CR 94-157

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Daniel J. Eastman, 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; securities registration exemptions; securities registration and disclosure standards, requirements, and procedures; securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures; fee-related provisions; and various licensing forms; were duly approved and adopted by this agency on November 14, 1994.

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 14th day of November, 1994.

[SEAL]

Daniel J. Eastman
Commissioner of Securities
State of Wisconsin

RECEIVED
NOV 14 1994
REVISOR OF STATUTES BUREAU

1-1-95

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

TO REPEAL SEC 2.02(4)(d)1 to 5, 2.025, 5.01(3)(b), 7.01(3)(c), and 9.01(1)(b)9, 12, 13, 15 and 16; to renumber SEC 2.027(6) to (8), 4.04(4), 5.01(3)(a), 7.01(3)(d) and (e), 9.01(1)(b)7, 8, 10 and (11); to renumber and amend SEC 2.02(4)(d)(intro.), 4.03(2), 9.01(1)(b)14; to amend SEC 1.02(5)(c) and (7)(a), 2.02(5)(a), (9)(c) and (9)(f)2, 2.027(intro.), 3.09(intro.), 3.17, 3.23(2)(h) and (3), 3.27(1), 4.01(5), 4.05(6), (9)(c) and (9)(d)(intro.), 4.06(1)(d) and (2)(c), 4.07(1)(c), 4.08(1), 5.03(4), 5.04(1)(a), 5.07(1), 5.08(1) and (2), 6.04, 7.01(intro.), (4)(b) and (7)(b) and 9.01(1)(b)10; to repeal and recreate SEC 4.01(4)(b) and 4.05(9)(e); and to create SEC 1.02(12) and (13), 2.02(9)(n), 2.027(6), 3.09(7), 4.03(2)(b), 4.06(1)(u), 5.04(1)(c), 5.05(9), 7.01(9)(a), (b) and (c) and 9.01(1)(b)7, 8, 9, 15, 16 and 17 relating to: definitions, securities registration exemptions, securities registration and disclosure standards and requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, fee-related provisions, and securities licensing forms.

Pursuant to ss. 551.63(1) and (2), 551.23(8)(f), (11) and (18), 551.26(2), 551.27(4), (10) and (11), 551.28(1)(e) and (f), 551.32(1)(a) and (b), (4), (5), (6) and (7), 551.33(1), (2) and (6), 551.34(1)(g) and (6), 551.43, 551.52(3) and (4), Stats., the Office of the Commissioner of Securities repeals, amends and adopts rules interpreting those sections as follows:

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

SECTION 1. SEC 1.02(5)(c) is amended to read:

SEC 1.02(5)(c) ~~For~~-1. Except as provided under sub. 2, for purposes of s. 551.31(1) and (3), Stats., soliciting any person in this state through the United States mail, by telephone or by other means from outside or from within this state to become a customer, client or subscriber of the person on whose behalf the soliciting is performed.

2. Any person who complies with Rule 206(4)-3 of the investment advisers act of 1940 and meets any of the following conditions is not considered to be "soliciting" for purposes of s. 551.31(3), Stats.:

a. The person is licensed in this state as an investment adviser or is qualified as an investment adviser representative of an investment adviser licensed in this state; or

b. The person is licensed in this state as a securities agent for a licensed broker-dealer which is approved to provide investment advisory services for a fee in this state; or

c. The person solicits or refers fewer than 10 persons in Wisconsin to any one investment adviser within a calendar year.

ANALYSIS: The amendments to this rule result from the Licensing Division staff addressing situations under wrap fee arrangements where a representative for one particular adviser may refer clients to a different adviser, or an agent for the broker-dealer under the wrap fee arrangement may refer customers to one or more of the participating advisers. In such situation, the issue becomes whether such referral activities by those persons triggers applicability of this rule requiring the need to be qualified/licensed on behalf of more than one licensee. These amendments provide that a person is not considered to be "soliciting" within the meaning of that term in the rule for Wisconsin investment adviser licensing purposes if the requirements of the cited federal rule are met and the person is either already licensed as an investment adviser, an investment adviser representative, or an agent, or the person solicits or refers fewer than 10 persons in Wisconsin to any one investment adviser within a calendar year.

SECTION 2. SEC 1.02(7)(a) is 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)~~ of a broker-dealer that is not a member of a national securities exchange or national securities association.

ANALYSIS: A recent change in the NASD's definition of "branch office" (for purposes of registration of each such office with the NASD) provides that any office held out to the public as a business location of the broker-dealer must be registered as a branch office with the NASD. For such offices, the first part of this rule in its current form applies to require a

filing with this agency under SEC 4.04(8) and (9) to designate the office's location for this agency's records and review purposes. However, there exist a number of locations where three or more agents may be assigned, but the NASD "hold out to the public as a business location" standard is not triggered because the agents do not conduct securities business with the public nor perform services at the particular location. The amendments to this rule make it consistent with the NASD definition by eliminating the language that the assigning of three persons to a particular office location automatically makes it a "branch office" for reporting purposes to this agency. Rather, the "3 person at a location" test under the rule as amended would automatically cover only locations for those few non-NASD member firms that are licensed in Wisconsin. Also, the reference in the rule to SEC 4.05(8) (relating to broker-dealer activities provided on the premises of banks) is deleted as unnecessary because those locations are considered branch offices by application of the NASD rule under its "hold itself out to the public" standard.

SECTION 3. SEC 1.02(12) is created to read:

SEC 1.02(12) "Cash," "funds," or "money" as used in ch. 551 and rules thereunder includes, but is not limited to, all types of currency, checks, drafts, bank deposits or their equivalents.

ANALYSIS: A recent agency enforcement action, which centered on the meaning of an investment adviser having custody of "funds," demonstrated that a rule was needed to codify definitions for the terms "funds" and "money" as used in s. 551.44, Stats., and various licensing rules including s. SEC 5.06(6). The synonyms used in this definitional rule are taken from the dictionary definitions of the two terms.

SECTION 4. SEC 1.02(13) is created to read:

SEC 1.02(13) An "offer" for purposes of use of the registration exemption in s. 551.23(11), Stats., does not include presentations made at an organized venture capital fair

or other investment forum designated in writing by the commissioner pursuant to s. SEC 2.02(9)(l).

ANALYSIS: This SECTION creates a definition which provides that presentations made at a venture capital fair or other investment forum designated by the Commissioner--which are accorded exemption status under SEC 2.02(9)(l)--do not constitute "offers" for purposes of s. 551.23(11), Stats. This SECTION will benefit small business entities intending to raise capital through use of the "10 offeree per 12 month period" private placement exemption of s. 551.23(11), Stats., because without this rule, if a small business entity made a presentation at a designated venture capital fair or investment forum that was attended by 10 persons or more, although the offers made in that context would be exempt by application of SEC 2.02(9)(l), the entity's ability to use 551.23(11), Stats., to make sales will have been "used up."

SECTION 5. SEC 2.02(4)(d)1. to 5. are repealed.

ANALYSIS: See the ANALYSIS for the amendments to SEC 2.02(4)(d).

SECTION 6. SEC 2.02(4)(d)(intro.) is renumbered SEC 2.02(4)(d) and as renumbered is amended to read:

SEC 2.02(4)(d) Any ~~of the following~~ "qualified institutional buyer" ~~entities~~ as defined and listed in sec. 230.144A under the securities act of 1933 as amended inclusive to October 22, 1992, 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 qualified institutional buyer~~:~~.

ANALYSIS: The amendments in this SECTION, together with the repeals in the preceding SECTION, make the federal "Qualified Institutional Buyer" category of "financial institution or institutional investor" under the registration exemption in s. 551.23(8), Stats., one that is incorporated by reference to the federal statute rather than having each entity separately listed as is now the case in subdivisions (d)1 to 5 of this rule. By structuring the provision in this way, when the U.S. Securities and Exchange Commission adds new categories of Qualified Institutional Buyers or amends existing categories, such changes can be reflected in the Wisconsin rule by promulgating a rule revision adopting the appropriately dated amendment to the SEC provision. That is what is being done in this SECTION by means of the specific, added reference to amendments adopted by the SEC on October 22, 1992 to the Qualified Institutional Buyer provisions in Rule 144A under the Securities Act of 1933. Those 1992 federal amendments expanded the definition of Qualified Institutional Buyer to include: (1) Bank collective trust funds whose participants are pension and benefit plans; and (2) unregistered, separate accounts of insurance companies.

SECTION 7. SEC 2.02(5)(a) is amended to read:

SEC 2.02(5)(a) Offerees or persons holding directly or indirectly all the issuer's securities include all joint or common owners and all beneficial owners of its securities, and all beneficial owners of any corporation, partnership, association or trust holding any of the issuer's securities and organized in connection with the offer or sale of the securities, provided that any relative or spouse, or any relative of the spouse, taking or holding the securities in joint or common tenancy with and having the same home as the offeree or person, shall not be deemed a separate offeree or person;

ANALYSIS: This amendment clarifies that the last clause of the rule (which provides that relatives or

spouses sharing a home are not considered separate offerees or securityholders for purposes of use of the registration exemptions in secs. 551.23(1) or (11), Stats.) is applicable only in the context where the same-household relatives or spouses hold the securities in joint or common tenancy. Such "joint or common owners" language outlining the scope of the rule is contained in the first part of the rule, and the amendment codifies prior agency opinion interpretations.

SECTION 8. SEC 2.02(9)(c) is amended to read:

SEC 2.02(9)(c) Any transaction pursuant to an offer to existing security holders of the issuer, other than an entity designated in s. 551.52(1)(b), Stats., and to not more than 10 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 months preceding the offer pursuant to s. 551.23(10) or (11), Stats., if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state; and if the issuer files with the commissioner prior to the offering a notice specifying the terms of the offer, including any prospectus, circular or other material to be delivered to offerees in connection with the transaction and such other information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days.

ANALYSIS: The amendment to this registration exemption rule under s. 551.23(18), Stats., (which enables issuers to combine usage of the "offer to existing securityholder" exemption of s. 551.23(12), Stats., and the "10 offeree" exemption of s. 551.23(11), Stats., for a single offering) adds identical language to that added statutorily in 1983

to s. 551.23(12), which precluded use of the "existing securityholder" exemption by open-end management companies or face amount certificate companies designated in s. 551.52(1)(b), Stats. The amendment will make the scope of usage of this rule exemption (that incorporates the "existing securityholder" exemption concept) equivalent to the scope of usage of the statutory "existing securityholder" exemption language in s. 551.23(12), Stats.

SECTION 9. SEC 2.02(9)(f)2. is amended to read:

SEC 2.02(9)(f)2. The total amount of options and the exercise price meet the requirements of s. SEC 3.03~~(4)~~-(1) and ~~(5)~~-(2).

ANALYSIS: These amendments reflect changes made to SEC 3.03 in the 1992 rule revision that should have been reflected by renumberings made in this rule to the sections cross-referenced.

SECTION 10. SEC 2.02(9)(n) is created to read:

SEC 2.02(9)(n) Any transaction by the sponsor of a unit investment trust involving the resale of a share of beneficial interest in the trust that meets all of the following conditions:

1. The sponsor acquired the share of beneficial interest in the secondary market.

2. The share of beneficial interest had been sold in the secondary market by a public holder of the share after the initial public offering of shares by the trust had been completed.

ANALYSIS: This SECTION creates a new registration exemption dealing with resales by a unit investment trust sponsor of shares of beneficial interest in the

trust. Without this special registration exemption, because there is no secondary trading exemption currently available under the Wisconsin Securities Law and rules applicable to such resales, it would be necessary for a unit investment trust (which originally had its securities registered under Chapter 551 when the public offering and sale of its shares of beneficial interest took place) to continuously maintain effectiveness of a registration statement in Wisconsin in order for the trust to resell repurchased units.

SECTION 11. SEC 2.025 is repealed.

ANALYSIS: This SECTION repeals the "non-seasoned issuer registration exemption by filing" provision because of the lack of use/absence of filings under the exemption. Since its enactment in 1986, there have only been a total of 12 filings under the exemption (only 1 of which was a Wisconsin issuer), with the most recent filing in 1991.

SECTION 12. SEC 2.027(intro.) is amended to read:

SEC 2.027 WISCONSIN ISSUER REGISTRATION EXEMPTION BY FILING. If all of the following conditions are met, other than any condition or conditions waived by the commissioner upon a showing of good cause, a transaction registration exemption is available under s. 551.23(18), Stats., for any offer or sale for cash of the securities of an issuer having, both before and upon completion of the offering, its principal office and a majority of the full-time employees located in this state.

ANALYSIS: This amendment makes use of the Wisconsin issuer registration-exemption-by-filing-rule in SEC 2.027 available only for offers and sales for cash, thereby precluding its use for exchange offers. The registration exemption of SEC 2.027 was created as a capital raising vehicle, and was not intended to be used in an exchange offer context. Equivalent federal limitations by the U.S. Securities and Exchange Commission on use of their new Form SB-2 for small business offerings restricts its use to offerings for cash.

SECTION 13. SEC 2.027(6) to (8) are renumbered SEC 2.027(7) to (9).

ANALYSIS: This renumbering is necessary to make room for a new subsection of the rule created in the following SECTION to be put in the proper sequence.

SECTION 14. SEC 2.027(6) is created to read:

SEC 2.027(6) The duration of the offering period shall not exceed one year, although the issuer may extend the offering for up to an additional one year by filing amended and updated disclosure materials, together with any advertising, with the commissioner in conformance with the requirements of sub. (9). If the disclosure materials provide that a minimum dollar amount of offering subscriptions must be received before the issuer may utilize any of the proceeds, all subscriptions shall be held by a financial institution under an impounding agreement until the required minimum subscription level is reached.

ANALYSIS: This new subsection to the Wisconsin issuer registration-exemption-by-filing rule does the following: (1) Establishes a one-year offering period duration so as to preclude open-ended offerings of indefinite length or offerings that provide for an excessively long duration during which the issuer's business and financial condition can change significantly. The new provision does permit the issuer to obtain an extension of the offering for up to an additional one year period if the issuer makes a filing of updated disclosure materials and advertising in conformance with the filing provisions of renumbered sub. (9). (2) Adds a provision that if the offering requires a minimum dollar amount of offering subscriptions before the issuer may utilize any of the proceeds, all subscriptions shall be held by a financial institution under an impounding agreement until the required minimum subscription level is reached.

SECTION 15. SEC 3.09(intro.) is amended to read:

SEC 3.09 (intro.) OPEN-END INVESTMENT COMPANIES. ~~The~~ Except as limited under sub.(7), the offer or sale of redeemable securities of an open-end management investment company, as defined in the investment company act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

ANALYSIS: This revision amends the preamble of SEC 3.09 (which establishes certain "merit" and "disclosure" requirements for open-end investment companies) to provide that a new subsection (7) created below will limit application of SEC 3.09 as provided in the new subsection.

SECTION 16. SEC 3.09(7) is created to read:

SEC 3.09(7)(a) For the purposes of par. (b), an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

(b) Subsections (1) to (4) are not applicable to the redeemable securities issued by an open-end management investment company, as described in the investment company act of 1940, which represents in writing incident to the filing of an application for registration of its securities, or incident

to the filing of an extension of its registration under SEC s. 3.27(2), that it meets the requirements below in subd. 1 and either subd. 2 or subd. 3:

1. The issuer is advised by an investment adviser that is a depository institution exempt from registration under the investment advisers act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the investment advisers act of 1940 for at least three years next preceding the date of filing the application for registration or for extension of the registration; and

2. The adviser has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding the date of filing the application for registration or for extension of the registration; or

3. The issuer has a sponsor that has at all times throughout the three years before the date of filing the application for registration or for extension of the registration, sponsored one or more registered investment companies, the aggregate total assets of which have exceeded $100 million.

ANALYSIS: This new rule subsection creates an exclusion that limits application of certain "merit" and "disclosure" requirements contained in SEC 3.09 in connection with registration applications (and extensions of registrations) for open-end management investment companies (mutual funds). The new rule subsection provides that the merit and disclosure requirements in sub. (1) to (4) of s. SEC 3.09 are not applicable to a registration application or a registration extension for any mutual fund that qualifies under the requirements specified. The requirements correspond to those contained in the so-called "blue-chip investment company exemption" from registration that to date has been adopted in 11 states. (Note that this rule operates as an exclusion from applicability of certain requirements of s. SEC 3.09 and is not a registration exemption.) The requirements that must be met to qualify for purposes of the exclusion are that the investment adviser (or an affiliated adviser) for the issuer must have been registered federally in that capacity for at least the 3 preceding years [subd. (b)1]; and either: (i) the adviser has engaged in the business of acting as an investment adviser to one or more registered mutual funds or unit investment trusts for at least the 3 preceding years [subd. (b)2]; or (ii) the mutual fund issuer has a sponsor that throughout the 3 preceding years sponsored one or more mutual funds with aggregate assets exceeding $100 million [subd. (b)3]. Additional amendments to rules dealing with disclosure and other requirements for registration or registration extension of the securities of mutual funds are made to s. SEC 3.23 in a following SECTION, including language added as a result of comment received during the public hearing process that unless an applicant or registrant qualifies under SEC 3.09(7), it may not utilize the exclusion from disclosure review by the agency provided under the amendment to SEC 3.23(3).

SECTION 17. SEC 3.17 is amended to read:

SEC 3.17 REAL ESTATE INVESTMENT TRUSTS. The offer or sale of securities of a corporation, trust or association, other than a real estate syndication, engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate, or both, 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 Real Estate Investment Trusts, as adopted April 28, 1981, and amended effective January 1, 1986, ~~and~~ October 24, 1991, and September 29, 1993.

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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

ANALYSIS: This SECTION adopts the amendments to the NASAA registration policy relating to real estate investment trusts that were adopted at the NASAA 1993 Fall Conference by vote of member jurisdictions, including Wisconsin.

SECTION 18. SEC 3.23(2)(h) is amended to read:

SEC 3.23(2)(h) If the offering is exempt under section 3(a)(2), 3(a)(4), 3(a)(11) or 4(2) of the securities act of 1933, and a filing is required to be made under ~~ch. 551~~ s. 551.26, 551.22(1)(b), 551.22(8) or 551.23(15), Stats., or rules promulgated thereunder, each of the following 2 statements in bold-face type, as applicable to the offering:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING

AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

ANALYSIS: These amendments do the following: (1) add a cross-reference to the federal registration exemption in section 3(a)(4) of the federal Securities Act of 1933 for not-for-profit issuers; and (2) clarify the scope of the requirement in the rule (to provide the bold-face disclosures) to correspond to the specific Wisconsin registration or exemption provisions that relate to offerings made under one or another of the federal exemptions specified. Those federal exemptions relate to governmental securities offerings [sec. 3(a)(2)], not-for-profit entities [sec. 3(a)(4)], intra-state offerings [sec. 3(a)(11))], and non-public offerings [sec. 4(2)]. By specifically listing the Wisconsin registration and exemption provisions to which the disclosures are applicable, issuers have certainty of the Wisconsin rule's scope. [For instance, "Regulation D" filings exempt under federal sec. 4(2) of the Securities Act of 1933 are not required under this rule as amended to contain the bold-face disclosures because Wisconsin's Regulation D exemption in sec. 551.23(19) is not contained in the listing of Wisconsin exemption sections specified.]

SECTION 19. SEC 3.23(3) is amended to read:

SEC 3.23(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting

the requirements of form S-1 under the Securities Act of 1933 that receives full review by the U.S. securities and exchange commission is deemed to satisfy the requirements of this subsection. A prospectus meeting the requirements of form N-1A or form S-6 and subsequent post-effective amendments as filed under the Securities Act of 1933, or the Investment Company Act of 1940, or both, by a registration applicant or an existing registrant that qualifies under s. SEC 3.09(7)(b) is deemed to satisfy the requirements of this subsection. If the offering is being made for federal purposes pursuant to use of either Rule 504 of Regulation D under the Securities Act of 1933 or Rule 147 under Section 3(a)(11) of the Securities Act of 1933, a disclosure document in compliance with the North American Securities Administrators Association, Inc. form U-7 is deemed to satisfy the requirements of this subsection.

ANALYSIS: This amendment, which was developed in conjunction with the creation of new rule SEC 3.09(7) in an earlier SECTION, provides that a prospectus meeting the requirements of Form N-1A (as well as subsequent post-effective amendments) filed under the federal Securities Act of 1933 and/or the Investment Company Act of 1940--which relates to open-end management company/mutual fund securities--is deemed to meet the "disclosure of all material facts" requirement of subsection (3).

As a result of public comment, the scope of the amendment is expanded to include prospectuses (as well as post-effective amendments) for unit investment trusts which satisfy the requirements of Form S-6 filed under the federal Securities Act of 1933 and/or the Investment Company Act of 1940. Equivalent treatment is warranted under the rule for the Form S-6 disclosure materials of unit investment trusts because both mutual funds and unit investment trusts are categories of investment companies that are subject to merit regulation pursuant to the Investment Company Act of 1940 and both are required to file prospectuses with the U.S. Securities and Exchange Commission for review in accordance with the Investment Company Act of 1940 and the Securities Act

of 1933. Additionally, unit investment trusts are included within the "blue chip investment company exemption" currently adopted in 11 states and upon which the new rule in SEC 3.09(7) is based.

The amendment is based on the position that the SEC has primary regulatory authority of open-end mutual funds and unit investment trusts under the Investment Company Act of 1940 and that disclosure materials for open-end investment companies/mutual funds or for unit investment trusts which are allowed for use nationally with public investors in accordance with applicable U.S. Securities and Exchange Commission review procedures will not be subject to a separate disclosure review by the Wisconsin Commissioner's Office.

As a result of comment received during the public hearing process, specific language ("by a registration applicant or an existing registrant that qualifies under s. SEC 3.09(7)(b)") is added to clarify the intent of the amendment which is to exclude from disclosure review by the agency under SEC 3.23(3), the disclosure materials specified in the amendment only for registration applicants or existing registrants who qualify under the "blue chip investment company" criteria specified in new rule SEC 3.09(7)(b). For those applicants or registrants who do not qualify under the criteria in SEC 3.09(7)(b), they are subject to all of the review requirements in SEC 3.09(1) to (6), particularly sub. (6), which establishes certain cover page risk disclosures that the agency can require an applicant or registrant to make.

SECTION 20. SEC 3.27(1) is amended to read:

SEC 3.27 EXTENSION OF REGISTRATION STATEMENTS. (1) Application for an extension of the offering period of a registration statement, except one relating to redeemable securities issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or securities of a finance company licensed under s. 138.09, Stats., shall be filed in the form prescribed by the commissioner not less than 30 days prior to the end of one year from the effective date of the registration statement or an

~~order of extension~~ an extended period of effectiveness for the registration statement, whichever is most recent. The application shall be accompanied by a prospectus updated in accordance with s. SEC 3.23(5), a balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of s. SEC 7.06, provided that if the date of any of the above financial statements is more than 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes) prior to the date of the extension of the registration statement, the statements shall be updated (which may be done without audit) to within the 120-day or 180-day requirement above. ~~Any extension of the offering period of a registration statement shall be by order of the commissioner, subject to such conditions as may be prescribed.~~ If no order specifying a different effectiveness period is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the commissioner determines.

ANALYSIS: These amendments will allow this Office to extend the effectiveness of a securities registration statement without the necessity of a formal, written order. The language in the new last sentence added at the end of the subsection is taken from the language in s. 553.30(1), Wis. Stats., which provides an equivalent (no written order needed) process for renewal of a franchise registration statement.

SECTION 21. SEC 4.01(4)(b) is repealed and recreated to read:

SEC 4.01(4)(b) The applicant has been licensed within 2 years prior to the date the application is filed in this state, as an agent or as a broker-dealer under the securities law of another state and the following applicable conditions are met:

1. The other state where the applicant has been licensed has required the uniform securities agent state law examination prior to that 2 year period.

2. In the case of examinations required by sub.(3)(a) to (e), the applicant has been registered with the national association of securities dealers, inc. to engage in the type of business for which the applicant is applying for license within 2 years prior to the date of filing of the application for license.

ANALYSIS: This recreated rule clarifies changes made to this agent-examination-waiver paragraph in the agency's 1992 rule revision in order to deal with fact situations involving agents who had not been continuously licensed, but had been licensed within the 2 year period required for NASD exams under the previous version of this rule. The recreated rule reinstates the "within" rather than "preceding" criteria for waiver of the exams as a requirement, while requiring that the applicant must have been licensed in another state for some period during which that other state had required the examination.

SECTION 22. SEC 4.01(5)(intro.) is amended to read:

SEC 4.01(5)(intro.) Prior to issuance of an initial license as a broker-dealer, at least one employe ~~at its principal office or designated office of supervision in accordance with s. SEC 4.03(1),~~ shall be designated in the license application to act in a supervisory capacity and be licensed as an agent for the broker-dealer and shall have immediate access to the records maintained pursuant to s. SEC 4.03(1). Each designated supervisor shall meet the examination requirement in sub. (3) and shall pass with a grade of at least 70% the examination in par. (a), unless the broker-dealer's proposed securities activities will be restricted, in which case the designated supervisor is required to pass each examination in pars. (b) to (d) that relates to the broker-dealer's securities activities, unless the examination is waived under sub. (4):

ANALYSIS: The amendments to this broker-dealer designated supervisor rule benefit broker-dealers by eliminating the requirement that the supervisor must be located either at the broker-dealer's principal office or designated office of supervision. With the advent of facsimile machines that enable supervisors to immediately receive copies of customer and firm records from the firm's home office or any branch office location, the rule is amended to require only that the supervisor--wherever physically located--must have immediate access to the records specified in the rule.

SECTION 23. SEC 4.03(2) is renumbered (2)(a) and as renumbered is amended to read:

SEC 4.03(2)(a) ~~Every~~ Except with respect to records specified in par (b), every licensed broker-dealer shall preserve at its principal office, at a designated office permitted by the commissioner under s. SEC 4.03(1), or at an office under the direct supervision and control of the principal or designated office, ~~for at least 6 years, the first 2 years in an easily accessible place,~~ all records required under sub. (1) ~~and under s. SEC 4.035(2), except that records.~~ The records required in sub. (1) shall be preserved for at least 6 years, with preservation for the first 2 years in an easily accessible place, except that records required under sub. (1)(k), (l), and (m) shall be preserved by the broker-dealer for at least 6 years after the closing of the account. Records required under sub. (1)(o) shall be preserved by the broker-dealer for at least 6 years after withdrawal or expiration of its license in this state. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record has been preserved for one year as required under this subsection, a microfilm copy may be substituted for the remainder of the required period. Compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records, or other means of retention of records, is deemed compliance with this subsection.

ANALYSIS: These amendments are necessary to: (1) place in separate sentences the location aspect of this records retention rule (regarding where the required records must be kept) and the duration aspect (regarding how long the required records must be maintained) to facilitate the creation in the

following SECTION of an exception to the location aspect of this records-retention rule; (2) provide notice that an exception to the location aspect of this rule to benefit broker-dealers is created in new rule SEC 4.03(2)(b) in the following SECTION; and (3) reflect the repeal of SEC 4.035 in a following SECTION.

SECTION 24. SEC 4.03(2)(b) is created to read:

SEC 4.03(2)(b) The customer account-related records in sub. (1)(a), (c), (f) to (m), (p), (r) and (s) may be separately maintained at a designated office permitted by the commissioner, provided the records are immediately accessible to the designated supervisor.

ANALYSIS: This new subsection of the broker-dealer records-retention rule benefits broker-dealers by providing an exception from the general rule in par. (2)(a) as revised in the preceding SECTION. The exception allows the customer account-related records specified in (2)(b) to be maintained away from the broker-dealer's home office, provided that the records are immediately accessible (by facsimile or other means) to the firm's designated supervisor.

SECTION 25. SEC 4.04(4) is renumbered SEC 4.04(4)(a).

ANALYSIS: This renumbering is necessary because of the creation in the following SECTION of paragraph (b) to sub (4).

SECTION 26. SEC 4.04(4)(b) is created to read:

SEC 4.04(4)(b) Each broker-dealer that intends to provide investment advisory services for compensation in this state shall file an amendment to its application and provide all information required by forms prescribed by s. SEC 9.01(1) together with any information requested by the commissioner.

Investment advisory activity may commence upon the expiration of 5 days from the filing of the amendment or such earlier date as permitted by the commissioner, unless a request for additional information relevant to the amendment is made by the commissioner prior to the expiration of the 5 days.

ANALYSIS: Currently, the Wisconsin Uniform Securities Law allows a broker-dealer to conduct investment advisory business (for which it receives separate compensation) without a separate license. However, the staff has been requiring such broker-dealers to file all pertinent information regarding their proposed investment advisory activities before the firm commences that activity in Wisconsin. Noting that investment advisory activity is subject to different state and federal requirements and because the staff reviews investment adviser license applications (which include proposed advisory contracts, fee schedules, descriptive brochures, and procedures) before permitting advisory activities, this rule codifies a requirement that a broker-dealer intending to provide advisory services for compensation must file an amendment to its broker-dealer application, with supporting documents relating to its advisory business, and may not commence advisory activities in Wisconsin until the prescribed 5-day review period has been completed.

SECTION 27. SEC 4.05(6) is amended to read:

SEC 4.05(6) Every licensed broker-dealer shall employ at ~~its principal office or designated office of supervision in accordance with s. 4.03(1),~~ at least one person designated in writing to the commissioner to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01(5) and has immediate access to the records maintained pursuant to s. SEC 4.03(1). If a licensed broker-dealer is not in compliance with the requirements of this ~~paragraph~~

subsection, it has 45 days from the first date of non-compliance to meet the requirements of this ~~paragraph~~ subsection.

ANALYSIS: The amendment to this Rule of Conduct provision relating to designated supervisors is necessary to parallel an equivalent amendment to the broker-dealer designated supervisor rule in SEC 4.01(5). The amendments to each rule benefit broker-dealers by eliminating the requirement that the supervisor must be located either at the broker-dealer's principal office or designated office of supervision. As stated in the ANALYSIS to the amendment to SEC 4.01(5), with the advent of facsimile machines that enable supervisors to immediately receive copies of customer and firm records from the firm's home office or any branch office location, this rule is amended to require only that the supervisor--wherever physically located--must have immediate access to the records specified in the rule.

SECTION 28. SEC 4.05(9)(c) is amended to read:

SEC 4.05(9)(c) ~~Prominently disclose~~ Disclose the identity of the licensed broker-dealer in, without limitation because of enumeration, all advertising, correspondence , business cards, promotional materials and securities records relating to the broker-dealer's securities services provided on the premises of the financial institution. Any materials described in this paragraph may not display the financial institution's name or logotype in a manner that would mislead customers as to the financial institution's role in connection with the securities services being offered by the broker-dealer. For purposes of this paragraph, if the broker-dealer's name is no less prominent in the materials than the name of the financial

institution in the size, style or color of type or in the placement or by use of logotypes, the materials are presumed not misleading.

ANALYSIS: Nationally and in Wisconsin, more and more broker-dealers have entered into so-called "networking" agreements with financial institutions for the purpose of conducting securities business on the premises of the financial institution. These amendments to par. (c) of existing rule SEC 4.05(9) dealing with these activities requires that advertising used by the broker-dealer not mislead customers regarding the financial institution's role in offering securities services. The rule as amended would require advertising and other promotional materials as well as securities records to disclose the name of the broker-dealer providing the securities services "not less prominently" than the name of the financial institution on such materials so that customers are not misled to infer that the bank or its employees are providing the securities services. Regarding the "not less prominently" standard in this rule as amended , joint guidelines issued in February 1994 by 6 national banking trade associations concerning the sale of mutual funds and other non-insured securities products on banking premises require that any advertising, promotional, marketing or sales materials must contain "conspicuous and prominent" notice of the uninsured nature of such investment products. The guidelines specifically go on to provide that "Disclosures are not conspicuous or prominent if they are lost in the middle of a multi-page document or if they are in a type-face that is too small relative to the other type-faces in the document."

This rule as amended is compatible with guidelines and interpretations issued in 1993 and 1994 by federal financial institution regulators. Additionally, the U.S. Securities and Exchange Commission issued a "no enforcement action" letter in November 1993 to Chubb Securities Corporation based on the terms and conditions contained in Chubb's Customer Access Agreement with participating financial institutions. Chubb's Agreement required certain prescribed steps to be taken with regard to the physical location of where the securities activities would be provided, customer disclosure procedures, and use of promotional literature, all of which must clearly distinguish the securities services provided by the broker-dealer from the banking functions of the financial institution. In particular, Chubb's Agreement provided that the broker-dealer's sales agents must obtain a written acknowledgement from customers that transactions in

their securities account are not FDIC-insured and are not guaranteed by the financial institution, that references to the financial institution in advertising materials must be for the purpose of identifying only the location where brokerage services are available, and that the references must not appear prominently in the materials.

SECTION 29. SEC 4.05(9)(d) (intro.) is amended to read:

SEC 4.05(9)(d)(intro.) Establish ~~and file with the commissioner~~ written supervisory procedures and a system for applying the procedures. The procedures shall comply with sub. (2) and shall be designed to accomplish certain supervisory functions, including but not limited to the following:

ANALYSIS: This amendment deletes the requirement that a copy of the supervisory procedures for brokers providing services on the premises of financial institutions be filed with the Commissioner inasmuch as this Office no longer requires new broker-dealer applicants to submit copies of their procedures for review, nor do the agency's rules require that amendments to such procedures be filed with this Office. All broker-dealers are still subject to the general requirement in SEC 4.05(2) to establish and maintain a set of written supervisory procedures, and the staff incident to its periodic, on-site inspections of broker-dealer home and branch offices can verify whether such supervisory procedures have been established and are being maintained.

SECTION 30. SEC 4.05(9)(e) is repealed and recreated to read:

SEC 4.05(9)(e)Disclose in writing prior to or at the time of opening an account that the securities services are provided by the broker-dealer and not by the financial institution, that non-deposit investment products are not guaranteed by the

financial institution, are not deposits or other obligations of the financial institution, are not subject to any federal deposit insurance protection and involve risk, including possible loss of principal.

ANALYSIS: This SECTION restructures the existing Rule of Conduct provision dealing with certain disclosures required to be made to customers by broker-dealers that provide securities services on the premises of a financial institution. The rule as restructured does the following: (1) Adds as a required specific disclosure to be provided to customers that the securities services are being provided by the broker-dealer and not by the financial institution to thereby ensure that customers are aware that the financial institution is not responsible for the securities recommendations of, or transactions by, the broker-dealer conducting business on the financial institution's premises. (2) Retains the existing requirement that the broker-dealer disclose to customers that securities transactions in their accounts are not covered by deposit insurance. In that regard, as a result of public comment, the language "federal" has been substituted for "bank" for purposes of the reference to deposit insurance to expressly provide that the rule is applicable to financial institutions in addition to banks (such as credit unions which have NCUA insurance). (3) As a result of public comment, added to the list of required disclosures are the same disclosure items required under recently-issued guidelines (referenced below) issued by federal financial institution regulatory authorities as well as financial institution trade associations--namely, that non-deposit investment products are not guaranteed by the financial institution, are not deposits or other obligations of the financial institution, are not subject to deposit insurance protection and involve risk, including possible loss of principal. (4) Changes the timing as to when the disclosures must be provided to be prior to, or at the time of opening, an account (in contrast to the existing rule which permitted such disclosures to be made as late as with an order confirmation or a monthly account statement). Such timing will ensure that customers will receive the required disclosures prior to the time they effectuate transactions in their accounts.

This rule, as revised, parallels the guidelines recently issued in late 1993 and early 1994 by various federal financial institution regulatory authorities, including the Office of Thrift Supervision, the

Federal Deposit Insurance Corporation, the Office of the Comptroller of Currency and the Federal Reserve Board, each of which requires disclosures to customers that the securities products marketed on-premises are not FDIC-insured, are not obligations of or guaranteed by the financial institution, and that they may fluctuate in value or suffer a loss of principal. The federal guidelines, in addition to requiring the disclosures, go beyond the scope of this rule by encouraging the financial institutions to obtain from customers a signed acknowledgement relating to the disclosures.

The required disclosures under this rule also correspond with disclosure guidelines announced in February 1994 by the American Bankers Association and 5 other national financial institution trade associations.

This rule also is compatible with the U.S. Securities and Exchange Commission's November 1993 "no enforcement action" letter issued to Chubb Securities Corporation discussed in the ANALYSIS to the amendments to SEC 4.05(9)(c) in a preceding SECTION. That SEC letter referenced the steps Chubb Securities would implement in its networking Agreement with financial institutions involving its customer disclosure procedures and use of promotional materials, all of which must clearly distinguish the securities services provided by the broker-dealer from the banking functions of the broker-dealer. The Chubb Agreement additionally provided that the broker-dealer's sales agents must obtain a written acknowledgement from customers that securities transactions in their accounts are not FDIC-insured.

SECTION 31. SEC 4.06(1)(d) is amended to read:

SEC 4.06(1)(d) Executing a transaction on behalf of a customer without authority to do so, except that use by a broker-dealer of a negative response letter in conformity with Article III, Section 15 of the Rules of Fair Practice of the national association of securities dealers, inc. is not a violation of this rule.

ANALYSIS: This SECTION creates an exception to the so-called "unauthorized trading" prohibited business practice rule to enable broker-dealers to utilize so-called "negative response letters" meeting the NASD

rule cited. The NASD rule, adopted in December, 1992 and approved by the SEC, permits the use of negative response letters (in which the broker-dealer informs the customer that a specific transaction will be effectuated in the customer's account unless the customer objects and specifically informs the broker-dealer not to effectuate the transaction) in certain specific circumstances only--namely, bulk exchanges at net asset value of money market funds in customer accounts, provided that certain listed requirements are met. Use of the NASD rule requires that the negative response letter contain disclosures comparing the investment objectives and fees of the respective funds, be accompanied by a copy of the prospectus of the fund to be purchased, and provide that the negative response feature will not be activated until 30 days after the date on which the letter was mailed.

SECTION 32. SEC 4.06(1)(u) is created to read:

SEC 4.06(1)(u) Failing to accurately describe or disclose in advertising or other materials used in connection with the promoting or transacting of securities business in this state, the identity of the broker-dealer or the issuer. For purposes of this paragraph, "other materials" includes, but is not limited to, business cards, business stationery and display signs.

ANALYSIS: This new rule (which parallels SEC 4.06(2)(g) that deals with agents properly representing themselves to the public in advertising) establishes an equivalent requirement for broker-dealers.

SECTION 33. SEC 4.06(2)(c) is amended to read:

SEC 4.06(2)(c) Effecting any securities ~~transactions with a customer~~ transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless

the transaction is disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transaction;

ANALYSIS: The amendments to this Rule of Conduct provision (that prohibits an agent from "doing business away from" the agent's employing broker-dealer) do the following: (1) make this rule consistent with the NASD rule on this subject which operates to prohibit an agent from such practices without regard to whether the transaction is with a "customer"; and (2) change the term "transactions" from plural to the singular "transaction" to clarify that the prohibition is triggered by the first such transaction done away from the employing broker-dealer (and thus eliminate any inference that an agent has a "free one" if it is the one and only such transaction).

SECTION 34. SEC 4.07(1)(c) is amended to read:

SEC 4.07(1)(c) The license of an agent representing an issuer expires on July 31 following the date of the issuance of the license, or upon the termination of the offering for which the agent was licensed, whichever first occurs. Each renewal application for license as an agent representing an issuer shall be filed with the commissioner not later than July 1 prior to expiration of the license.

ANALYSIS: This amendment [which parallels an equivalent amendment made to the investment adviser license period and renewal rule in SEC 5.07(1)] codifies the de facto timing deadline under 551.32(1)(c), Wis. Stats., for agent-for-issuer license renewal purposes. Because the statute provides for a 30-day review period, the renewal application must be received at least 30 days prior to the July 31 license expiration date to enable the review process to be completed before expiration occurs.

SECTION 35. SEC 4.08(1) is amended to read:

SEC 4.08(1) An application for withdrawal from the status of a licensed broker-dealer under s. 551.34(6), Stats., shall be filed by the licensee on Form BDW ~~(WI) prescribed by the commissioner, and shall include a report on the status of all customer accounts of the licensee in this state and any additional information the commissioner may require~~ with the central registration depository. If the licensee has any open customer accounts in this state, the settlement of those accounts is a condition of its withdrawal~~, and~~. Additional information may be required by the commissioner and ~~its~~ withdrawal is not effective until permitted in writing by the commissioner or electronically noticed through the central registration depository.

ANALYSIS: These amendments are necessary to reflect that the broker-dealer license withdrawal procedures now involve utilizing the Central Registration Depository through which the majority of withdrawal filings are electronically made and processed rather than by making filings of paper forms with this Office.

SECTION 36. SEC 5.01(3)(a) is renumbered SEC 5.01(3).

ANALYSIS: This renumbering is necessary because of the repeal of the only other paragraph of SEC 5.01(3) in the following SECTION.

SECTION 37. SEC 5.01(3)(b) is repealed.

ANALYSIS: This SECTION makes a correction by repealing a provision (dealing with Part II of the Wisconsin investment adviser examination) that should

have been deleted incident to this Office's 1992 rule revision when the NASAA Series 65 Uniform Examination was adopted to replace the Wisconsin examination.

SECTION 38. SEC 5.03(4) is amended 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), (h) and (L) and (2)(a) and (b).

ANALYSIS: These amendments add to the list of records required to be maintained at every branch office of an investment adviser, copies of customer complaints [cross-referenced from par. (1)(h)] and customer holding records [cross-referenced from par. (2)(b)].

SECTION 39. SEC 5.04(1)(a) is amended to read:

SEC 5.04 REPORTING REQUIREMENTS. (1)(a) Except as provided in par. (b) or (c), each investment adviser shall file annually with the commissioner within 90 days after the end of its fiscal year, a copy of its balance sheet with accompanying notes, including supporting schedules, which may be either audited, prepared or compiled by an independent accountant, on either a cash or an accrual basis unless the investment adviser has received an order of the commissioner waiving the provisions of s. SEC 5.02(3).

ANALYSIS: These amendments to the investment adviser annual financial statement reporting requirement do the following: (1) Add a cross-reference to an additional alternative method (created in the next SECTION) of satisfying the annual financial statement filing requirement; (2) Add the terminology "either" to clarify that an investment adviser has separate choices to make under this section not only with

respect to whether the financial statements will be audited, prepared or compiled, but also whether the financial statements are on a cash or accrual basis; and (3) Provide an exception from the requirement that each licensed investment adviser file annual balance sheet data with the Commissioner to cover situations where the investment adviser previously has received an Order of the Commissioner waiving the investment adviser net capital requirement provisions under SEC 5.02(3).

SECTION 40. SEC 5.04(1)(c) is created to read:

SEC 5.04(1)(c) If an investment adviser is a sole proprietor, the reporting requirement in par. (a) may be satisfied by providing proof of cash or securities on deposit as of the adviser's fiscal year-end meeting the requirements of s. SEC 5.02(1) and (2).

ANALYSIS: This new rule codifies the review policy of the staff to allow the type of verification provided in the rule as a substitute for a personal financial statement prepared by an independent accountant if a copy of a bank or brokerage statement dated for the investment adviser's most recent fiscal year-end is provided which shows that $5000 has been segregated for the advisory business pursuant to SEC 5.02(2).

SECTION 41. SEC 5.05(9) is created to read:

SEC 5.05(9) Each investment adviser that participates in a wrap fee arrangement with a broker-dealer shall disclose to each customer under the arrangement the portion of the wrap fee that is attributable to advisory services. This requirement may be satisfied if the information is contained in the brochure provided to the customer either by the investment adviser or the sponsor of the wrap fee arrangement.

ANALYSIS: This SECTION creates the same wrap fee disclosure rule (except for an added last sentence) that was proposed for adoption in this Office's 1992 rule revision. Following the 1992 comment period, this Office determined not to proceed with adoption of the rule at that time because the U.S. Securities and Exchange Commission, as well as a committee of NASAA, were developing disclosure policies or rules for wrap fee arrangements and it was felt that any rule on the subject adopted in Wisconsin should be consistent with (if not uniform with) equivalent policies/rules of national scope. Recently, the U.S. Securities and Exchange Commission adopted rule 204-3(f) under the Investment Advisers Act of 1940, effective October 1, 1994, requiring the "sponsor" of any wrap fee arrangement to provide disclosure to customers--via a separate brochure--of specified information. The "sponsor" under the SEC rule can either be the broker-dealer or the investment adviser. The required disclosures include not only the identity of each sponsor of a wrap fee arrangement, but also "the schedule under which it is compensated by the sponsor for services provided to wrap fee program clients." The Wisconsin rule created in this SECTION--which obligates an investment adviser operating under a wrap fee arrangement to disclose to customers the portion of the wrap fee attributable to the advisory services--is not inconsistent with the SEC disclosure rule. Further, it does not impose a duplicative disclosure requirement beyond the SEC rule because the last sentence of this new Wisconsin rule provides that the disclosure obligation of the investment adviser can be satisfied if the allocation-of-fee-information is contained in the brochure provided to customers by the wrap fee arrangement sponsor.

The last sentence of the rule was modified as a result of public comment received to provide flexibility by enabling the brochure containing the disclosures to be provided to customers either by the sponsor or by the investment adviser.

SECTION 42. SEC 5.07(1) is amended to read:

SEC 5.07 LICENSE PERIOD. (1) The ~~initial~~ license of an investment adviser expires April 30 of each year. Each licensed investment adviser seeking renewal of its license shall file with the commissioner an application for renewal not later than March 31 prior to the expiration of its license.

The qualification of an investment adviser representative expires on the same day as that of the investment adviser which the person represents. The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

ANALYSIS: These amendments to the investment adviser license period and renewal rule provision do the following: (1) delete the term "initial" from the rule because it is unnecessary and confusing; and (2) codifies the de facto timing deadline within which an application for renewal of an investment adviser license must be received (prior to its expiration) so that the 30-day review period provided for in 551.32(1)(c), Wis. Stats., can be completed by the staff prior to the expiration of the current license.

SECTION 43. SEC 5.08(1) and (2) are amended to read:

SEC 5.08 WITHDRAWAL OF LICENSES. (1) An application for withdrawal from the status of a licensed investment adviser under s. 551.34(6), Stats., shall be filed by the licensee on Form ~~IAW(WI)~~-ADV-W prescribed by the commissioner, and shall include a report on the status of all customer accounts of the licensee in this state and any additional information the commissioner may require.

(2) An application for withdrawal from the status of a qualified investment adviser representative shall be filed by the investment adviser which the person represents within 15 days of the termination of the representative's employment on Form ~~IARepW~~-U-5 prescribed by the commissioner.

ANALYSIS: These amendments--which substitute references to new forms to be used for license withdrawals by investment advisers and for withdrawals from the status of investment adviser representatives--are necessary to prepare for electronic filing of investment adviser withdrawals through the Central Registration Depository as well as withdrawals from the status of a qualified investment adviser representative. The new forms provide equivalent information to that required under the agency's own forms previously used to date.

SECTION 44. SEC 6.04 is amended to read:

SEC 6.04 BROKER-DEALER ACTIVITIES The terms "manipulative, deceptive or other fraudulent device or contrivance" in s. 551.43, Stats., are defined to include the activities described in rules 15c1-1, 2, 4, 5, 6, 7 and 8, ~~and~~ 15c2-1, 4, 5, 6, 7, 8 and 11, and 15g-2,3,4,5 and 6 under the securities exchange act of 1934.

ANALYSIS: These amendments incorporate into this rule the federal anti-fraud-type Penny Stock Disclosure Rules under the Securities Enforcement Remedies and Penny Stock Reform Act of 1990--which are set forth in the cited subsections of 15g of the Securities Exchange Act of 1934.

SECTION 45. SEC 7.01(intro.) is amended to read:

SEC 7.01 FEES. The following fees payable in U.S. dollars, prescribed for the examination of various matters arising under ch. 551, Stats., are chargeable to the applicant, registrant or licensee, and are payable, unless otherwise provided by the commissioner, at the time an application or notice is filed:

ANALYSIS: This amendment to the introduction of the Fees chapter of the Rules of the Commissioner provides that all fees are payable in U.S. dollars.

SECTION 46. SEC 7.01(3)(c) is repealed.

ANALYSIS: With the substitution by this agency (effective 1/1/93) of the NASAA Series 65 examination that is now required to be passed by an investment adviser representative (rather than the Wisconsin examination) under SEC 5.01(3), this Office no longer administers the Wisconsin examination, thus making the fee in this section unnecessary.

SECTION 47. SEC 7.01(3)(d) and (e) are renumbered SEC 7.01(3)(c) and (d):

ANALYSIS: This renumbering is necessary as a result of the repeal of SEC 7.01(3)(c) in the preceding SECTION.

SECTION 48. SEC 7.01(4)(b) is amended to read:

SEC 7.01(4)(b) Advertising filed under s. 551.53 or 551.23(9), Stats. ..... $10 per item.

ANALYSIS: This amendment (to the fee provision for review of certain advertising materials) adds a cross-reference to the registration exemption in s. 551.23(9), Stats., which provides for filing and review by this Office of advertising materials published or circulated in connection with use of that exemption.

SECTION 49. SEC 7.01(7)(b) is amended to read:

SEC 7.01(7)(b) Delinquent filing of any material amendment required to be filed under ch. SEC 4 or SEC 5 to a broker-dealer or investment adviser ~~transfer of control~~ license ..... $100.

ANALYSIS: These changes make the delinquency fee in this rule applicable to the failure by a broker-dealer or investment adviser licensee to file any material amendment, not limited to transfer of control amendment situations.

SECTION 50. SEC 7.01(9)(a), (b) and (c) are created to read:

SEC 7.01(9) Preparation of computer-generated lists:

(a) Preparation of a list from agency computer database.....	$25 per 75 pages of printed report.
(b) Creation of a computer program for the purpose of preparing a report.....	$20.
(c) Processing of a request for a list of agents from the central registration depository.....	$25 plus accessing costs to the central registration depository.

ANALYSIS: This Office has the capability to prepare reports or lists from information contained in various computer databases that either are created and maintained by this Office, or are accessible by this Office (most significantly, the database of the Central Registration Depository). This Office on

numerous past occasions has prepared the types of lists and reports specified in the rule subsections in response to requests by the public for such information. The Office has ascertained its reasonable costs and expenses in gathering and providing such information, which fees have been charged in the past to requestors, and this SECTION codifies the charges for the various categories of data specified in the rule subsections.

SECTION 51. SEC 9.01(1)(b)9, 12, 13, 15, and 16 are repealed.

ANALYSIS: The five different forms listed in the subdivisions specified are repealed for the following reasons: (1) The IA Rep A and IA Rep W forms (for investment adviser representatives) in Subds. 9 and 12 are replaced by the uniform forms U-4 and U-5 (currently listed in SEC 9.01(1)(b)2. and 5.) for purposes of filing under the Central Registration Depository; (2) Subd. 13, the Consent to Service of Process form, is part of Form ADV listed in SEC 9.01(1)(b)8; (3) Subds. 15 and 16 are no longer in use.

SECTION 52. SEC 9.01(1)(b)7, 8 and 10 are renumbered 9.01(1)(b)11, 12 and 13, respectively.

ANALYSIS: These renumberings are for the purpose of making room for the broker-dealer and investment adviser related licensing forms created in the next two SECTIONS that need to follow each other by category and by sequence.

SECTION 53. SEC 9.01(1)(b)7 to 9 are created to read:

SEC 9.01(1)(b)7. BDAA. Broker-dealer applicant activities questionnaire.

8. USR. Acknowledgement of understanding of supervisory responsibilities of broker-dealers under Wisconsin statutes and administrative code.

9. BDDS (WI). Designation of broker-dealer supervisor.

ANALYSIS: These new broker-dealer related licensing forms will provide data about the firm corresponding to the name of the form and are reviewed by the staff incident to the licensing process.

SECTION 54. SEC 9.01(1)(b)14 is renumbered SEC 9.01(1)(b)10 and as renumbered is amended to read:

SEC 9.01(1)(b)10.BDBrO(WI). Broker-dealer Wisconsin branch office ~~report~~ designated location renewal.

ANALYSIS: This amendment changes the name of this form (which contains information relating to each Wisconsin-sited branch office of a broker-dealer and must be filed annually) to reflect that it is more correctly designated a renewal form and not a "report."

SECTION 55. SEC 9.01(1)(b)11 is renumbered SEC 9.01(1)(b)14:

ANALYSIS: This renumbering places the investment adviser licensing form involved in the proper sequence of other investment adviser licensing forms.

SECTION 56. SEC 9.01(1)(b)15 to 17 are created to read:

SEC 9.01(1)(b)15. IAAA. Investment adviser applicant activities questionnaire.

16. IAPC. Investment adviser supervisory procedures checklist.

17. IADS. Designation of investment adviser supervisor.

ANALYSIS: These new investment adviser related forms provide data about the firm corresponding to the name of the form and are reviewed by the staff incident to the licensing process.

* * * *

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 14th day of November, 1994.

(SEAL)

DANIEL J. EASTMAN
Commissioner of Securities

REPORT PREPARED BY THE
OFFICE OF THE COMMISSIONER OF SECURITIES
RELATING TO 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. 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 either new securities registration guidelines or amendments to existing guidelines previously adopted by a national securities administrators association of which Wisconsin is a member. The agency's 1994 rule revision contains 56 separate SECTIONS that make changes to the securities rules chapters relating to definitions, registration exemptions, broker-dealers and investment advisers, fraudulent practices, fees and forms. 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

-- As a result of public comment letters and hearing testimony received, the agency has withdrawn the proposed repeal (in former Section 15 of the public comment form of the proposed rule revisions) of the North American Securities Administrators Association (NASAA) registration policy on so-called "contractual plan" mutual funds contained in current rule SEC 3.01(3). That determination was based on public comment demonstrating that: (1) Although there are large numbers of persons who now reside in Wisconsin who are still paying into contractual plans initiated while residing in other states, the agency has not received complaints from investors concerning the purchase or subsequent servicing of contractual plans. Additionally, numerous (35) comment letters were received from Wisconsin public investors as well as public hearing testimony from 3 public investors, all objecting to the repeal and instead providing strong public support for the view that contractual plan mutual funds meeting the NASAA policy should be available for purchase by public investors. (2) Because currently all 50 states permit the offer and sale to their public investors of contractual plans meeting the NASAA policy, if the rule provision were repealed, it would make Wisconsin investors the only investors in the United States who would be effectively prohibited from having the opportunity to make new contractual plan investments. That is because comment letter and testimony on behalf of contractual plan issuers and sponsors stated that they would not market their contractual plans in Wisconsin if they could not utilize the NASAA policy inasmuch as it would not be economically feasible for them to operate and sell in Wisconsin under the sales compensation limits otherwise imposed by the Wisconsin rule. (3) The NASAA policy, which was developed over a 1-1/2 year period by a NASAA Committee and was adopted in March 1992 by vote of member jurisdictions, including Wisconsin, provides extensive requirements relating to disclosure, purchaser suitability, limitations on commissions and persistency reporting that provide investor safeguards to prevent abuse in the sale and operation of contractual plan mutual funds.

-- Modifications were made in the following respects to SEC 3.23(3) relating to prospectus disclosure requirements as a result of public comment letters and hearing testimony received:

The scope of the amendment is expanded to include prospectuses (as well as post-effective amendments) for unit investment trusts which satisfy the requirements of Form S-6 filed under the federal Securities Act of 1933 and/or the Investment Company Act of 1940. Equivalent treatment is warranted under the rule for the Form S-6 disclosure materials of unit investment trusts because both mutual funds and unit investment trusts are categories of investment companies that are subject to merit regulation pursuant to the Investment Company Act of 1940 and both are required to file prospectuses with the U.S. Securities and Exchange Commission for review in accordance with the Investment Company Act of 1940 and the Securities Act of 1933. Additionally, unit investment trusts are included within the "blue chip investment company exemption" currently adopted in 11 states and upon which the new rule in SEC 3.09(7) is based.

Specific language ("by a registration applicant or an existing registrant that qualifies under s. SEC 3.09(7)(b)") is added to clarify the intent of the amendment which is to exclude from disclosure review by the agency under SEC 3.23(3), the disclosure materials specified in the amendment only for registration applicants or existing registrants who qualify under the "blue chip investment company" criteria specified in new rule SEC 3.09(7)(b). For those applicants or registrants who do not qualify under the criteria in SEC 3.09(7)(b), they are subject to all of the review requirements in SEC 3.09(1) to (6), particularly sub. (6), which establishes certain cover page risk disclosures that the agency can require an applicant or registrant to make.

-- Modifications were made in the following respects to the broker-dealer Rule of Conduct provision in SEC 4.05(9)(e) relating to certain disclosures required to be made to customers by broker-dealers that provide securities services on the premises of a financial institution. As a result of public comment, the language "federal" has been substituted for "bank" for purposes of the reference to deposit insurance to expressly provide that the rule is applicable to financial institutions in addition to banks (such as credit unions which have NCUA insurance). Also as a result of public comment, added to the list of required disclosures are the same disclosure items required under recently-issued guidelines by federal financial institution regulatory authorities as well as financial institution trade associations--namely, that non-deposit investment products are not guaranteed by the financial institution, are not deposits or other obligations of the financial institution, are not subject to deposit insurance protection and involve risk, including possible loss of principal.

-- A modification was made as a result of public comment to the investment adviser Rule of Conduct provision in SEC 5.05(9) relating to disclosures required to be made to customers concerning so-called "wrap fee" arrangements. The last sentence of the rule was modified to provide flexibility by enabling the brochure containing the disclosures to be provided to customers either by the sponsor or by the investment adviser.

(c) List of Persons Appearing or Registering at Public Hearing conducted by Commissioner of Securities Daniel J. Eastman, 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.

-- James R. Fischer, Administrator of the Securities & Franchise Investment Registration Division of the Office of the Commissioner of Securities provided hearing testimony.

-- William C. Ruff, Examiner, Securities & Franchise Investment Registration Division provided hearing testimony.

-- Conrad Goodkind, Attorney, Quarles & Brady, Milwaukee, Wisconsin.

-- Craig Tyler, Vice President and Senior Counsel of the Investment Company Institute, Washington, D.C. .

-- Patrick J. Retzer, Vice President/Treasurer, Heartland Funds, Milwaukee, Wisconsin.

-- Mark Jacobs, Vice President-Legal and Secretary, The Dreyfus Corporation and Chairman of the State Liaison Committee of the Investment Company Institute, New York, New York.

-- Robert G. Same, AAL Capital Management Corporation, Appleton, Wisconsin.

-- Elliott Cohan, Assistant General Counsel, Federated Investors, Pittsburgh, Pennsylvania.

-- Robert J. Tuszynski, Vice President and Treasurer, Principal Preservation Portfolios, Inc., West Bend, Wisconsin.

-- Stanley N. Griffith, Associate General Counsel, Fidelity Management & Research Company, Boston, Massachusetts.

-- Terry D. Nelson, Foley & Lardner, Madison, Wisconsin.

-- M. Douglas Mays, Topeka, Kansas, on behalf of United Services Planning Association.

-- Lamar C. Smith, Chief Executive Officer, USPA & IRA, Fort Worth, Texas.

-- Randal L. Schroeder, private citizen, Onalaska, Wisconsin.

-- Jay E. Burzak, private citizen, Vernon, Wisconsin.

-- Mary Ann Ihlenfeld, private citizen, Wisconsin.

Comment Letters Received

-- Comment letter dated September 18, 1994 from Phillip D. Keener, CFP, Financial Security Advisors, Ltd., Brookfield, Wisconsin.

-- Comment letter dated September 21, 1994 from Robert H. Graham, Executive Vice President, AIM Distributors, Inc., Houston, Texas.

-- Comment letter dated September 18, 1994 from Richard A. Erdmann.

-- Comment letter dated September 19, 1994 from Bruce M. Bilam.

-- Comment letter dated September 21, 1994 from Allan K. Baars and Nancy E. Baars, Cleveland, Wisconsin.

-- Comment letter dated September 20, 1994 from Leonard C. Francoeur, Merrill, Wisconsin.

-- Comment letter dated September 16, 1994 from Lucinda L. Zimmer, Merced, California.

-- Comment letter dated September 17, 1994 from Patrick and Denise Rothbauer, Honolulu, Hawaii.

-- Comment letter dated September 16, 1994 from Lieutenant Commander Richard Brundrett, Lake Charles, Louisiana.

-- Comment letter dated September 15, 1994 from Robert and Kim Johnson, LaCrosse, Wisconsin.

-- Comment letter received September 22, 1994 from Jeffrey J. Sullivan, Green Bay, Wisconsin.

-- Comment letter received September 22, 1994 from Eileen J. Southwick., Lake Geneva, Wisconsin.

-- Comment letter dated September 19, 1994 from Lt. Col (Ret) and Mrs. Jerome E. Johnson, Woodville, Wisconsin.

-- Comment letter dated September 12, 1994 from Barbara J. Kocha, Florence, Wisconsin.

-- Comment letter dated September 20, 1994 from Arthur A. Verick Jr. and Rochelle L. Verick, Mukwonago, Wisconsin.

-- Comment letter dated September 11, 1994 from Dennis J. Peters, Tomah, Wisconsin.

-- Comment letter dated September 14, 1994 from Major (U.S. Army Retired) John V. Olmstead, San Antonio, Texas.

-- Comment letter dated September 15, 1994 from James K. Given Jr., Verona, Wisconsin.

-- Comment letter dated September 13, 1994 from Major, USAF (ret) David J. Husby, Verona, Wisconsin..

-- Comment letter dated September 8, 1994 from Jay E. Burzak, Verona, Wisconsin.

-- Additional comment letter dated September 22, 1994 from Jay E. Burzak, Vernon, Wisconsin.

-- Comment letter dated September 15, 1994 from Richard L. and Patricia A. Schwarz, Green Bay, Wisconsin.

-- Comment letter received September 26, 1994 from Lt. Col. Donald R. Stiffler, Lubbock Texas.

-- Comment letter dated September 18, 1994 from Lieutenant Colonel Craig A. Gaetzke (overseas).

-- Comment letter dated September 8, 1994 from David M. Hoffmann, M.D., Mauston, Wisconsin.

-- Comment letter dated September 9, 1994 from Chris Arenas, Black Earth, Wisconsin.

-- Comment letter dated September 12, 1994 from James A. Mellon, Alexandria, Virginia.

-- Comment letter dated September 14, 1994 from Jennifer L. Kuckuk, Yuma, Arizona.

-- Comment letter received September 26, 1994 from Jerald W. Clark, Butternut, Wisconsin.

-- Comment letter dated September 22, 1994 from Mary J. Richbourg and James J. Malinoski, Eau Claire, Wisconsin.

-- Comment letter dated September 20, 1994 from John E. Grek, Ashland, Wisconsin.

-- Comment letter dated September 18, 1994 from Edward w. Hermansen Jr., Racine, Wisconsin.

-- Comment letter dated September 22, 1994 from Jeffery H. and Mary Reed.

-- Comment letter dated September 22, 1994 from David Larson, Onalaska, Wisconsin.

-- Comment letter dated September 20, 1994 from Bill Cole, New Mexico.

-- Comment letter dated September 15, 1994 from Thomas J. Phalon and Julie A. Phalon, Norfolk, Virginia.

-- Comment letter dated August 11, 1994 from Harold N. Lee, Jr., Commissioner, Wisconsin Office of Commissioner of Savings & Loan, Madison, Wisconsin.

-- Comment letter dated September 2, 1994 from Orestes J. Mihaly, First Vice President and Assistant General Counsel, Merrill Lynch, New York, New York.

-- Comment letter dated September 21, 1994 from Jeffrey B. Bartell and Richard P. Carney, Quarles & Brady, Madison, Wisconsin.

-- Comment letter dated September 21, 1994 from Scott A. Moehrke and Carol A. Gehl, Godfrey & Kahn, Milwaukee, Wisconsin.

-- Comment letter dated September 15, 1994 from Nicolette Parrish, Vice-President & Assistant Secretary, Stein Roe & Farnham, Chicago, Illinois.

-- Comment letter dated September 13, 1994 from W. Richard Mason, General Counsel GIT Investment Funds, Arlington, Virginia.

-- Comment letter dated August 23, 1994 from H. Dick Harris, CLU, ChFC, Minnesota Mutual MIMLI Sales Corporation, St. Paul, Minnesota.

-- Comment letter dated September 23, 1994 from S. Elliott Cohan, Assistant General Counsel, Federated Investors, Pittsburgh, Pennsylvania.

-- Comment letter dated September 19, 1994 from Loren Dunton, President, National Center for Financial Education, San Francisco, California.

-- Comment letter dated September 23, 1994 from Stanley N. Griffith, Associate General Counsel, Fidelity Investments.

-- Comment letter dated September 22, 1994 from Craig S. Tyle, Vice President and Senior Counsel, Investment Company Institute, Washington, DC.

-- Two comment letters dated September 22, 1994 from Laura J. Siegel, Davis Polk and Wardwell, New York, New York.

-- Comment letter dated September 22, 1994 from Thomas M. Mistele, Vice President, Franklin/Templeton Distributors, Inc., St. Petersburg, Florida.

-- Comment letter dated September 22, 1994 from Robert Harris, Vice President, Merrill Lynch Asset Management, Plainsboro, New Jersey.

-- Comment letter dated September 22, 1994 from Jane Baggs, Supervisor, Blue Sky Department, Franklin/Templeton Group of Funds.

-- Two comment letters dated September 22, 1994 from Sheldon A. Jones, Dechert Price & Rhoads, Boston, Massachusetts.

-- Comment letter dated September 20, 1994 from Eileen J. Newhouse, Counsel, IDS Financial Corporation, Minneapolis, Minnesota.

-- Comment letter dated September 21, 1994 from Karen J. Grozinski, Assistant Vice President, The Vanguard Group, Valley Forge, Pennsylvania.

-- Comment letter dated September 21, 1994 from Ellen Metzger, Vice President and General Counsel, Neuberger & Berman Management, Inc., New York, New York.

-- Comment letter dated September 20, 1994 from Henry H. Hopkins, Sarah McCafferty and Richard J. Barna, T. Rowe Price Associates, Inc., Baltimore, Maryland.

-- Comment letter dated September 20, 1994 from A. John Murphy, Assistant Vice President, Eaton Vance Management.

-- Comment fax received September 22, 1994 from Linda Carley, State Street Research, Boston, Massachusetts.

-- Comment letter dated September 14, 1994 from Brenda Mitchell, Blue Sky Representative, the Winsbury Company, Columbus, Ohio.

-- Comment letter dated September 21, 1994 from Karen M. McLaughlin, General Counsel, The Gateway Trust, Milford, Ohio.

-- Comment letter dated September 20, 1994 from Steven E. Asher, Putnam Investments, Boston, Massachusetts.

-- Comment letter dated September 24, 1994 from Lt. Col. David Klauck and Suzanne Klauck, Elmendorf Air Force Base, Arkansas.

-- Comment letter dated September 26, 1994 from Stephen J. Schenkenberg and John S. Weitzer, Strong/Corneliuson Capital Management, Inc., Milwaukee, Wisconsin.

-- Comment letter dated September 26, 1994 from Joseph P. Hildebrandt, Foley & Lardner, Madison, Wisconsin.

-- Comment letter dated September 26, 1994 from James B. Craver, Senior Vice President, Signature Financial Group, Inc., Boston, Massachusetts.

-- Comment letter dated September 27, 1994 from Susan M. Holcomb, Capital Research and Management Company, Los Angeles, California.

-- Comment letter dated September 27, 1994 from Daniel J. Barry, Attorney, Securities Industry Association, New York, New York.

-- Comment letter dated September 28, 1994 from Steven J. Paggioli, Investment Company Administration Corporation, New York, New York.

-- Comment letter dated September 28, 1994 from James Klingler, Compliance Counsel, A.G. Edwards & Sons, Inc., St. Louis, Missouri.

(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 the "Pursuant to" clause, the first "sections" is changed to "ss," and "Wis. Stats." is changed to "Stats."

-- Consistent with the Rules Clearinghouse comment in para. b. regarding SEC 1.02(5)(c), it is restructured as (c)1 and (c)2, with the three new subdivisions numbered (c)2a, b and c.

-- Consistent with the Rules Clearinghouse comment in para. c. regarding the Analysis to SEC 1.02(5)(c), a reference is added in the last sentence to the "soliciting or referring fewer than 10 person" subdivision (c)2c.

-- Consistent with the Rules Clearinghouse comment in para. d. regarding the Analysis to SEC 1.02(12), the misspelling of "licensing" is corrected.

-- Consistent with the Rules Clearinghouse comment in para. e. regarding the Analysis to SEC 1.02(13), "Stats." is added to the end of the final statutory reference to s. 551.23(11).

-- Consistent with the Rules Clearinghouse comment in para. f. regarding SEC 2.02(4)(d), the term "qualified institutional buyer" is substituted for the term "entity."

-- Consistent with the Rules Clearinghouse comment in para. g. regarding SEC 2.02(9)(n)(intro.), "all" is substituted for "each" and a period is substituted for the semicolon at the end of subd. 1.

-- Consistent with the Rules Clearinghouse comment in para. h. regarding SEC 3.09(intro.), the parenthetical abbreviation ("intro.") was added to the title of the text after "SEC 3.09." Additionally, the underscored term "limited" was substituted for the underscored language "application of this section is limited as provided" in the clause created by this section.

-- Consistent with the Rules Clearinghouse comment in para. i. regarding SEC 3.09(7), the Section is restructured by numbering existing (a), (b) and (c) to be (b)1, (b)2 and (b)3, and by taking the last paragraph at the end and renumbering it par. (a). Additionally, the Analysis is clarified to reflect that the requirements to be met are those in subd. (b)1 plus either (b)2 or (b)3, and the notation "s." is inserted before the reference to SEC 3.27(2).

-- Consistent with the Rules Clearinghouse comment in para. j. regarding the analysis to SEC 3.09(7), the last reference to another rule cross-referenced in the section is preceded by "SEC."

-- Consistent with the Rules Clearinghouse comment in para. k. regarding SEC 3.23(2)(h), "ss" is changed to "s."

-- Consistent with the Rules Clearinghouse comment in para. l. regarding SEC 3.23(3), "or" is substituted for "and/or," and ", or both" is inserted after "1940."

-- Consistent with the Rules Clearinghouse comment in para. n. regarding SEC 4.01(4)(b)1, "has" is substituted for "shall have," and "that 2 year period" is substituted for "the two (2) year period referred to in (4)(b)(intro.); and." Additionally, regarding (b) 2, "has" is substituted for "shall have", the capitalization is removed from "National Association of Securities Dealers, Inc." and "2" is substituted for "two (2)."

-- Consistent with the Rules Clearinghouse comment in para. o. regarding SEC 4.01(5), "(intro.)," is inserted after "(5)" in the treatment clause as well as after "(5)" in the first line of the rule.

-- Consistent with the Rules Clearinghouse comment in para. p. regarding SEC 4.03(2)(a), "sub. (1)" is substituted for the underscored "s. SEC 4.03(1)," and the underscored language "with preservation for" is inserted before the underscored language "the first 2 years."

-- Consistent with the Rules Clearinghouse comment in para. q. regarding SEC 4.03(2)(b), "to" is substituted for "through" between "(f)" and "(m)," and "the records" is substituted for "they."

-- Consistent with the Rules Clearinghouse comment in para. r. regarding SEC 4.04(4), the word "shall" is substituted for "must."

-- Consistent with the Rules Clearinghouse comment in para. s. regarding SEC 4.05(6), the citation to the rule cross-referenced in the underscored language is changed to "s. SEC 4.03(1)" from "s. SEC 4.03(a)." Additionally, in the last sentence, both references to "paragraph" are changed to "subsection."

-- Consistent with the Rules Clearinghouse comment in para. t. regarding SEC 4.05(9)(c), the underscored language ", without limitation because of enumeration," is substituted for "the following, without limitation". Additionally, in the first sentence an underscored period is substituted for the underscored comma after "financial institution," and the following language is revised to begin as a sentence "Any materials described in this paragraph may not display . . . ."

-- Consistent with the Rules Clearinghouse comment in para. u. regarding SEC 4.05(9)(d)(intro.), "(intro.)" is inserted in the first line of the rule text after "(d)."

-- Consistent with the Rules Clearinghouse comment in para. v. regarding SEC 4.06(1)(d), "conformity" is substituted for "conformance," and the capitalization is removed for National Association of Securities Dealers, Inc. Additionally, the

language "is not" is substituted for "shall not be deemed," and the term "paragraph" is substituted for "rule."

-- Consistent with the Rules Clearinghouse comment in para. w. regarding SEC 4.06(1)(u), the language "includes, but is" is substituted for "include, but are."

-- Consistent with the Rules Clearinghouse comment in para. x. regarding SEC 5.03(4), an underscored and is substituted for the underscored comma between (h) and (L).

-- Consistent with the Rules Clearinghouse comment in para. y., regarding the Analysis to SEC 5.08, language is added relating to withdrawals from the status of a qualified investment adviser representative.

-- Consistent with the Rules Clearinghouse comment in para. z. regarding SEC 7.01(4)(b), the substitution of "ss." for "s." in the current rule is not undertaken such that "s" will remain.

-- Consistent with the Rules Clearinghouse comment in para. aa. regarding the analysis to SEC 9.01(1)(b), the notation "SEC" is added before the reference to "9.01(1)(b)8.

(2) Rejection of recommendations and reasons therefor:

Under 2. Form, Style and Placement in Administrative Code

-- With respect to the Rules Clearinghouse comment in para. m. regarding SEC 3.27(1), the recommendation to substitute "different effective date" for "different effectiveness period" is not adopted for 2 reasons: (1) the language and concept of "period" of effectiveness--as contrasted with one specific date--is provided for in the amendment earlier in the rule; and (2) registration orders, particularly orders extending registration statements, that are issued by this Office under this and other rule sections utilize the "period of effectiveness" concept, and the Office wants to be consistent in the language used in this rule with that used in other related agency rules.

(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.

FORM IADS
LR 14
12-92

State of Wisconsin
Office of the Commissioner of Securities

Tommy G. Thompson
Governor

Wesley L. Ringo
Commissioner

Daniel J. Eastman
Deputy Commissioner

Mailing Address:
101 E. Wilson Street, Fourth Floor
Post Office Box 1768
Madison, WI 53701

Information	(608) 266-3431
Registration	(608) 266-1064
Franchise	(608) 266-3364
Licensing	(608) 266-3693
Legal Services	(608) 266-8557
Administration	(608) 266-3583

DESIGNATION OF SUPERVISOR

FIRM INFORMATION

FIRM NAME: _____
FIRM ADDRESS: _____
_____
_____

DESIGNATED SUPERVISOR INFORMATION

If the firm wishes to designate more than one supervisor submit one form for each supervisor designated.

NAME OF DESIGNATED SUPERVISOR: _____
HOME ADDRESS OF DESIGNATED SUPERVISOR: _____
_____

ADDRESS OF OFFICE OF EMPLOYMENT: _____
(Must be Principal or Designated Office) _____
_____

This form is to be signed by any officer of the firm

_____
Typed name and title of Signatory

_____ _____
Signature Date

This Office is to be notified within 10 days of any change in designated supervisor. Failure to do so will be cause for a delinquent filing fee of $100 pursuant to section SEC 7.01(7)(g), Wis. Adm. Code. (Please refer section SEC 5.04(4) Wis. Adm. Code.)

FORM IAAA
LR 15
12-92

WISCONSIN INVESTMENT ADVISORY ACTIVITY OF APPLICANT

Pursuant to sec. 551.31(3), Wis. Stats., it is unlawful for any person to transact business in Wisconsin as an investment adviser unless so licensed or licensed as a broker-dealer whose activities in Wisconsin include investment advisory services under Chapter 551, Wis. Stats., except that a person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in sec. 551.23(8), Wis. Stats., is not required to be so licensed.

The fact that a person may have transacted business as an investment adviser in Wisconsin in violation of sec. 551.31(3), Wis. Stats., does not mean that a person's Wisconsin license application will automatically be denied.

As part of the Wisconsin Investment Adviser License Application, the applicant must respond as to whether or not the applicant has engaged in investment advisory business in Wisconsin without being properly licensed. To facilitate your response, please complete the questionnaire below and return the completed form to this Office.

Office of the Commissioner of Securities
101 East Wilson Street, 4th Floor
P. O. Box 1768
Madison, Wisconsin 53701
(608) 266-3693

ATTENTION: LICENSING & REGULATION DIVISION

_____ **No**, this applicant is not now transacting and has never transacted investment advisory business in Wisconsin.

_____ **Yes**, this applicant has transacted investment advisory business in Wisconsin prior to this application. *The applicant agrees to stop transacting such business immediately, until properly licensed.*

If **yes**, list all transactions effected in Wisconsin:

Name & Address of Customer	Date of Transaction	Description of Transaction	Date of Client Agreement	Name of IA Rep

(Attach additional pages if space provided is insufficient.)

Name of Applicant_____

_____
Firm's Authorized Signatory

_____
Typed name and title of signatory

Date _____

INVESTMENT ADVISER SUPERVISORY PROCEDURES CHECKLIST

Please indicate below the specific section and page number of the applicant's supervisory procedures which address the following sections of the Wisconsin Uniform Securities Law ("Law") and the Rules of the Commissioner of Securities ("Code"). If these items are not in the firm's supervisory procedures, you may submit an addendum to the firm's procedures for Wisconsin addressing these items. If the applicant feels that some of these items are not applicable due to the specific nature of the business the firm will transact, please submit a written statement describing why the specific statute and Rules are not applicable.

The sections referenced below are not a comprehensive listing of all the relevant sections of the Law and the Code. The fact that we do not specifically request information on other sections of the Law and the Code should not be construed by the applicant to mean that the applicant is not responsible for ensuring compliance with all relevant sections of the Law and the Code.

1. _____ Section 551.44, Wis. Stats. It is unlawful for any person who received any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state; to employ any device, scheme or artifice to defraud the other person; or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person; or to take or have custody of any securities or funds of any client unless the adviser is licensed as a broker-dealer under ch. 551, Wis. Stats.

2. _____ Section 551.31(3), Wis. Stats. It is unlawful for any person to transact business in this state as an investment adviser unless so licensed or licensed as a broker-dealer under this chapter, except that a person whose only clients in this state are persons specified in s. 551.23(8) may transact business without a license. Representatives must be qualified pursuant to section 551.32(4), Wis. Stats., and section SEC 5.01(3), Wis. Adm. Code.

3. _____ Section SEC 5.04(1)(a), Wis. Adm. Code. Except as provided in par. (b), each investment adviser shall file annually with the Commissioner within 90 days after the end of its fiscal year, a copy of its balance sheet with accompanying notes in the form prescribed in section SEC 7.06, Wis. Adm. Code, including supporting schedules.

4. _____ Section SEC 5.05(5), Wis. Adm. Code. 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 20 days after the execution of the contract.

5. _____ Section SEC 5.06(1), Wis. Adm. Code. Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

6. _____ Section SEC 5.06(3), Wis. Adm. Code. Inducing trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account.

7. _____ Section SEC 5.06(4), Wis. Adm. Code. Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the investment adviser.

8. _____ Section SEC 5.06(5), Wis. Adm. Code. Placing an order to purchase or sell a security for the account of a customer without the authority to do so (when discretionary power is not granted, in writing, by the investment advisory client).

9. _____ Section SEC 5.06(6), Wis. Adm. Code. Borrowing money or securities from, or lending money or securities to, a customer.

10. _____ Section SEC 5.06(8), Wis. Adm. Code. Placing an order for the purchase or sale of a security if the security is not registered or the security or transaction is not exempt from registration under ch. 551., Wis. Stats.

11. _____ Section SEC 5.06(9), Wis. Adm. Code. Placing an order to purchase or sell a security for a customer through a broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person referenced in sec. 551.23(8), Wis. Stats.

12. _____ Section SEC 5.06(10), Wis. Adm. Code. Recommending to a customer that the customer engage the services of a broker-dealer, agent, or investment adviser not licensed under ch. 551, Stats., unless the customer is a person described in sec. 551.23(8), Wis. Stats.

DESIGNATION OF SUPERVISOR

FIRM INFORMATION

FIRM'S NAME: _____
FIRM'S ADDRES: _____
_____
_____
FIRM'S CRD #: _____

DESIGNATED SUPERVISOR INFORMATION

If the firm wishes to designate more than one supervisor, submit one form for each supervisor designated.

NAME OF DESIGNATED SUPERVISOR: _____
HOME ADDRESS: _____
_____
ADDRESS OF OFFICE OF EMPLOYMENT: _____
_____
_____
CRD #: _____
EXAMS: _____
_____
DATE LICENSED IN WISCONSIN: _____

(If the firm is designating more than one supervisor, please indicate on the next two lines which area of the business this supervisor will be supervising.)

_____
_____

This form is to be signed by an officer of the firm

_____
Typed name and title of Signatory

_____ _____
Signature Date

This office is to be notified within 10 days of any change in designated supervisor, failure to do so will be cause for an administrative assessment of $100 pursuant to section SEC 7.01(7)(g), Wis. Adm. Code. Please refer to section SEC 4.04(3), Wis. Adm. Code, for designated supervisor requirements.

Form BDAA
LR8
02/94

WISCONSIN BROKER DEALER ACTIVITY OF APPLICANT

Pursuant to sec. 551.31(1), Wis. Stats., it is unlawful for any person to transact business in Wisconsin as an broker-dealer unless so licensed or licensed as a broker-dealer whose activities in Wisconsin include broker-delaer services under Chapter 551, Wis. Stats., except that a person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in sec. 551.23(8), Wis. Stats., is not required to be so licensed.

Transacting business includes effecting or attempting to effect transactions in securities and/or soliciting any person in the state to become a customer of the broker-dealer.

The fact that a person may have transacted business as an broker-dealer in Wisconsin in violation of sec. 551.31(1), Wis. Stats., does not mean that a person's Wisconsin license application will automatically be denied.

As part of the Wisconsin Boker-Dealer License Application, the applicant must respond as to whether or not the applicant has engaged in broker-dealer business in Wisconsin without being properly licensed. To facilitate your response, please complete the questionnaire below and return the completed form to this Office.

_____ **No**, this applicant is not now transacting and has never transacted broker-dealer business in Wisconsin.

_____ **Yes**, this applicant has transacted broker-dealer business in Wisconsin prior to this application. *The applicant agrees to stop transacting such business immediately, until properly licensed.*

If **yes**, list all transactions effected in Wisconsin:

Name & Address of Customer	Date of Transaction	Description of Transaction	Date of Client Agreement	Name of Agent

(Attach additional pages if space provided is insufficient.)

Name of Applicant_____

_____
Firm's Authorized Signatory

_____
Typed name and title of signatory

Date _____

UNDERSTANDING OF SUPERVISORY RESPONSIBILITIES REGARDING WISCONSIN UNIFORM SECURITIES LAW AND ADMINISTRATIVE CODE

The applicant understands that pursuant to section SEC 4.05(2), Wis. Adm. Code, that it shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall include the designation, by name or title, of a number of supervisory employees reasonable in relation to the number of licensed agents, offices, and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at the principal or designated office and every Wisconsin branch office. The applicant's procedures must be structured to ensure compliance with all requirements of Wisconsin Law that are applicable to the type of business transacted by the applicant. The following are some (but not all) of the sections of Wisconsin Law that must be addressed in the applicant's procedures in addition to the applicant's NASD-approved procedures.

1. Sec. 551.21(1), Wis. Stats. It is unlawful for any person to offer or sell any security in this state unless the security is registered under this Chapter or the security or transaction is exempted under sec. 551.22, 551.23, or 551.235, Wis. Stats.

2. Sec. 551.31(1), Wis. Stats. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless so licensed under this Chapter, except that a person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in sec. 551.23(8), Wis. Stats., is not required to be so licensed.

3. Section SEC 4.05(1)(a), Wis. Adm. Code. Except as provided in paragraphs (b) and (c), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth the information prescribed in rule 10b-10 of the Securities and Exchange Act of 1934 and whether the transaction was unsolicited.

4. Section SEC 4.05(5), Wis. Adm. Code. 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 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.

5. Section SEC 4.05(6), Wis. Adm. Code. Every licensed broker-dealer shall employ at its principal office or designated office of supervision at least one person designated in writing to the commissioner to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01(5), provided that if a licensed broker-dealer is not in compliance with the requirements of this paragraph, it has 45 days from the first date of noncompliance to meet the requirements of this paragraph.

6. Section SEC 4.04(3), Wis. Adm. Code. Each broker-dealer shall notify the commissioner in writing within 10 days from the first date that the person who is the designated supervisor under s. SEC 4.05(6), no longer is acting in that capacity. The notification shall either identify a substitute designated supervisor or undertake to identify to the commissioner in writing a substitute designated supervisor with the 45 day period provided under s. SEC 4.05(6).

7. Section SEC 4.04(8)(a), Wis. Adm. Code. Each broker-dealer 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)(a).

8. Section SEC 4.04(8)(b), Wis. Adm. Code. 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). 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.

9. Section SEC 4.03(3), Wis. Adm. Code. Every branch office of a licensed broker-dealer, as defined in s. SC 1.02(7), shall prepare and keep current the records specified in this section for the period required by s. SEC 4.03(4).

10. Section SEC 4.05(11), Wis. Adm. Code. 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.

11. Sections SEC 4.06(1)(t) and (2)(i), Wis. Adm. Code. Recommending to a customer that the customer engage the services of an investment adviser that is not licensed under Chapter 551, Wis. Stats., unless the customer is a person described in 551.23(8), Wis. Stats. is deemed a "dishonest and unethical business practice" or "taking unfair advantage of a customer."

12. Section SEC 4.06(2)(a), Wis. Adm. Code. Borrowing money or securities from or lending money or securities to, a customer is deemed a "dishonest and unethical business practice" or "taking unfair advantage of a customer by an agent" under s. 551.34(1)(g), Wis. Stats.

13. Section SEC 4.06(2)(b), Wis. Adm. Code. Acting as a custodian for money, securities or an executed stock power of a customer is deemed a "dishonest and unethical business practice" or "taking unfair advantage of a customer by an agent" under s. 551.34(1)(g), Wis. Stats.

Failure to maintain an adequate supervisory system may result in formal action against the firm and/or its agents, including individuals performing supervisory functions.

I certify that I have read and understand the supervisory responsibilities set forth above, and that the firm and its agents will take the necessary steps to ensure compliance with the above-referenced sections and the remainder of the Wisconsin Uniform Securities Law and Wisconsin Administrative Code.

Name of Firm_____

_____
Typed Name and Title of an Officer Other Than the Supervisor

_____ _____
Signature Date

_____
Typed Name and Title of Designated Wisconsin Supervisor

_____ _____
Signature Date

1993 Session

LRB or Bill No./Adm. Rule No.

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 (R10/92)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

Subject Proposed amendments to Rules of the Commissioner of Securities under Chapters SEC 1, 2, 3, 4, 5, 6, 7 and 9, 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 ☒ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ 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_____ ☐ School Districts ☐ VTAE Districts

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 this agency administers (for 1994, the revisions relate solely to rules under Ch. 551, the Wisconsin Uniform Securities Law). The particular fiscal effects of the rules are as follows:

(1) A one-time revenue fluctuation of approximately $1500 of reduced securities registration revenues resulting from repeal of that part of SEC 3.01(3) permitting registration of mutual fund contractual plans meeting a NASAA Guideline, based on the agency's experience of only 1 registration under that rule since January 1, 1993 and there being only a few remaining such issuers nationally that would have been able to file for registration in Wisconsin with the $750 registration fee.

(2) No significant change in anticipated net annual agency revenues (only aggregating approximately +$1500/yr.) resulting from the rule changes based on: (i) no reduced exemption fee revenue resulting from the repeal of SEC 2.027 because there have been an average of less than 2 filings per year (with a $200 fee) since 1986 and none since 1991, and because issuers can still alternatively file for registration which involves a $750 fee; (ii) approximately $1000 in additional annual revenue from delinquency fees due to the amendment to SEC 7.01(7)(b) (10 additional delinquency situations/year X $100 each) relating to late filings by broker-dealers and investment advisers of any material licensing amendment, based on an average of 2-3 delinquencies charged per year under the current rule (which only covers transfers of control), but which would involve an estimated 12-13 delinquencies per year under the expanded rule; (iii) approximately $500 in additional agency annual revenue from fees chargeable under new rule SEC 7.01(9)(a) to (c) for providing reports or lists of information from the agency's computer databases in response to requests by outside parties, which dollar amount is based on the number of reports/lists prepared by the agency over the last 2 years and the charges established under the new rule.

Long-Range Fiscal Implications

None beyond annual fiscal effects.

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
WI Comm of Securities Office (266-3414) Randall E. Schumann, Gen Counsel	Daniel J. Eastman (266-3433) Commissioner of Securities	8-19-94

FISCAL ESTIMATE WORKSHEET — 1993 Session

Detailed Estimate of Annual Fiscal Effect ☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL
DOA-2047(R10/92)

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 and 9, Wis. Adm. Code

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

$1500

II. Annualized Costs:	Annualized Fiscal impact on State funds from: Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs	0	- 0
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	$ 0	$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-

III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS	1500	- 0
SEG/SEG-S		-
TOTAL State Revenues	$ 1500	$ - 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 0	$ 0
NET CHANGE IN REVENUES	$ +$1500	$ 0

Agency/Prepared by: (Name & Phone No.) 266-3414
WI Comm of Securities Office
Randall E. Schumann, General Counsel

Authorized Signature/Telephone No. 266-3433
Daniel J. Eastman
Commissioner of Securities

Date: 8-19-94

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982

David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

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 94-157
AN ORDER to repeal SEC 2.02 (4) (d) 1 to 5, 2.025, 5.01 (3) (b), 7.01 (3) (c) and 9.01 (1) (b) 9, 12, 13, 15 and 16; to renumber SEC 2.027 (6) to (8), 4.04 (4), 5.01 (3) (a), 7.01 (3) (d) and (e), 9.01 (1) (b) 7, 8, 10 and (11); to renumber and amend SEC 2.02 (4) (d) (intro.), 4.03 (2), 9.01 (1) (b) 14; to amend SEC 1.02 (5) (c) and (7) (a), 2.02 (5) (a) and (9) (c) and (f) 2, 2.027 (intro.), 3.01 (3), 3.09 (intro.), 3.17, 3.23 (2) (h) and (3), 3.27 (1), 4.01 (5), 4.05 (6) and (9) (c) and (d) (intro.), 4.06 (1) (d) and (2) (c), 4.07 (1) (c), 4.08 (1), 5.03 (4), 5.04 (1) (a), 5.07 (1), 5.08 (1) and (2), 6.04, 7.01 (intro.), (4) (b) and (7) (b) and 9.01 (1) (b) 10; to repeal and recreate SEC 4.01 (4) (b) and 4.05 (9) (e); and to create SEC 1.02 (12) and (13), 2.02 (9) (n), 2.027 (6), 3.09 (7), 4.03 (2) (b), 4.06 (1) (u), 5.04 (1) (c), 5.05 (9), 7.01 (9) (a), (b) and (c) and 9.01 (1) (b) 7, 8, 9, 15, 16 and 17, relating to definitions, securities registration exemptions, securities registration and disclosure standards and requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, fee-related provisions and securities licensing forms.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

8-19-94. Received by Legislative Council.
9-19-94. Report sent to Agency.

RS:DLS:kjf;jt

Clearinghouse Rule No. 94-157
Date 9/19/94

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

WLCS
DJS:las;kja
2/92

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982

David J. Stute
Director
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 94-157

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated November 1991.]

2. Form, Style and Placement in Administrative Code

a. In the "Pursuant to" clause, prior to the text of the rule, the first "sections" should be "ss." and "Wis. Stats." should be "Stats.".

b. Section SEC 1.02 (5) (c) should be restructured as follows:

> SEC 1.02 (5) (c) ~~For~~ 1. Except as provided under subd. 2, for purposes of...on whose behalf the soliciting is performed.
>
> 2. Any person who complies with...for purposes of s. 551.31 (3), Stats.:
>
> a. The person is licensed...in this state.
>
> b. The person is licensed...in this state.
>
> c. The person solicits...within a calendar year.

c. In the last sentence of the analysis to s. SEC 1.02 (5) (c), it appears that reference should be made to soliciting or referring fewer than 10 persons in Wisconsin to any one investment adviser within a calendar year.

d. In the analysis to s. SEC 1.02 (12), it appears that the word "licensing" is misspelled.

e. In the analysis to s. SEC 1.02 (13), the final statutory reference should read "s. 551.23 (11), Stats."

f. Section SEC 2.02 (4) (d) is amended to use the term "qualified institutional buyer." Should the word "entity" be deleted and be replaced by the term "qualified institutional buyer"?

g. In s. SEC 2.02 (9) (n) (intro.), "each" should be "all." In subd. 1, substitute a period for the semicolon.

h. In s. SEC 3.09 (intro.), insert "(intro.)" after "SEC 3.09" in the title to the text in the rule. The clause created in this section should read: "~~The~~ Except as limited under sub. (7), the."

i. Section SEC 3.09 (7) should be restructured as follows, taking the last paragraph on page 12 and renumbering it as par. (a):

> SEC 3.09 (7) (a) For the purposes of par. (b), an investment adviser is affiliated...with the other investment adviser.
>
> (b) Subsections (1) to (4) are not applicable...that it meets all of the following requirements:
>
> 1. The issuer is advised...registration.
>
> 2. The adviser has acted...registration.
>
> 3. The issuer has a sponsor...exceeded $100 million.

The Note to this subsection indicates that all three of these requirements must be met, thus requiring the deletion of "or" on page 12, line 15. In par. (a) (page 12, line 3), delete "currently" and in par. (b) (page 11, line 14), insert the notation "s." before the reference "SEC 3.27 (2)."

j. In the analysis to s. SEC 3.09 (7), the last reference to the Administrative Code should be preceded by the notation "SEC."

k. In s. SEC 3.23 (2) (h), "ss." should be "s.".

l. In s. SEC 3.23 (3), is "post-effective" necessary? Does this refer to amendments which are prospective in their application? This should be clarified. Also, substitute "or" for "and/or" and insert ", or both," after "1940".

m. In s. SEC 3.27 (1) (page 17, line 25), substitute "that a different effective date" for "a different effectiveness period."

n. In s. SEC 4.01 (4) (b) 1, substitute "has" for "shall have" and substitute "that 2 year period." for "the two (2) year period referred to in (4) (b) (intro.); and". In subd. 2, substitute "has" for "shall have," do not capitalize "National Association of Securities Dealers, Inc." and substitute "2" for "two (2)."

o. In s. SEC 4.01 (5), in the treatment clause insert "(intro.)" after "(5)." Also, insert "(intro.)" after "(5)" on line 1, page 19.

p. In s. SEC 4.03 (2) (a), page 20, line 9, substitute "sub. (1)" for "s. SEC 4.03 (1)" and insert "with preservation for" before "the first 2 years" on line 10.

q. In s. SEC 4.03 (2) (b), substitute "to" for "through" on line 2 and "the records" for "they" on line 4.

r. In s. SEC 4.04 (4) (b), the word "must" should be replaced by the word "shall."

s. In s. SEC 4.05 (6), first sentence, "s. SEC 4.03 (a)" should be "s. SEC 4.03 (2) (a)." In the second sentence, both references to "paragraph" should be changed to "subsection."

t. In s. SEC 4.05 (9) (c), page 23, lines 5 and 6, substitute ", without limitation because of enumeration," for "the following, without limitation,". Also, on line 9, substitute an underlined period for the underlined comma and begin the next sentence "Any materials described in this paragraph may not display".

u. In s. SEC 4.05 (9) (d) (intro.), insert "(intro.)" after "(d)."

v. In s. SEC 4.06 (1) (d), substitute "conformity" for "conformance" and do not capitalize any of the words on lines 4 and 5, page 27. Also, on line 6, "rule" should be "paragraph." Finally, the phrase "shall not be deemed" should be replaced by the phrase "is not."

w. In s. SEC 4.06 (1) (u), second sentence, "include, but are" should be "includes, but is" since the reference is to the defined term "other materials."

x. In s. SEC 5.03 (4), "(h), (L)" should be "(h) and (L)."

y. The analysis to s. SEC 5.08 states that the amendments are necessary to prepare for electronic filing of investment adviser withdrawals. Should this statement also include a withdrawal from the status of a qualified investment adviser representative?

z. In s. SEC 7.01 (4) (b), the amendment to the notation "s." should not be undertaken. The notation should remain as it is in the current rule.

aa. In the analysis to SECTION 52, the notation "SEC" should appear before the reference to "9.01 (1) (b) 8."

STATEMENT OF POLICY REGARDING REAL ESTATE INVESTMENT TRUSTS

As revised and adopted by the NASAA membership on September 29, 1993.

[¶ 3401]

I. INTRODUCTION

A. Application

1. This Statement of Policy applies to qualifications and registrations of Real Estate Investment Trusts (REITS).
2. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain guidelines may be modified or waived by the Administrator.

B. Definitions

1. ADMINISTRATOR: The official or agency administering the Securities laws of a jurisdiction.
2. ACQUISITION EXPENSES: Expenses including but not limited to legal fees and expenses, travel and communications expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether or not acquired.
3. ACQUISITION FEE: The total of all fees and commissions paid by any party to any party in connection with making or investing in mortgage loans or the purchase, development or construction of property by a REIT. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, DEVELOPMENT FEE, CONSTRUCTION FEE, nonrecurring management fee, loan fees or points or any fee of a similar nature, however designated. Excluded shall be DEVELOPMENT FEES and CONSTRUCTION FEES paid to PERSONS not affiliated with the SPONSOR in connection with the actual development and construction of a project.
4. ADVISOR: The PERSON responsible for directing or performing the day-to-day business affairs of a REIT, including a PERSON to which an Advisor subcontracts substantially all such functions. To the extent the provisions of this Statement of Policy are germane they shall apply to self-administered REITS.
5. AFFILIATE: An AFFILIATE of another PERSON includes any of the following:
   a. any PERSON directly or indirectly owning, controlling, or holding, with power to vote ten percent or more of the outstanding voting securities of such other PERSON.
   b. any PERSON ten percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by such other PERSON.
   c. any PERSON directly or indirectly controlling, controlled by, or under common control with such other PERSON.
   d. any executive officer, director, trustee or general partner of such other PERSON.
   e. any legal entity for which such PERSON acts as an executive officer, director, trustee or general partner.

6. AVERAGE INVESTED ASSETS: For any period the average of the aggregate book value of the assets of the Trust invested, directly or indirectly, in equity interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar non-cash reserves computed by taking the average of such values at the end of each month during such period.
7. COMPETITIVE REAL ESTATE COMMISSION: Real estate or brokerage commission paid for the purchase or sale of a property which is reasonable, customary and competitive in light of the size, type and location of such property.
8. CONTRACT PRICE FOR THE PROPERTY: The amount actually paid or allocated to the purchase, development, construction or improvement of a property exclusive of ACQUISITION FEES and ACQUISITION EXPENSES.
9. CONSTRUCTION FEE: A fee or other remuneration for acting as general contractor and/or construction manager to construct improvements, supervise and coordinate projects or to provide MAJOR REPAIRS OR REHABILITATION on a REITS property.
10. CROSS REFERENCE SHEET: A compilation of the STATEMENT OF POLICY sections, referenced to the page of the PROSPECTUS and DECLARATION OF TRUST, or other exhibits, and justification for any deviation from the STATEMENT OF POLICY. Such compilation shall comply with the provisions set forth on the CROSS REFERENCE SHEET.
11. DECLARATION OF TRUST: The declaration of trust, by-laws, certificate, articles of incorporation or other governing instrument pursuant to which a REIT is organized.
12. DEVELOPMENT FEE: A fee for the packaging of a REIT'S property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.
13. INDEPENDENT EXPERT: A PERSON with no material current or prior business or personal relationship with the ADVISOR or TRUSTEES who is engaged to a substantial extent in the business of rendering opinions regarding the value of assets of the type held by the REIT.
14. INDEPENDENT TRUSTEE(S): The TRUSTEE(S) of a REIT who are not associated and have not been associated within the last two years, directly or indirectly, with the SPONSOR or ADVISOR of the REIT.
    a. A TRUSTEE shall be deemed to be associated with the SPONSOR or ADVISOR if he or she:
        i. owns an interest in the SPONSOR, ADVISOR, or any of their AFFILIATES; or
        ii. is employed by the SPONSOR, ADVISOR or any of their AFFILIATES; or
        iii. is an officer or director of the SPONSOR, ADVISOR, or any of their AFFILIATES; or
        iv. performs services, other than as a TRUSTEE, for the REIT; or
        v. is a TRUSTEE for more than three REITS organized by the SPONSOR or advised the ADVISOR; or

vi. has any material business or professional relationship with the SPONSOR, ADVISOR, or any of their AFFILIATES.

b. For purposes of determining whether or not the business or professional relationship is material, the gross revenue derived by the prospective INDEPENDENT TRUSTEE from the SPONSOR and ADVISOR and AFFILIATES shall be deemed material *per se* if it exceeds 5% of the prospective INDEPENDENT TRUSTEE'S:

i. annual gross revenue, derived from all sources, during either of the last two years; or

ii. net worth, on a fair market value basis.

c. An indirect relationship shall include circumstances in which a TRUSTEE'S spouse, parents, children, siblings, mothers- or fathers-in-law, sons- or daughters-in-law, or brothers- or sisters-in-law is or has been associated with the SPONSOR, ADVISOR, any of their AFFILIATES, or the REIT.

15. INITIAL INVESTMENT: That portion of the initial capitalization of the REIT contributed by the SPONSOR or its AFFILIATES pursuant to Section II.A of this Statement of Policy.

16. LEVERAGE: The aggregate amount of indebtedness of a REIT for money borrowed (including purchase money mortgage loans) outstanding at any time, both secured and unsecured.

17. NET ASSETS: The total assets (other than intangibles) at cost before deducting depreciation or other non-cash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

18. NET INCOME: For any period total revenues applicable to such period, less the expenses applicable to such period other than additions to reserves for depreciation or bad debts or other similar non-cash reserves. If the ADVISOR receives an incentive fee, NET INCOME, for purposes of calculating TOTAL OPERATING EXPENSES in Section IV.D shall exclude the gain from the sale of the REIT'S assets.

19. ORGANIZATION AND OFFERING EXPENSES: All expenses incurred by and to be paid from the assets of the REIT in connection with and in preparing a REIT for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys), expenses for printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositaries, experts, expenses of qualification of the sale of the securities under Federal and State laws, including taxes and fees, accountants' and attorneys' fees.

20. PERSON: Any natural persons, partnership, corporation, association, trust, limited liability company or other legal entity.

21. PROSPECTUS: Shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary Prospectus; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

22. REAL ESTATE INVESTMENT TRUST ("REIT"): A corporation, trust, association or other legal entity (other than a real estate syndication) which is engaged primarily in investing in equity interests in real estate (including fee ownership and leasehold interests) or in loans secured by real estate or both.
23. ROLL-UP: A transaction involving the acquisition, merger, conversion, or consolidation either directly or indirectly of the REIT and the issuance of securities of a ROLL-UP ENTITY. Such term does not include:
    a. a transaction involving securities of the REIT that have been for at least 12 months listed on a national securities exchange or traded through the National Association of Securities Dealers Automated Quotation National Market System; or
    b. a transaction involving the conversion to corporate, trust, or association form of only the REIT if, as a consequence of the transaction there will be no significant adverse change in any of the following:
        i. SHAREHOLDERS' voting rights;
        ii. the term of existence of the REIT;
        iii. SPONSOR or ADVISOR compensation;
        iv. the REIT'S investment objectives.
24. ROLL-UP ENTITY: A partnership, real estate investment trust, corporation, trust, or other entity that would be created or would survive after the successful completion of a proposed ROLL-UP transaction.
25. SHARES: Shares of beneficial interest or of common stock of a REIT of the class that has the right to elect the Trustees of such REIT.
26. SHAREHOLDERS: The registered holders of a REIT'S SHARES.
27. SPECIFIED ASSET REIT: A PROGRAM where, at the time a securities registration is ordered effective, at least 75% of the net proceeds from the sale of SHARES are allocable to the purchase, construction, renovation, or improvement of individually identified assets. Reserves shall not be included in the 75%.
28. SPONSOR: Any PERSON directly or indirectly instrumental in organizing, wholly or in part, a REIT or any PERSON who will control, manage or participate in the management of a REIT, and any AFFILIATE of such PERSON. Not included is any PERSON whose only relationship with the REIT is as that of an independent property manager of REIT assets, and whose only compensation is as such. SPONSOR does not include wholly independent third parties such as attorneys, accountants and underwriters whose only compensation is for professional services. A PERSON may also be deemed a SPONSOR of the REIT by:
    a. taking the initiative, directly or indirectly, in founding or organizing the business or enterprise of the REIT; either alone or in conjunction with one or more other PERSONS;
    b. receiving a material participation in the REIT in connection with the founding or organizing of the business of the REIT, in consideration of services or property, or both services and property;

c. having a substantial number of relationships and contacts with the REIT;

d. possessing significant rights to control REIT properties;

e. receiving fees for providing services to the REIT which are paid on a basis that is not customary in the industry; or

f. providing goods or services to the REIT on a basis which was not negotiated at arms length with the REIT.

29. TOTAL OPERATING EXPENSES: Aggregate expenses of every character paid or incurred by the REIT as determined under Generally Accepted Accounting Principles, including ADVISORS' fees, but excluding:

a. the expenses of raising capital such as ORGANIZATION AND OFFERING EXPENSES, legal, audit, accounting, underwriting, brokerage, listing, registration and other fees, printing and other such expenses, and tax incurred in connection with the issuance, distribution, transfer, registration, and stock exchange listing of the REIT'S SHARES;

b. interest payments;

c. taxes;

d. non-cash expenditures such as depreciation, amortization and bad debt reserves;

e. incentive fees paid in compliance with Section IV.F., notwithstanding Section I.B.29.(f);

f. ACQUISITION FEES, ACQUISITION EXPENSES, real estate commissions on resale of property and other expenses connected with the acquisition, disposition, and ownership of real estate interests, mortgage loans, or other property, (such as the costs of foreclosure, insurance premiums, legal services, maintenance, repair, and improvement of property).

COMMENT: The Exclusion from TOTAL OPERATING EXPENSES for costs related directly to asset acquisition, operation and disposition is intended to allow exclusion of expenses incurred on the individual property level but not to allow the exclusion of expenses incurred on the REIT level.

30. TRUSTEE(S): The members of the board of trustees or directors or other body which manages the REIT.

31. UNIMPROVED REAL PROPERTY: The real property of a REIT which has the following three characteristics:

a. an equity interest in real property which was not acquired for the purpose of producing rental or other operating income;

b. has no development or construction in process on such land; and

c. no development or construction on such land is planned in good faith to commence on such land within one year.

[¶ 3402]

II. REQUIREMENTS OF SPONSOR, ADVISOR, TRUSTEES AND ANY AFFILIATE

A. Minimum Capital

1. Prior to the initial public offering, the SPONSOR, or any AFFILIATE, shall contribute to the REIT an amount not less than the lesser of:
   a. 10% of the total net assets upon completion of the offering, or
   b. $200,000 as an INITIAL INVESTMENT.
2. The SPONSOR or any AFFILIATE may not sell this INITIAL INVESTMENT while the SPONSOR remains a SPONSOR but may transfer the shares to other AFFILIATES.

B. Number and Election of TRUSTEES

1. The REIT shall have a minimum of three TRUSTEES, each of whom (other than a TRUSTEE elected to fill the unexpired term of another TRUSTEE) is elected by the SHAREHOLDERS of the REIT and who shall serve for a term of one year.
2. Nothing in this section shall prohibit a TRUSTEE from being reelected by the SHAREHOLDERS.
3. A majority of the TRUSTEES shall be INDEPENDENT TRUSTEES.
4. INDEPENDENT TRUSTEES shall nominate replacements for vacancies amongst the INDEPENDENT TRUSTEES' positions.
5. the TRUSTEES may establish such committees they deem appropriate (provided the majority of the members of each committee are INDEPENDENT TRUSTEES).

C. Duties of TRUSTEES

1. At, or before, the first meeting of the TRUSTEES, the DECLARATION OF TRUST shall be reviewed and ratified by a majority vote of the TRUSTEES and of the INDEPENDENT TRUSTEES. The PROSPECTUS shall disclose that such ratification is required.
2. The TRUSTEES shall establish written policies on investments and borrowing and shall monitor the administrative procedures, investment operations and performance of the REIT and the ADVISOR to assure that such policies are carried out.
3. A majority of the INDEPENDENT TRUSTEES must approve matters to which this Section and Sections II.A., II.F., II.G., IV.A., IV.B., IV.C., IV.D., IV.E., IV.F., IV.G., V.E., V.H., V.J., VI.A., VI.B.4, and VI.G., of this Statement of Policy apply.

COMMENT: The special obligations of the INDEPENDENT TRUSTEES should not be interpreted to lessen in any way the obligations of the affiliated TRUSTEES.

D. Experience of TRUSTEES

A TRUSTEE shall have had at least three years of relevant experience demonstrating the knowledge and experience required to successfully acquire and manage the type of assets being acquired by the REIT. At least one of the INDEPENDENT TRUSTEES shall have three years of relevant real estate experience.

COMMENT: "Relevant real estate experience" shall mean actual direct experience by the TRUSTEE in acquiring or managing the type of real estate to be acquired by the REIT for his or her own account or as an agent. For example, if the REIT will acquire commercial real estate, i.e. office buildings or shopping centers, "relevant real estate experience" would not include experience in buying and selling houses because it is apparent that a different level of sophistication and knowledge is required.

E. Fiduciary Duty

The TRUSTEES and ADVISOR of the REIT shall be deemed to be in a fiduciary relationship to the REIT and the SHAREHOLDERS. The TRUSTEES of the REIT shall also have a fiduciary duty to the SHAREHOLDERS to supervise the relationship of the REIT with the ADVISOR.

F. Advisory Contract

1. It shall be the duty of the TRUSTEES to evaluate the performance of the ADVISOR before entering into or renewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of such meeting.
2. Each contract for the services of an ADVISOR entered into by the TRUSTEES shall have a term of no more than one year.
3. Each advisory contract shall be terminable by a majority of the INDEPENDENT TRUSTEES, or the ADVISOR on sixty (60) days written notice without cause or penalty. In the event of the termination of such contract, the ADVISOR will cooperate with the REIT and take all reasonable steps requested to assist the TRUSTEES in making an orderly transition of the advisory function.
4. The qualifications of the ADVISOR shall be set forth in the PROSPECTUS relating to the initial public offering of the SHARES of the REIT and the TRUSTEES shall determine that any successor ADVISOR possesses sufficient qualifications to:
    a. perform the advisory function for the REIT; and
    b. justify the compensation provided for in its contract with the REIT.

G. Liability and Indemnification

1. The REIT shall not provide for indemnification of the TRUSTEES, ADVISORS or AFFILIATES for any liability or loss suffered by the TRUSTEES, ADVISORS or AFFILIATES, nor shall it provide that the TRUSTEES, ADVISORS or AFFILIATES be held harmless for any loss or liability suffered by the REIT, unless all of the following conditions are met:
    a. The TRUSTEES, ADVISORS or AFFILIATES have determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the REIT.
    b. The TRUSTEES, ADVISORS or AFFILIATES were acting on behalf of or performing services for the REIT.
    c. Such liability or loss was not the result of:
        i. negligence or misconduct by the TRUSTEES, excluding the INDEPENDENT TRUSTEES, ADVISORS or AFFILIATES; or
        ii. gross negligence or willful misconduct by the INDEPENDENT TRUSTEES.
    d. Such indemnification or agreement to hold harmless is recoverable only out of REIT net assets and not from SHAREHOLDERS.
2. Notwithstanding anything to the contrary contained in Section II.G.1, the TRUSTEES, ADVISORS or AFFILIATES and any persons acting

as a broker-dealer shall not be indemnified by the REIT for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws by such party unless one or more of the following conditions are met:

a. There has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee.

b. Such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee.

c. A court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and the related costs should be made, and the court considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and of the published position of any state securities regulatory authority in which securities of the REIT were offered or sold as to indemnification for violations of securities laws.

3. The advancement of REIT funds to the TRUSTEES, ADVISORS or AFFILIATES for legal expenses and other costs incurred as a result of any legal action for which indemnification is being sought is permissible only if all of the following conditions are satisfied:

a. The legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the REIT.

b. The legal action is initiated by a third party who is not a SHAREHOLDER or the legal action is initiated by a SHAREHOLDER acting in his or her capacity as such and a court of competent jurisdiction specifically approves such advancement.

c. The TRUSTEES, ADVISORS or AFFILIATES undertake to repay the advanced funds to the REIT, together with the applicable legal rate of interest thereon, in cases in which such TRUSTEES, ADVISORS or AFFILIATES are found not to be entitled to indemnification.

H. Arbitration Provisions

The DECLARATION OF TRUST may contain provisions relating to the use of arbitration as a means of dispute resolution; provided, however, it may not require arbitration for allegations involving breach of contract, negligence, violations of state or federal securities laws, breach of fiduciary duty or other misconduct by the TRUSTEES or ADVISOR, nor shall it provide for mandatory venue. A DECLARATION OF TRUST which contains arbitration provisions shall prominently disclose such fact on the cover page of the DECLARATION OF TRUST. Allocation of the cost of arbitration may be made a matter for determination in the proceedings. This Section is not intended to prohibit arbitration agreements entered into as a condition for opening or maintaining an account with a broker-dealer, who may also be a SPONSOR. In addition, this Section should not be interpreted to prohibit separate arbitration agreements between

SPONSORS and SHAREHOLDERS if the agreements are not a condition of making an investment in the REIT.

[¶ 3403]

III. SUITABILITY OF SHAREHOLDERS

A. General Policy

1. The SPONSOR shall establish minimum income and net worth standards for PERSONS who purchase SHARES in a REIT for which there is not likely to be a substantial and active secondary market.
2. The SPONSOR shall propose minimum income and net worth standards which are reasonable given the type of REIT and the risks associated with the purchase of SHARES. REITS with greater investor risk shall have minimum standards with a substantial NET WORTH requirement. The ADMINISTRATOR shall evaluate the standards proposed by the SPONSOR when the REIT'S application for registration is reviewed. In evaluating the proposed standards, the ADMINISTRATOR may consider the following:
    a. the REIT'S use of leverage;
    b. tax implications;
    c. balloon payment financing;
    d. potential variances in cash distributions;
    e. potential SHAREHOLDERS;
    f. relationship among potential SHAREHOLDERS, the SPONSOR and ADVISOR;
    g. liquidity of REIT SHARES;
    h. prior performance of SPONSOR and ADVISOR;
    i. financial condition of the SPONSOR;
    j. potential transactions between the REIT and the SPONSOR and ADVISOR; and
    k. any other relevant factors.

B. Income and Net Worth Standards

1. Unless the ADMINISTRATOR determines that the risks associated with the REIT would require lower or higher standards, SHAREHOLDERS shall have:
    a. a minimum annual gross income of $45,000 and a minimum NET WORTH of $45,000; or
    b. a minimum NET WORTH of $150,000.
2. NET WORTH shall be determined exclusive of home, home furnishings, and automobiles.
3. In the case of sales to fiduciary accounts, these minimum standards shall be met by the beneficiary, the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the SHARES if the donor or grantor is the fiduciary.
4. The SPONSOR shall set forth in the final PROSPECTUS:
    a. the investment objectives of the REIT;
    b. a description of the type of PERSON who might benefit from an investment in the REIT; and

c. the minimum standards imposed on each SHAREHOLDER in the REIT.

C. Determination that Sale to SHAREHOLDER is Suitable and Appropriate

1. The SPONSOR and each PERSON selling SHARES on behalf of the SPONSOR or REIT shall make every reasonable effort to determine that the purchase of SHARES is a suitable and appropriate investment for each SHAREHOLDER.
2. In making this determination, the SPONSOR or each PERSON selling SHARES on behalf of the SPONSOR or REIT shall ascertain that the prospective SHAREHOLDER:
   a. meets the minimum income and net worth standards established for the REIT;
   b. can reasonably benefit from the REIT based on the prospective SHAREHOLDER'S overall investment objectives and portfolio structure;
   c. is able to bear the economic risk of the investment based on the prospective SHAREHOLDER'S overall financial situation; and
   d. has apparent understanding of:
      i. the fundamental risks of the investment;
      ii. the risk that the SHAREHOLDER may lose the entire investment;
      iii. the lack of liquidity of REIT SHARES;
      iv. the restrictions on transferability of REIT SHARES;
      v. the background and qualifications of the SPONSOR or the ADVISOR; and
      vi. the tax consequences of the investment.
3. The SPONSOR or each PERSON selling SHARES on behalf of the SPONSOR or REIT will make this determination on the basis of information it has obtained from a prospective SHAREHOLDER. Relevant information for this purpose will include at least the age, investment objectives, investment experience, income, NET WORTH, financial situation, and other investments of the prospective SHAREHOLDER, as well as any other pertinent factors.
4. The SPONSOR or each PERSON selling SHARES on behalf of the SPONSOR or REIT shall maintain records of the information used to determine that an investment in SHARES is suitable and appropriate for a SHAREHOLDER. The SPONSOR or each PERSON selling SHARES on behalf of the SPONSOR or REIT shall maintain these records for at least six years.
5. The SPONSOR shall disclose in the final PROSPECTUS the responsibility of the SPONSOR and each PERSON selling SHARES on behalf of the SPONSOR or REIT to make every reasonable effort to determine that the purchase of SHARES is a suitable and appropriate investment for each SHAREHOLDER, based on information provided by the SHAREHOLDER regarding the SHAREHOLDER'S financial situation and investment objectives.

D. Subscription Agreements

1. The ADMINISTRATOR may require that each SHAREHOLDER complete and sign a written subscription agreement.

2. The SPONSOR may require that each SHAREHOLDER make certain factual representations in the subscription agreement, including the following:
    a. The SHAREHOLDER meets the minimum income and net worth standards established for the REIT.
    b. The SHAREHOLDER is purchasing the SHARES for his or her own account.
    c. The SHAREHOLDER has received a copy of the PROSPECTUS.
    d. The SHAREHOLDER acknowledges that the SHARES are not liquid.
3. The SHAREHOLDER must separately sign or initial each representation made in the subscription agreement. Except in the case of fiduciary accounts, the SHAREHOLDER may not grant any PERSON a power of attorney to make such representations on his or her behalf.
4. The SPONSOR and each PERSON selling SHARES on behalf of the SPONSOR or REIT shall not require SHAREHOLDERS to make representations in the subscription agreement which are subjective or unreasonable and which:
    a. might cause the SHAREHOLDER to believe that he or she has surrendered rights to which he or she is entitled under federal or state law; or
    b. would have the effect of shifting the duties regarding suitability, imposed by law on broker-dealers, to the SHAREHOLDERS.
5. Prohibited representations include, but are not limited to, the following:
    a. The SHAREHOLDER understands or comprehends the risks associated with an investment in the REIT.
    b. The investment is a suitable one for the SHAREHOLDER.
    c. The SHAREHOLDER has read the PROSPECTUS.
    d. In deciding to invest in the REIT, the SHAREHOLDER has relied solely on the PROSPECTUS, and not on any other information or representations from other PERSONS or sources.
6. The SPONSOR may place the content of the prohibited representations in the subscription agreement in the form of disclosures to SHAREHOLDERS. The SPONSOR may not place these disclosures in the SHAREHOLDER representation section of the subscription agreement.

E. Completion of Sale

1. The SPONSOR or any PERSON selling SHARES on behalf of the SPONSOR or REIT may not complete a sale of SHARES to a SHAREHOLDER until at least five business days after the date the SHAREHOLDER receives a final PROSPECTUS.
2. The SPONSOR or the PERSON designated by the SPONSOR shall send each SHAREHOLDER a confirmation of his or her purchase.

F. Minimum Investment

The ADMINISTRATOR may require minimum initial and subsequent cash investment amounts.

[¶ 3404]

IV. FEES, COMPENSATION AND EXPENSES

A. Introduction

1. The PROSPECTUS must fully disclose and itemize all consideration which may be received in connection with REIT activities directly or indirectly by the SPONSOR, TRUSTEES, ADVISOR and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.
2. The INDEPENDENT TRUSTEES will determine, from time to time but at least annually, that the total fees and expenses of the REIT are reasonable in light of the investment performance of the REIT, its NET ASSETS, its NET INCOME, and the fees and expenses of other comparable unaffiliated REITS. Each such determination shall be reflected in the minutes of the meeting of the Trustees.

B. ORGANIZATION AND OFFERING EXPENSES

The ORGANIZATION AND OFFERING EXPENSES paid in connection with the REIT'S formation or the syndication of its shares shall be reasonable and shall in no event exceed an amount equal to 15% of the proceeds raised in an offering.

C. ACQUISITION FEES and ACQUISITION EXPENSES

1. The total of all ACQUISITION FEES and ACQUISITION EXPENSES shall be reasonable, and shall not exceed an amount equal to 6% of the contract price of the property, or in the case of a mortgage loan, 6% of the funds advanced.
2. Notwithstanding the above, a majority of the TRUSTEES (including a majority of the INDEPENDENT TRUSTEES) not otherwise interested in the transaction may approve fees in excess of these limits if they determine the transaction to be commercially competitive, fair and reasonable to the REIT.

D. TOTAL OPERATING EXPENSES

1. The TOTAL OPERATING EXPENSES of the REIT shall (in the absence of a satisfactory showing to the contrary) be deemed to be excessive if they exceed in any fiscal year the greater of 2% of its AVERAGE INVESTED ASSETS or 25% of its NET INCOME for such year. The INDEPENDENT TRUSTEES shall have the fiduciary responsibility of limiting such expenses to amounts that do not exceed such limitations unless such INDEPENDENT TRUSTEES shall have made a finding that, based on such unusual and non-recurring factors which they deem sufficient, a higher level of expenses is justified for such year. Any such finding and the reasons in support thereof shall be reflected in the minutes of the meeting of the TRUSTEES.
2. Within 60 days after the end of any fiscal quarter of the REIT for which TOTAL OPERATING EXPENSES (for the twelve (12) months then ended) exceeded 2% of AVERAGE INVESTED ASSETS or 25% of NET INCOME, whichever is greater, there shall be sent to the SHAREHOLDERS of the REIT a written disclosure of such fact, together with an explanation of the factors the INDEPENDENT TRUSTEES considered in arriving at the conclusion that such higher operating expenses were justified.
3. In the event the INDEPENDENT TRUSTEES do not determine such excess expenses are justified, the ADVISOR shall reimburse the REIT at the end of the twelve month period the amount by which the aggregate

annual expenses paid or incurred by the REIT exceed the limitations herein provided.

E. Real Estate Commissions on Resale of Property

If an ADVISOR, TRUSTEE, SPONSOR or any AFFILIATE provides a substantial amount of the services in the effort to sell the property of the REIT, then that PERSON may receive up to one-half of the brokerage commission paid but in no event to exceed an amount equal to 3% of the contracted for sales price. In addition, the amount paid when added to the sums paid to unaffiliated parties in such a capacity shall not exceed the lesser of the COMPETITIVE REAL ESTATE COMMISSION or an amount equal to 6% of the contracted for sales price.

F. Incentive Fees

1. An interest in the gain from the sale of assets of the REIT, for which full consideration is not paid in cash or property of equivalent value, shall be allowed provided the amount or percentage of such interest is reasonable. Such an interest in gain from the sale of REIT assets shall be considered presumptively reasonable if it does not exceed 15% of the balance of such net proceeds remaining after payment to SHAREHOLDERS, in the aggregate, of an amount equal to 100% of the original issue price of REIT SHARES, plus an amount equal to 6% of the original issue price of the REIT shares per annum cumulative. For purposes of this Section, the original issue price of the REIT SHARES may be reduced by prior cash distributions to SHAREHOLDERS of net proceeds from the sale of REIT assets.
2. In the case of multiple ADVISORS, ADVISORS and any AFFILIATE shall be allowed incentive fees provided such fees are distributed by a proportional method reasonably designed to reflect the value added to REIT assets by each respective ADVISOR or any AFFILIATE.

COMMENT: Distribution of incentive fees to ADVISORS/AFFILIATES, in proportion to the length of time served as ADVISOR while such property was held by the REIT or in ratio to the fair market value of the asset at the time of the ADVISOR'S termination, and the fair market value of the asset upon its disposition by the REIT shall be considered reasonable methods by which to apportion incentive fees.

G. Advisor Compensation

The INDEPENDENT TRUSTEES shall determine from time to time and at least annually that the compensation which the REIT contracts to pay to the ADVISOR is reasonable in relation to the nature and quality of services performed and that such compensation is within the limits prescribed by this Statement of Policy. The INDEPENDENT TRUSTEES shall also supervise the performance of the ADVISOR and the compensation paid to it by the REIT to determine that the provisions of such contract are being carried out. Each such determination shall be based on the factors set forth below and all other factors such INDEPENDENT TRUSTEES may deem relevant and the findings of such TRUSTEES on each of such factors shall be recorded in the minutes of the TRUSTEES:

1. The size of the advisory fee in relation to the size, composition and profitability of the portfolio of the REIT.
2. The success of the ADVISOR in generating opportunities that meet the investment objectives of the REIT.
3. The rates charged to other REIT's and to investors other than REIT'S by advisors performing similar services.
4. Additional revenues realized by the ADVISOR and any AFFILIATE through their relationship with the REIT, including loan administration, underwriting or broker commissions, servicing, engineering, inspection and other fees, whether paid by the REIT or by others with whom the REIT does business.
5. The quality and extent of service and advice furnished by the ADVISOR.
6. The performance of the investment portfolio of the REIT, including income, conservation or appreciation of capital, frequency of problem investments and competence in dealing with distress situations.
7. The quality of the portfolio of the REIT in relationship to the investments generated by the ADVISOR for its own account.

[¶ 3405]

V. CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS

A. Sales and Leases to REIT

The REIT shall not purchase property from the SPONSOR, ADVISOR, TRUSTEE, or any AFFILIATE thereof, unless a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES) not otherwise interested in such transaction approve the transaction as being fair and reasonable to the REIT and at a price to the REIT no greater than the cost of the asset to such SPONSOR, ADVISOR, TRUSTEE or any AFFILIATE thereof, or if the price to the REIT is in excess of such cost, that substantial justification for such excess exists and such excess is reasonable. In no event shall the cost of such asset to the REIT exceed its current appraised value.

B. Sales and Leases to SPONSOR, ADVISOR, TRUSTEES or any AFFILIATE

1. A SPONSOR, ADVISOR, TRUSTEE or any AFFILIATE thereof shall not acquire assets from the REIT unless approved by a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES), not otherwise interested in such transaction, as being fair and reasonable to the REIT.
2. A REIT may lease assets to a SPONSOR, ADVISOR, TRUSTEE or any AFFILIATE thereof only if approved by a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES), not otherwise interested in such transaction, as being fair and reasonable to the REIT.

C. Loans

1. No loans may be made by the REIT to the SPONSOR, ADVISOR, TRUSTEE or any AFFILIATE thereof except as provided under Section V.K.3 or to wholly owned subsidiaries of the REIT.
2. The REIT may not borrow money from the SPONSOR, ADVISOR, TRUSTEE, or any AFFILIATE thereof, unless a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES) not otherwise interested in such transaction approve the transaction as being fair, competitive, and commercially reasonable and no less

favorable to the REIT than loans between unaffiliated parties under the same circumstances.

D. Investments

1. The REIT shall not invest in joint ventures with the SPONSOR, ADVISOR, TRUSTEE, or any AFFILIATE thereof, unless a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES) not otherwise interested in such transactions, approve the transaction as being fair and reasonable to the REIT and on substantially the same terms and conditions as those received by the other joint venturers.
2. The REIT shall not invest in equity securities unless a majority of TRUSTEES (including a majority of INDEPENDENT TRUSTEES) not otherwise interested in such transaction approve the transaction as being fair, competitive, and commercially reasonable.

E. Statement of Objectives

1. The PROSPECTUS must state specific investment objectives of the REIT. It should indicate whether the primary objective is to obtain current income, tax benefits, or capital appreciation for its SHAREHOLDERS.
2. The INDEPENDENT TRUSTEES shall review the investment policies of the REIT with sufficient frequency and at least annually to determine that the policies being followed by the REIT at any time are in the best interests of its SHAREHOLDERS. Each such determination and the basis therefor shall be set forth in the minutes of the TRUSTEES.

F. Multiple PROGRAMS

The method for the allocation of the acquisition of properties by two or more PROGRAMS of the same SPONSOR or ADVISOR seeking to acquire similar types of assets shall be reasonable. The method shall be described in the PROSPECTUS. It shall be the duty of the TRUSTEES (including the INDEPENDENT TRUSTEES) to insure such method is applied fairly to the REIT.

G. Other Transactions

All other transactions between the REIT and the SPONSOR, ADVISOR, TRUSTEE or any AFFILIATE thereof, shall require approval by a majority of the TRUSTEES (including a majority of INDEPENDENT TRUSTEES) not otherwise interested in such transactions as being fair and reasonable to the REIT and on terms and conditions not less favorable to the REIT than those available from unaffiliated third parties.

H. Appraisal of Real Property

The consideration paid for real property acquired by the REIT shall ordinarily be based on the fair market value of the property as determined by a majority of the TRUSTEES. In cases in which a majority of the INDEPENDENT TRUSTEES so determine, and in all cases in which assets are acquired from the ADVISORS, TRUSTEES, SPONSORS or AFFILIATES thereof, such fair market value shall be as determined by an INDEPENDENT EXPERT selected by the INDEPENDENT TRUSTEES.

I. Roll-Up Transaction

1. In connection with a proposed ROLL-UP, an appraisal of all REIT assets shall be obtained from a competent, INDEPENDENT EXPERT. If the appraisal will be included in a PROSPECTUS used to offer the

securities of a ROLL-UP ENTITY, the appraisal shall be filed with the SEC and the states as an Exhibit to the Registration Statement for the offering. Accordingly, an issuer using the appraisal shall be subject to liability for violation of Section 11 of the Securities Act of 1933 and comparable provisions under state laws for any material misrepresentations or material omissions in the appraisal. REIT assets shall be appraised on a consistent basis. The appraisal shall be based on an evaluation of all relevant information, and shall indicate the value of the REIT'S assets as of a date immediately prior to the announcement of the proposed ROLL-UP transaction. The appraisal shall assume an orderly liquidation of REIT assets over a 12 month period. The terms of the engagement of the INDEPENDENT EXPERT shall clearly state that the engagement is for the benefit of the REIT and its investors. A summary of the independent appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to the investors in connection with a proposed ROLL-UP.

2. In connection with a proposed ROLL-UP, the PERSON sponsoring the ROLL-UP shall offer to SHAREHOLDERS who vote "no" on the proposal the choice of:
   a. accepting the securities of the ROLL-UP ENTITY offered in the proposed ROLL-UP; or
   b. one of the following:
      i. remaining as SHAREHOLDERS of the REIT and preserving their interests therein on the same terms and conditions as existed previously; or
      ii. receiving cash in an amount equal to the SHAREHOLDERS' pro-rata share of the appraised value of the net assets of the REIT.

COMMENT: With respect to the options specified in Subsection V.I.2.(b), the PERSON sponsoring the ROLL-UP needs only offer one of these alternatives to dissenting investors who do not wish to accept the security of the ROLL-UP ENTITY.

3. The REIT shall not participate in any proposed ROLL-UP which would result in SHAREHOLDERS having democracy rights in the ROLL-UP ENTITY that are less than those provided for under Sections VI.A., VI.B., VI.C., VI.D., VI.E of these Guidelines.
4. The REIT shall not participate in any proposed ROLL-UP which includes provisions which would operate to materially impede or frustrate the accumulation of shares by any purchaser of the securities of the ROLL-UP ENTITY (except to the minimum extent necessary to preserve the tax status of the ROLL-UP ENTITY). The REIT shall not participate in any proposed ROLL-UP which would limit the ability of an investor to exercise the voting rights of its securities of the ROLL-UP ENTITY on the basis of the number of REIT SHARES held by that investor.
5. The REIT shall not participate in any proposed ROLL-UP in which investors' rights of access to the records of the ROLL-UP ENTITY will be less than those provided for under Section VI.E of these Guidelines.
6. The REIT shall not participate in any proposed ROLL-UP in which any of the costs of the transaction would be borne by the REIT if the ROLL-UP is not approved by the SHAREHOLDERS.

J. Leverage

The PROSPECTUS shall include an explanation of the borrowing policies of the REIT. The aggregate borrowings of the REIT, secured and unsecured, shall be reasonable in relation to the NET ASSETS of the REIT and shall be reviewed by the TRUSTEES at least quarterly. The maximum amount of such borrowings in relation to the NET ASSETS shall, in the absence of a satisfactory showing that higher level of borrowing is appropriate, not exceed 300%. Any excess in borrowing over such 300% level shall be approved by a majority of the INDEPENDENT TRUSTEES and disclosed to SHAREHOLDERS in the next quarterly report of the REIT, along with justification for such excess.

K. Other Limitations. The REIT may not:

1. Invest more than 10% of its total assets in UNIMPROVED REAL PROPERTY or mortgage loans on UNIMPROVED REAL PROPERTY.
2. Invest in commodities or commodity future contracts. Such limitation is not intended to apply to future contracts, when used solely for hedging purposes in connection with the REIT's ordinary business of investing in real estate assets and mortgages.
3. Invest in or make mortgage loans unless an appraisal is obtained concerning the underlying property except for those loans insured or guaranteed by a government or government agency. In cases in which a majority of the INDEPENDENT TRUSTEES so determine, and in all cases in which the transaction is with the ADVISOR, TRUSTEES, SPONSOR or AFFILIATES thereof, such an appraisal must be obtained from an INDEPENDENT EXPERT concerning the underlying property. This appraisal shall be maintained in the REIT's records for at least five years, and shall be available for inspection and duplication by any SHAREHOLDER. In addition to the appraisal, a mortgagee's or owner's title insurance policy or commitment as to the priority of the mortgage or the condition of the title must be obtained. Further, the ADVISOR and TRUSTEES shall observe the following policies in connection with investing in or making mortgage loans:
    a. The REIT shall not invest in real estate contracts of sale, otherwise known as land sale contracts, unless such contracts of sale are in recordable form and appropriately recorded in the chain of title.
    b. The REIT shall not make or invest in mortgage loans, including construction loans, on any one property if the aggregate amount of all mortgage loans outstanding on the property, including the loans of the REIT, would exceed an amount equal to 85% of the appraised value of the property as determined by appraisal unless substantial justification exists because of the presence of other underwriting criteria. For purposes of this subsection, the "aggregate amount of all mortgage loans outstanding on the property, including the loans of the REIT," shall include all interest (excluding contingent participation in income and/or appreciation in value of the mortgaged property), the current payment of which may be deferred pursuant to the terms of such loans, to the extent that deferred interest on each loan exceeds 5% per annum of the principal balance of the loan;

COMMENT: Section V.K.3(b) provides certain minimum standards in connection with the investment in or making of mortgage loans by a REIT. The standards may be exceeded for a particular registration if the mortgage loans are supported by sound underwriting criteria, such as the net worth of the borrower; the credit rating of the borrower based on historical financial performance, or collateral adequate to justify waiver from application of this section. The standards may also be exceeded where program mortgage loans are or will be insured or guaranteed by a government or a government agency; where the loan is secured by the pledge or assignment of other real estate or another real estate mortgage; where rents are assigned under a lease where a tenant or tenants have demonstrated through historical net worth and cash flow the ability to satisfy the terms of the lease; or where similar criteria is presented satisfactory to the ADMINISTRATOR.

c. The REIT shall not make or invest in any mortgage loans that are subordinate to any mortgage or equity interest of the ADVISOR, TRUSTEES, SPONSORS or any AFFILIATE of the REIT.

4. Issue redeemable equity securities.

5. Issue debt securities unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt.

6. Issue options or warrants to purchase its SHARES to the ADVISOR, TRUSTEES, SPONSORS or any AFFILIATE thereof except on the same terms as such options or warrants are sold to the general public. The REIT may issue options or warrants to persons not so connected with the REIT but not at exercise prices less than the fair market value of such securities on the date of grant and for consideration (which may include services) that in the judgment of the INDEPENDENT TRUSTEES, has a market value less than the value of such option on the date of grant. Options or warrants issuable to the ADVISOR, TRUSTEES, SPONSORS or any AFFILIATE thereof shall not exceed an amount equal to 10% of the outstanding SHARES of the REIT on the date of grant of any options or warrants.

7. Issue its shares on a deferred payment basis or other similar arrangement.

[¶ 3406]

VI. RIGHTS AND OBLIGATIONS OF SHAREHOLDERS

A. Meetings

1. There shall be an annual meeting of the SHAREHOLDERS of the REIT upon reasonable notice and within a reasonable period (not less than 30 days) following delivery of the annual report. The TRUSTEES, including the INDEPENDENT TRUSTEES, shall be required to take reasonable steps to insure that this requirement is met.

2. Special meetings of the SHAREHOLDERS may be called by the chief executive officer, by a majority of the TRUSTEES or by a majority of the INDEPENDENT TRUSTEES, and shall be called by an officer of the REIT upon written request of SHAREHOLDERS holding in the aggregate not less than 10% of the outstanding SHARES of the REIT entitled to vote at such meeting. Upon receipt of a written request, either in person or by mail, stating the purpose(s) of the meeting, the SPONSOR shall provide all SHAREHOLDERS within ten days after receipt of said request, written notice, either in person or by mail, of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after the distribution of such notice, at a time and place specified in the request, or if none is specified, at a time and place convenient to SHAREHOLDERS.

B. Voting Rights of SHAREHOLDERS

1. A public offering of equity securities of a REIT other than voting shares will be looked upon with disfavor.
2. The voting rights per share of equity securities of the REIT (other than the publicly held equity securities of the REIT) sold in a private offering shall not exceed voting rights which bear the same relationship to the voting rights of the publicly held shares of the REIT as the consideration paid to the REIT for each privately offered REIT share bears to the book value of each outstanding publicly held share.
3. The DECLARATION OF TRUST must provide that a majority of the then outstanding SHARES may, without the necessity for concurrence by the TRUSTEES, vote to:
   a. amend the DECLARATION OF TRUST;
   b. terminate the REIT;
   c. remove the TRUSTEES.
4. The DECLARATION OF TRUST must provide that a majority of SHAREHOLDERS present in person or by proxy at an Annual Meeting at which a quorum is present, may, without the necessity for concurrence by the TRUSTEES, vote to elect the TRUSTEES. A quorum shall be 50% of the then outstanding shares.
5. Without concurrence of a majority of the outstanding SHARES, the TRUSTEES may not:
   a. amend the DECLARATION OF TRUST, except for amendments which do not adversely affect the rights, preferences and privileges of SHAREHOLDERS including amendments to provisions relating to, TRUSTEE qualifications, fiduciary duty, liability and indemnification, conflicts of interest, investment policies or investment restrictions;
   b. sell all or substantially all of the REIT's assets other than in the ordinary course of the REIT's business or in connection with liquidation and dissolution;
   c. cause the merger or other reorganization of the REIT; or
   d. dissolve or liquidate the REIT, other than before the initial investment in property.

COMMENT: A sale of all or substantially all of the REIT's assets shall mean the sale of two-thirds or more of the REIT's assets based on the total number of properties and mortgages, or the current fair market value of these assets.

6. With respect to SHARES owned by the ADVISOR, the TRUSTEES, or any AFFILIATE, neither the ADVISOR, nor the TRUSTEES, nor any AFFILIATE may vote or consent on matters submitted to the SHAREHOLDERS regarding the removal of the ADVISOR, TRUSTEES or any AFFILIATE or any transaction between the REIT and any of them. In determining the requisite percentage in interest of SHARES necessary to approve a matter on which the ADVISOR, TRUSTEES and any AFFILIATE may not vote or consent, any SHARES owned by any of them shall not be included.

C. Liability of SHAREHOLDERS

The DECLARATION OF TRUST shall provide that:

1. The SHARES of the REIT shall be non-assessable by the REIT whether a trust, corporation or other entity.

2. The SHAREHOLDERS of the REIT which is not a corporation shall not be personally liable on account of any of the contractual obligations undertaken by the REIT.

3. All written contracts to which the REIT which is not a corporation is a party shall include a provision that the SHAREHOLDER shall not be personally liable thereon.

D. Reports

1. The DECLARATION OF TRUST shall provide that the REIT shall cause to be prepared and mailed or delivered to each SHAREHOLDER as of a record date after the end of the fiscal year and each holder of other publicly held securities of the REIT within 120 days after the end of the fiscal year to which it relates an annual report for each fiscal year ending after the initial public offering of its securities which shall include:

   a. financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants:

   b. the ratio of the costs of raising capital during the period to the capital raised;

   c. the aggregate amount of advisory fees and the aggregate amount of other fees paid to the ADVISOR and any AFFILIATE of the ADVISOR by REIT and including fees or charges paid to the ADVISOR and any AFFILIATE of the ADVISOR by third parties doing business with the REIT;

   d. the TOTAL OPERATING EXPENSES of the REIT, stated as a percentage of AVERAGE INVESTED ASSETS and as a percentage of its NET INCOME;

   e. a report from the INDEPENDENT TRUSTEES that the policies being followed by the REIT are in the best interests of its SHAREHOLDERS and the basis for such determination; and

   f. separately stated, full disclosure of all material terms, factors, and circumstances surrounding any and all transactions involving the REIT, TRUSTEES, ADVISORS, SPONSORS and any AFFILIATE thereof occurring in the year for which the annual report is made. INDEPENDENT TRUSTEES shall be specifically charged with a duty to examine and comment in the report on the fairness of such transactions;

COMMENT: A partial enumeration of such transactions would include the lease or purchase of property by the REIT to or from any TRUSTEE, ADVISOR, SPONSOR or AFFILIATE; and loan transactions involving, directly or indirectly, the REIT and any TRUSTEE, ADVISOR, SPONSOR or AFFILIATE; and any joint venture involving the REIT and a TRUSTEE, ADVISOR, SPONSOR or AFFILIATE thereof.

2. The TRUSTEES, including the INDEPENDENT TRUSTEES, shall be required to take reasonable steps to insure that the above requirements are met.

COMMENT: The above section is not intended to be exhaustive of the type and extent of information to be presented to SHAREHOLDERS in an annual report.

E. Access to Records

Any SHAREHOLDER and any designated representative thereof shall be permitted access to all records of the REIT at all reasonable times, and may inspect and copy any of them. Inspection of the REIT books and records-by the ADMINISTRATOR shall be provided upon reasonable notice and during normal business hours. The DECLARATION OF TRUST shall include the following provisions regarding access to the list of SHAREHOLDERS:

1. An alphabetical list of the names, addresses, and telephone numbers of the SHAREHOLDERS of the REIT along with the number of SHARES held by each of them (the "SHAREHOLDER List") shall be maintained as part of the books and records of the REIT and shall be available for inspection by any SHAREHOLDER or the SHAREHOLDER'S designated agent at the home office of the REIT upon the request of the SHAREHOLDER;
2. The SHAREHOLDER List shall be updated at least quarterly to reflect changes in the information contained therein.
3. A copy of the SHAREHOLDER List shall be mailed to any SHAREHOLDER requesting the SHAREHOLDER List within ten days of the request. The copy of the SHAREHOLDER List shall be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than 10-point type). A reasonable charge for copy work may be charged by the REIT.
4. The purposes for which a SHAREHOLDER may request a copy of the SHAREHOLDER List include, without limitation, matters relating to SHAREHOLDERS' voting rights under the REIT agreement, and the exercise of SHAREHOLDERS' rights under federal proxy laws; and
5. If the ADVISOR or TRUSTEES of the REIT neglects or refuses to exhibit, produce, or mail a copy of the SHAREHOLDER List as requested, the ADVISOR, and the TRUSTEES shall be liable to any SHAREHOLDER requesting the list for the costs, including attorneys' fees, incurred by that SHAREHOLDER for compelling the production of the SHAREHOLDER List, and for actual damages suffered by any SHAREHOLDER by reason of such refusal or neglect. It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the SHAREHOLDER List is to secure such list of SHAREHOLDERS or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a SHAREHOLDER relative to the affairs of the REIT. The REIT may require the SHAREHOLDER requesting the SHAREHOLDER List to represent that the list is not requested for a commercial purpose unrelated to the SHAREHOLDER'S interest in the REIT. The remedies provided hereunder to SHAREHOLDERS requesting copies of the SHAREHOLDER List are in addition to, and shall not in any way limit, other remedies available to SHAREHOLDERS under federal law, or the laws of any state.

F. Repurchase of SHARES

Ordinarily, the REIT is not obligated to repurchase any of the SHARES. However, the REIT is not precluded from voluntarily repurchasing the SHARES if such repurchase does not impair the capital or operations of the REIT. The REIT may have excess share provisions that provide for mandatory redemption. The SPONSOR, ADVISOR, TRUSTEES or

AFFILIATES are prohibited from receiving a fee on the repurchase of the SHARES by the REIT.

G. Distribution Reinvestment Plans

All Distribution Reinvestment Plans shall, at the minimum provide for the following:

1. All material information regarding the distribution to the SHAREHOLDER and the effect of reinvesting such distribution, including the tax consequences thereof, shall be provided to the SHAREHOLDER at least annually.
2. Each SHAREHOLDER participating in the plan shall have a reasonable opportunity to withdraw from the plan at least annually after receipt of the information required in subparagraph (1) above.

H. Distributions

The DECLARATION OF TRUST shall state the manner in which distributions to SHAREHOLDERS are to be determined.

I. Distributions in Kind

Distributions in kind shall not be permitted, except for:

1. distributions of readily marketable securities;
2. distributions of beneficial interests in a liquidating trust established for the dissolution of the REIT and the liquidation of its assets in accordance with the terms of the DECLARATION OF TRUST; or
3. distributions of in-kind property which meet all of the following conditions:
   a. The TRUSTEES advise each SHAREHOLDER of the risks associated with direct ownership of the property.
   b. The TRUSTEES offer each SHAREHOLDER the election of receiving in-kind property distributions.
   c. The Trustees distribute in-kind property only to those SHAREHOLDERS who accept the TRUSTEE'S offer.

[¶ 3407]

VII. DISCLOSURE AND MARKETING

A. Sales Material

Sales material, including without limitation, books, pamphlets, movies, slides, article reprints, television and radio commercials, materials prepared for broker/dealer use only, sales presentations (including prepared presentations to prospective SHAREHOLDERS at group meetings) and all other advertising used in the offer or sale of units shall conform to filing, disclosure, and adequacy requirements under any applicable state regulations. Statements made in sales material communicated directly or indirectly to the public may not conflict with, or modify risk factors or other statements made in the PROSPECTUS.

B. PROSPECTUS and its Contents

1. PROSPECTUS

A PROSPECTUS which is not part of a Registration Statement declared effective by the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall generally conform to the disclosure requirements which

would apply if the offering were so registered. The format and information requirements of applicable Guide(s) promulgated by the Securities and Exchange Commission shall be followed, with appropriate adjustments made for the different business of the REIT.

2. Prohibited Representations

   a. In connection with the offering and sale of SHARES in a REIT, neither the SPONSOR(S) nor the underwriter(s) may, in writing or otherwise, directly or indirectly, represent or imply that an Administrator has approved the merits of the investment or any aspects thereof.

   b. Any reference to the REIT'S compliance with these Guidelines or any provisions herein which connotes or implies compliance shall not be allowed.

3. Forecasts and Projections

   a. Neither the PROSPECTUS nor any sales material communicated directly or indirectly to the public shall contain a quantitative estimate of a REIT'S anticipated economic performance or anticipated return to participants, in the form of investment objectives, cash distributions, tax benefits or otherwise, except as permitted by this Section of these Guidelines.

   b. The presentation of predicted future results of operations of programs shall be permitted but not required for SPECIFIED ASSET REITS and shall be prohibited for all other REITS. The cover of the PROSPECTUS must contain in bold face language one of the following statements:

      i. for SPECIFIED ASSET REITS with forecasts: "Forecasts are contained in this prospectus. Any representation to the contrary and any predictions, written or oral, which do not conform to that contained in the prospectus shall not be permitted"; or

      ii. for all other REITS: "The use of forecasts in this offering is prohibited. Any representations to the contrary and any predictions, written or oral, as to the amount or certainty of any present or future cash benefit or tax consequence which may flow from an investment in this program is not permitted."

   c. Content of Forecasts

   Forecasts for SPECIFIED ASSET REITS may be included in the PROSPECTUS and sales material of the REIT only if they comply with all of the following requirements:

      i. Generally, forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of presentation. Forecasts should be examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements and the Statement on Standards for Accountant's Services on Prospective Financial

Information as promulgated by the American Institute of Certified Public Accountants. The report of the independent certified public accountant must be included in the PROSPECTUS.

ii. if any part of the forecast appears in the sales material, the entire forecast must be presented.

iii. Forecasts shall generally be for a period equivalent to the anticipated holding period for REIT assets. Forecasts which do not extend through the expected term of the REIT'S life must show the effects of a hypothetical liquidation of program assets under good and bad conditions. Yield information may not be presented for Forecasts which do not extend through the expected term of the REIT'S life.

iv. Forecasts shall disclose possible undesirable tax consequences of an early sale of program assets, such as depreciation recapture, the loss of prior year tax credits or the possible failure to generate sufficient cash from the disposition to pay the associated tax liabilities.

v. In computing any rate of return or yield to investors, no unrealized gains or value shall be included.

C. The ADMINISTRATOR may require that the DECLARATION OF TRUST be given to prospective SHAREHOLDERS.

[¶ 3408]

VIII. MISCELLANEOUS

A. Provisions of the DECLARATION OF TRUST

The requirements and/or provisions of appropriate portions of the following Sections shall be included in the DECLARATION OF TRUST:

I.B.; II.A.; II.B.; II.C.; II.D.; II.E.; II.F.; II.G.; II.H.; III.B.; III.C.; III.F.; IV.A.2; IV.C.; IV.D.; IV.E.; IV.F.; IV.G.; V.A.; V.B.; V.C.; V.D.; V.E.2; V.G.; V.H.; V.I.; V.J.; V.K.; VI.A.; VI.B.; VI.C.; VI.D.; VI.E.; VI.F.; VI.G.; VI.H.; VI.I.

B. Amendments and Supplements

A marked copy of all amendments and supplements to an application shall be filed with the ADMINISTRATOR as soon as the amendment or supplement is available.

C. Cross Reference Sheet Requirement

The CROSS REFERENCE SHEET shall be included with the application for registration.

[¶ 3409]

REIT GUIDELINES CROSS REFERENCE SHEET

General Instructions

1. This CROSS REFERENCE SHEET should be completed and submitted with the Application for Registration.

2. Sections which are not applicable should be noted as such.

3. Provisions of the REIT which vary from the Guidelines must be explained by endnote; for example, if the REIT uses a defined term which is different from the Guidelines' definition, the variance must be explained. Endnotes should be numbered sequentially in the column designated "Endnotes" and should be presented on a rider identified as "Endnotes" with each endnote on the rider numerically corresponding to the endnote identified on the CROSS REFERENCE SHEET.

[¶ 3409]

REIT GUIDELINES CROSS REFERENCE SHEET

Name of Applicant: _____

Guideline Section	*Section Number Declaration of Trust*	*Page Number Prospectus*	*Endnote See instruction 3*
I.B. Definitions			
2. Acquisition Expenses			
3. Acquisition Fee			
4. Advisor			
5. Affiliate			
6. Average Invested Assets			
7. Competitive Real Estate Commission			
8. Contract Price for the Property			
9. Construction Fee			
12. Development Fee			
13. Independent Expert			
14. Independent Trustee			
17. Net Assets			
18. Net Income			
19. Organization and Offering Expenses			
23. Roll-up			
24. Roll-up Entity			
25. Shares			
26. Shareholders			
27. Specified Asset REITS			
28. Sponsor			
29. Total Operating Expenses			
30. Trustees			
31. Unimproved Real Property			

Guideline Section	*Section Number Declaration of Trust*	*Page Number Prospectus*	*Endnote See instruction 3*
II. Requirements of Sponsor, Advisor, Trustees and Affiliates			
A. Minimum Capital			
B. Number and Election of Trustees			
C. Duties of Trustees			
D. Experience of Trustees			
E. Fiduciary Duty			
F. Advisory Contract			
G. Liability and Indemnification			
H. Arbitration Provisions			
III. Suitability of Shareholders			
B. Income and Net Worth Standards			
D. Subscription Agreements			
E. Completion of Sale			
F. Minimum Investment			
IV. Fees, Compensation and Expenses			
A. Introduction			
B. Organization and Offering Expenses			
C. Acquisition Fees and Acquisition Expenses			
D. Total Operating Expenses			
E. Real Estate Commissions on Resale of Property			
F. Incentive Fees			
G. Advisor Compensation			
V. Conflicts of Interest and Investment Restrictions			
A. Sales and Leases to REIT			
B. Sales and Leases to Sponsor, Advisor, Trustees or Affiliates			
C. Loans			
D. Investments			
E. Statement of Objectives			

Guideline Section	Section Number Declaration of Trust	Page Number Prospectus	Endnote See instruction 3
F. Multiple Programs			
G. Other Transactions			
H. Appraisal of Real Property			
I. Roll-up Transaction			
J. Leverage			
K. Other Limitations			
VI. Rights and Obligations of Shareholders			
A. Meetings			
B. Voting Rights of Shareholders			
C. Liability of Shareholders			
D. Reports			
1. Annual Report			
E. Access to Records			
F. Repurchase of Shares			
G. Distribution Reinvestment Plan			
H. Distributions			
I. Distributions in Kind			
VII. Disclosure and Marketing			
B. Prospectus and its Contents			
3. Forecasts and Projections			

ADDITIONAL OR SUPPLEMENTAL CROSS REFERENCES

[The next page is 2001.]

State of Wisconsin
Office of the Commissioner of Securities

Tommy G. Thompson
Governor

Daniel J. Eastman
Commissioner

Patricia D. Struck
Deputy Commissioner

Mailing Address:
101 E. Wilson Street, Fourth Floor
Post Office Box 1768
Madison, WI 53701

Information	(608) 266-3431
Registration	(608) 266-1064
Franchise	(608) 266-3364
Licensing	(608) 266-3693
Legal Services	(608) 266-8557
Administration	(608) 266-3583

November 14, 1994

HAND DELIVERED

Office of the Secretary of State
30 West Mifflin Street
Madison, WI 53703

Revisor of Statutes Bureau
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

Re: Filing of Certified Copies of Final Order
Adopting Rules/Clearinghouse Rule 94-157

Gentlemen and Mesdames:

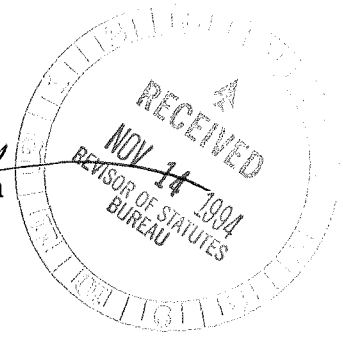
Pursuant to the requirements of ss. 227.20 and 227.21, Wis. Stats., a certified copy is herewith filed with each of your Offices of the above-referenced Final Order Adopting Rules in the form prescribed by sec. 227.14, Wis. Stats. The Final Order Adopting Rules was signed and issued by this agency on November 14, 1994. Also attached is a copy of the Report prepared by this agency relating to the final rules, together with a copy of a fiscal estimate relating to the rules, and a copy of the Wisconsin Legislative Council Rules Clearinghouse Report.

Included as attachments as well are copies of the forms to which several of the rule sections relate, together with copies of amendments to a securities regulatory standard incorporated by reference in section SEC 3.17, Wis. Adm. Code, contained in SECTION 17 of the Final Order Adopting Rules. Authorization for the incorporation by reference of the amended regulatory standard has been received under s. 227.21(2), Wis. Stats., from the Attorney General and the Revisor of Statutes.

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

Very truly yours,

Randall E. Schumann
General Counsel



enclosures
cc: Daniel J. Eastman
Commissioner of Securities