's office \$50 plus \$1 per page for copies included with the certificate.

ANALYSIS: This SECTION makes clarifying and substantive revisions to the existing rule on this subject (establishing a fee for certification of agency franchise-related documents or entries) identical to revisions made in the 1990 rule revision to the fee section for certification of securities-related documents or entries in s. SEC 7.01(5)(a). The revisions are as follows: (1) The language of the rule is revised to clarify that the \$50 certification fee is for the review, preparation and issuance of a certificate and is not a fee of \$50 per document or entry certified to; (2) Language is added to provide that the certification can relate to the existence or non-existence of files or entries in the agency's records; and (3) An additional charge of \$1 per page for documents to be included with the certificate is prescribed to cover the costs of agency personnel retrieving files, locating specific documents and making photocopies. Such \$1 per page charge is properly higher than the regular per page photocopying fee in SEC 35.01(4) because the regular photocopying fee applies when members of the public themselves review files and locate and make copies of agency documents using the agency's copying facilities.

SECTION 38. SEC 35.01(6) is created to read:

SEC 35.01(6) Per copy cost of Guidelines for Preparation of
 the Uniform Franchise Offering Circular and Related
 Documents.....\$20.00

ANALYSIS: This rule prescribes a \$20 cost per copy for the Guidelines for Preparation of the Uniform Franchise Offering Circular and Related Documents that has been adopted by NASAA and is referred to in SEC 32.06(2).

SECTION 39. SEC 35.02(2)(a)2 is amended to read:

SEC 35.02(2)(a)2. Projections of operations or of income from the operation of any franchise unless based on past certified and audited financial statements except during the time preceding the first yearly report of operations of the franchisor as authorized under s. SEC ~~34.02(1)(d)~~---or 35.05, or unless otherwise permitted by the commissioner, and then, only if a statement of the basis ~~therefor~~ for the projections as required by s. ~~553.22(3)(m)~~-or 553.26(16), Stats., is disclosed therein;

ANALYSIS: These amendments to a subdivision of the franchise advertising standards do the following:
(1) Delete cross-references to an administrative rule and to a statute that have been repealed; and
(2) Make minor language changes.

The rules and amendments contained in this Order shall take effect as provided in sec. 227.22(2)(intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED this 15th day of November, 1991.

(SEAL)



WESLEY L. RINGO
Commissioner of Securities

FISCAL ESTIMATE

DOA-2048 (R 10/88)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

Subject Proposed amendments to Rules of the Commissioner of Securities under Chapters SEC 1, 2, 3, 4, 5, 6, 7, 32 and 35, Wis. Adm. Code

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This fiscal estimate relates to the annual revision by this agency of the Rules of the Commissioner of Securities under the statutes the agency administers (Wisconsin Uniform Securities Law, Wisconsin Corporate Take-Over Law, Wisconsin Franchise Investment Law).

The overall fiscal effect to the agency of the proposed rule revisions will be a net increase of annual agency program revenues estimated at \$21,425.

The particular fiscal effects are as follows:

- (1) The creation of rule SEC 35.01(1)(h) in the fees chapter of the agency's franchise rules establishes a \$200 review fee for the annual filing required to be made by a franchisor to maintain franchise registration exemption status under s. 553.22(5), Wis. Stats., or SEC 32.05(1)(c)6. Because the agency's records disclose that as of the end of the current fiscal year (6/30/91) there is a total of 109 franchisors that make the annual filings to maintain franchise registration exemption status under the two exemption provisions cited, the creation of the \$200 fee under the rule would result in additional estimated agency revenues of \$21,800 annually (109 x \$200).
- (2) The reduction in rule SEC 7.01(5)(d) (to \$5 from the current \$20) of the cost to receive a copy of the Form U-7 small corporate offering disclosure form will reduce annual agency revenues by approximately \$375 based on the level of sales of the form during the last fiscal year (approximately 25).

Long-Range Fiscal Implications

None beyond annualized fiscal effects

Agency/Prepared by: (Name & Phone No.)

WI Commissioner of Securities Office
Randall E. Schumann 266-3414
General Counsel

Authorized Signature/Telephone No.

Wesley L. Ringo
Wesley L. Ringo, Comm. of Securities
266-3433

Date

8/8/91

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R 10/88) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.

Subject Proposed amendments to Rules of the Commissioner of Securities under Chapters
 SEC 1, 2, 3, 4, 5, 6, 7, 32 and 35, Wis. Adm. Code

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

Nonw

II. Annualized Costs:		Annualized Fiscal Impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
TOTAL State Costs by Category		\$ - 0	\$ + 0
B. State Costs by Source of Funds			
GPR		\$ -	\$ +
FED		-	+
PRO/PRS		- 0	+ 0
SEG/SEG-S		-	+
C. FTE Position Changes		Increased Pos. + (0)	Decreased Pos. - (0)
III. State Revenues-		Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	
GPR Taxes		Decreased Rev. \$ -	Increased Rev. \$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		- 375	+ 21,800
SEG/SEG-S		-	+
TOTAL State Revenues		\$ - 375	\$ + 21,800

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ - 0	\$ + 0	Total Costs	\$ - 0	\$ + 0
Total Revenues	+ 21,800	- 375	Total Revenues	+ 0	- 0
NET Impact on State Funds	\$ (+) 21,425 or (-)		NET Impact on Local Funds	\$ (+) 0 or (-)	

Agency/Prepared by: (Name & Phone No.)
 WI Commissioner of Securities Office
 Randall E. Schumann, General Counsel

Authorized Signature/Telephone No. Date
 Wesley L. Angelo, Comm. of Securities 8/8/91

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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 91-123

AN ORDER to repeal SEC 2.02 (6); to renumber SEC 2.01 (3), 2.02 (4) (d), 2.02 (7) to (10), 5.03 (4) and 6.05 (1) (intro.) and (a) 1 to 4; to renumber and amend SEC 1.07 and 4.04 (8); to amend SEC 2.02 (9) (f) 6, 2.027 (3) and (4), 2.03 (1), 3.05, 3.11, 3.18 4.03 (3) (intro.), 4.05 (5), 5.03 (1) (intro.), 5.04 (1) (a), 5.05 (5), 6.05 (1) (a) 1 c, 7.01 (5) (d) and (7) (d), 32.05 (1) (intro.) and 35.02 (2) (a) 2; to repeal and recreate SEC 35.01 (3); and to create SEC 1.02 (7) (b), 2.01 (3) (b), 2.02 (4) (d), 3.01 (2) and (3), 3.21 (3), 4.04 (8) (b) and (c), 4.05 (11), 5.03 (4) and (5), 5.04 (5) and (6), 6.05 (1) (a) 2, 7.06 (4), 35.01 (1) (h) and 35.01 (6), relating to definitions under the securities law, securities and franchise registration exemptions, securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; and various fee-related provisions under the securities law and franchise law.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

8- 8-91. Received by Legislative Council.
9- 5-91. Report sent to Agency.

Clearinghouse Rule No. 91-123
Date 9/5/91

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 91-123

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, dated April 1989.]

2. Form, Style and Placement in Administrative Code

a. In s. SEC 1.02 (7) (a) and (b), the references to the "statutes" and the "rules" should be clarified by a numerical cross-reference. For example, the paragraphs could begin as follows:

"Branch office" for purposes of the [broker-dealer] [investment adviser] provisions of ch. 551, Stats., and chs. SEC ___ to ___ means any branch office....

b. Section SEC 2.02 (4) (d) 4 should be divided into two subdivisions as follows:

4. Any organization...revenue code corporation, other than a bank as defined in...or equivalent institution.

5. Any partnership or Massachusetts or similar business trust.

c. In the treatment clause in SECTION 9, delete the period after "6." The same comment applies to SECTIONS 28 (the periods after "1," "1a" and "d"), 30 and 31.

d. In the analysis to SECTION 10, the reference to "par. (3)" should be replaced by a reference to "sub. (3)."

e. In s. SEC 3.21 (3), insert ", Stats.," after the statutory citation in the text.

f. In s. SEC 4.03 (3) (intro.), in the treatment clause, "(Intro.)" should be "(intro.)" and insert "(intro.)" after "SEC 4.03 (3)" before the text of the rule. Similar comments apply to SECTIONS 21 and 35.

g. In s. SEC 4.04 (8) (a), first sentence, insert "s." before "SEC."

h. In s. SEC 4.04 (8) (b), delete the quotation marks around "branch office" and delete "as defined in s. SEC 1.02 (7) (a)." The same comment applies to SECTIONS 25 [sub. (5) (a) and (b)] and 26.

i. In s. SEC 4.05 (5), the clause beginning with "For purposes" should be replaced by the clause "In this subsection"; delete the quotation marks around "material amendment"; and insert "s. SEC" before "4.06 (1) (c)." Also, unless the presumption language is necessary, substitute "exists" for "is presumed to exist."

j. In s. SEC 5.03 (4), the last citation should read: "subs. (1) (c), (d) and (f) to (L) and (2)." In sub. (5), last sentence, the introductory clause should read: "If a record has been preserved for the first year of the 3-year period required in this subsection,".

k. In s. SEC 7.06 (4) (a) (intro.), the last clause should read "and that complies with the following conditions applicable to the type of form being used for the offering:". Also, the notation "s." should precede "551.25." In sub. (4) (b), "subdivision" should be "par."

l. In s. SEC 35.01 (1) (h), insert "s." before "SEC" in the text of the rule.

m. In s. SEC 35.02 (2) (a) 2, insert "s." before "553.26 (16), Stats.,". In the analysis, "subparagraph" should be "subdivision."

n. The rule apparently does not contain an effective date provision. [See s. 227.22, Stats., and s. 1.02 (4), Manual.]

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

a. In s. SEC 2.01 (3) (b), second sentence, insert a comma after "revoke."

b. In s. SEC 2.02 (4) (d) (intro.), "their own account" should be "its own account." In subd. 1, "employees" should be "employes" and in subd. 2, "employee" should be "employe."

c. In s. SEC 6.05 (1) (a) 2, "shall create no" should be "shall not create a."

d. In s. SEC 32.05 (1) (intro.), insert a comma after "s. 553.25."

REPORT PREPARED BY THE
OFFICE OF THE COMMISSIONER OF SECURITIES
RELATING TO PROPOSED FINAL FORM OF AMENDMENTS TO THE
RULES OF THE COMMISSIONER OF SECURITIES

(a) Statement Explaining Need for Proposed Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the rules of the Commissioner of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law and Chapter 553, Wis. Stats., the Wisconsin Franchise Investment Law. The annual rule revision is made for the following purposes: making clarifications to existing rule provisions where language is vague or ambiguous; adopting or amending rules necessary to effectively regulate new circumstances or developments which have occurred in the industry and the marketplace that require regulatory treatment; formally adopting and incorporating by reference new securities registration guidelines previously adopted by a national securities administrators association of which Wisconsin is a member. Each SECTION in the proposed rules that adopts, repeals or amends a rule is followed by a separate explanatory ANALYSIS which discusses the nature of the revision as well as the rationale behind and/or the necessity for it.

(b) Explanation of Modifications Made as a Result of Public Comment Letters and Hearing Testimony

- Modifications were made as follows to SEC 1.02(7)(b) in SECTION 2 as a result of public comment letters: (1) The language "in this state" was added to clarify that the scope of the rule extends only to branch offices located in Wisconsin and does not apply to locations outside of Wisconsin; and (2) Language was deleted from the public comment draft form of the rule referring to an office of an investment adviser "where investment advice is normally provided to clients."
- Modifications were made as follows to SEC 4.05(5) in SECTION 19 as a result of public comment letters: (1) The language in the public comment draft form of the rule relating to "name and address" information was deleted; and (2) The language "the broker-dealer receives from the customer and records on the customer information form" was added to clarify that the rule does not establish a duty on a broker-dealer of ongoing inquiry into the customer's circumstances. Rather, the rule as modified requires a copy of the material amendment data to be furnished where the broker-dealer has been informed of the revised customer data by the customer and the broker-dealer has recorded such revised data on the customer information form.
- Modifications were made to SEC 5.03(4) in SECTION 23 as a result of comments received, resulting in the deletion of several of the categories of records required under sub. (4) to be maintained at a branch office of an investment adviser. Specifically, the deletions were the records that had been listed as specified in paragraphs (1)(d), (h), (i), (j) and (2)(b). The records required to be maintained by a branch office of an investment adviser under the rule as now revised are those which would normally be expected to be prepared and be present reflecting the ordinary conduct of advisory activities at the branch office location (e.g., payments and disbursement records (par. (1)(c)), order tickets or memorandums (par. (1)(f)), correspondence with customers (par. (1)(g)), a copy of the advisory agreements with customers (par. (1)(k)), copies of advertisements (par. (1)(L), and records for each customer showing securities purchased or sold on advice of the adviser (par. (2)(a)).

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities Wesley L. Ringo, as Hearing Officer, and Comment Letters Received

- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to be available both to ask questions and to respond to questions regarding hearing testimony.

Comment Letters Received

- Comment letter dated September 6, 1991 from Harris Investors Direct, Inc., Chicago, Illinois
- Comment letter dated September 23, 1991 from Schiff, Hardin & Waite Law Offices, Chicago, Illinois, on behalf of the Chicago Board Options Exchange
- Comment letter dated September 23, 1991 from IDS Financial Services, Inc., Minneapolis, Minnesota
- Comment letter dated September 24, 1991 from the Investment Company Institute, Washington, DC
- Comment letter dated September 25, 1991 from Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, New York

(d) Response to Legislative Council/Rules Clearinghouse Report Recommendations

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

- Consistent with the Rules Clearinghouse comment in para. a. regarding ss. SEC 1.02(7)(a) and (b), the reference to the "statutes" and "rules" is clarified by making the appropriate numerical cross-references.
- Consistent with the Rules Clearinghouse comment in para. b. regarding s. SEC 2.02(4)(d)4, that single subdivision is divided into 2 subdivisions.
- Consistent with the Rules Clearinghouse comments in para. c. regarding the treatment clauses in SECTIONS 9, 28, 30 and 31, the periods are deleted in the rule citations listed therein.
- Consistent with the Rules Clearinghouse comment in para. d. regarding the Analysis to SECTION 10, the reference to "par. (3)" is replaced by a reference to "sub. (3)."
- Consistent with the Rules Clearinghouse comment in para. e. regarding SEC 3.21(3), ", Stats." is inserted after the statutory citation in the text.
- Consistent with the Rules Clearinghouse comment in para. f. regarding the treatment clause to s. SEC 4.03(3), and to SECTION 21, the capitalization of "Intro." is removed to read "intro."
- Consistent with the Rules Clearinghouse comment in para. g. regarding s. SEC 4.04(8)(a), first sentence, "s." is inserted before "SEC."
- Consistent with the Rules Clearinghouse comment in para. h. concerning SEC 4.04(8)(b), the quotation marks are deleted around "branch office," and the phrase "as defined in s. SEC 1.02(7)(a)" is deleted. Similar deletions are made as recommended relating to SECTIONS 25 and 26.
- Consistent with the Rules Clearinghouse comment in para. i. regarding s. SEC 4.05(5), the clause beginning with "For purposes" is replaced by the clause "In this subsection;" additionally, the quotation marks are deleted around "material amendment," and "s. SEC" is inserted before "4.06(1)(c)."
- Consistent with the Rules Clearinghouse comment in para. j. regarding s. SEC 5.03(4), the last citation is changed to read as per the language recommended by the Rules Clearinghouse; additionally, s. SEC 5.03(5), last sentence,

the introductory clause is changed to read verbatim as per the Rules Clearinghouse suggested language.

- Consistent with the Rules Clearinghouse comment in para. k. regarding s. SEC 7.06(4)(a)(intro.), the language of the last clause is changed to read verbatim as per the Rules Clearinghouse suggested language; additionally, the notation "s." is added preceding "551.25." Lastly, in sub. (4)(b), the term "subdivision" is changed to "par."
- Consistent with the Rules Clearinghouse comment in para. l. regarding s. SEC 35.01(1)(h), the notation "s." is inserted before SEC in the text of the rule.
- Consistent with the Rules Clearinghouse comment in para. m. regarding s. SEC 35.02(2)(a)2, "s." is inserted before "553.26(16), Stats.;" additionally in the Analysis, "subparagraph" is changed to "subdivision."
- Consistent with the Rules Clearinghouse comment in para. n. regarding the absence of an effective date provision, an effective date provision is added at the end of the rule provisions.

Under 5. Clarity, Grammar, Punctuation and Plain Language

- Consistent with the Rules Clearinghouse comment in para. a. regarding s. SEC 2.01(3)(b), second sentence, a comma is added after "revoke."
- Consistent with the Rules Clearinghouse comment in para. b. regarding s. SEC 2.02(4)(d)(intro.), the language "their own account" is changed to "its own account." Additionally, in subd. 1, the spelling of "employees" is changed to "employes," and in subd. 2, the spelling of "employee" is changed to "employe."
- Consistent with the Rules Clearinghouse comment in para. c. regarding s. SEC 6.05(1)(a)2, the language "shall create no" is changed to "shall not create a."
- Consistent with the Rules Clearinghouse comment in para. d. regarding s. SEC 32.05(1)(intro.), a comma is inserted after "s. 551.25."

(2) Acceptance of recommendations in part: None

(3) & (4) Rejection of recommendations and reasons therefor: None

- (e) No final regulatory flexibility analysis is included on the basis that the Office of the Wisconsin Commissioner of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.