CR 95-158

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

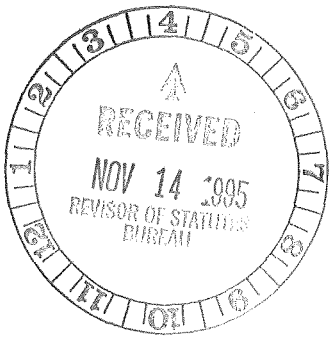
I, Patricia D. Struck, Commissioner of the State of Wisconsin Office of the Commissioner of Securities, as custodian of the official records of said agency, do hereby certify that the annexed rules relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, relating to: definitions under the securities law; securities registration exemptions; securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; fee-related provisions, and securities licensing forms under the securities law were duly approved and adopted by this agency on November 14, 1995.

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, 1995.

[SEAL]

Patricia D. Struck
Commissioner of Securities
State of Wisconsin

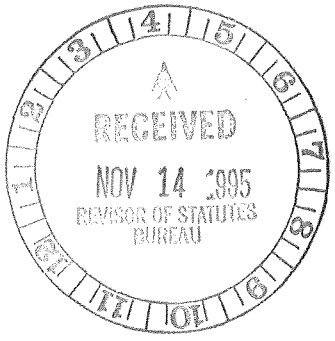


2-1-96

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

To repeal SEC 2.01(1)(c) 2 and 3, 2.01 (1)(d) 2 and 3, 2.02(5)(d)3, 2.02(9)(i) and 2.027(5); to renumber SEC 2.01(1)(c)4, 5 and 6, 2.01(1)(d)4, 5 and 6, 2.02(9)(j) to (n), 2.027(6) to (9), 4.01(4)(e) and 4.03(6); to amend SEC 2.01(1)(a)3, 2.02(1)(a), 2.02(4)(c)2, 2.02(5)(d)1, 2.02(9)(i) and (l), 2.027(1)(intro.), (4), (7)(a) and (8)(c), 3.23(3), 4.01(3)(intro.) and (5), 4.03(3)(c), 4.04(8)(b), 4.05(5), 4.05(6), 5.01(4)(a) and (5), 5.02(1), 5.05(7), 7.01(7)(c) and (e), 7.06(2) and 9.01(1)(a)8; to repeal and recreate SEC 2.02(5)(d)2, 5.01(3), 5.04(1) and 7.01(9); and to create SEC 2.01(3)(c) and (d) , 2.02(4)(h), 2.02(9)(n), 2.027(8)(b), 2.028, 3.001, 4.01(4)(e), 4.03(6), 5.03(1)(m) and (n), 9.01(1)(a)18, 19 and (c) relating to: 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), (2) and (3), 551.22(1)(a) and (b) and (7), 551.23(1), (8)(f), (11)(b) and (18), 551.26(2), 551.27(4), (8) and (10), 551.28(1)(e), (f) and (i), 551.32(1)(b), (4), (5) and (7), 551.33(1), (2) and (6), 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 2.01(1)(a)3 is amended to read:

SEC 2.01(1)(a)3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for the enterprise meeting the requirements of s. SEC 3.22(1)(p) and subject to the standards in s. SEC 3.06(2), and additional information as the commissioner may require, and the commissioner does not by order deny the exemption within ~~20~~ 10 days of the date the notice is filed.

ANALYSIS: This amendment changes from 20 days to 10 days the review period applicable to exemption notice filings made under this rule for purposes of claiming use of the registration exemption in s. 551.22(1)(b), Stats., for certain municipal/governmental revenue bonds. The amendment will make the review period in this rule consistent with the 10-day review period prescribed for all other exemption notices by statute and rule under Ch. 551, Stats.

SECTION 2. SEC 2.01(1)(c) 2 and 3 are repealed:

ANALYSIS: This SECTION deletes 2 "sunsetted" rule subdivisions which provided separate alternatives to the full-GAAP-financial-statement requirement for use of the exemption in s. 551.22(1), Stats. for general obligation debt of governmental and municipal issuers. The 2 subdivisions (relating to alternatives for "GAAP except for the fixed asset account group" and for "state mandated accounting guidelines") had been adopted in the early 1980's and extended in the late 1980's with "sunset" dates that have since expired.

SECTION 3. SEC 2.01(1)(c) 4,5 and 6 are renumbered SEC 2.01(1)(c) 2,3 and 4

ANALYSIS: This renumbering is necessary as a result of the repeal of SEC 2.01(1)(c) 2 and 3 in the previous SECTION.

SECTION 4. SEC 2.01(1)(d) 2 and 3 are repealed:

ANALYSIS: These repeals are warranted because the subdivisions involved relate solely to the corresponding rule subdivisions of SEC 2.01(1)(c) 2 and 3 that were repealed in a previous SECTION.

SECTION 5. SEC 2.01(1)(d) 4 and 5 and 6 are renumbered SEC 2.01(1)(d) 2, 3 and 4

ANALYSIS: This renumbering is necessary as a result of the repeal of SEC 2.01 (1)(d) 2 and 3 in the previous SECTION.

SECTION 6. SEC 2.01(3)(c) and (d) are created to read:

SEC 2.01(3)(c) The Pacific stock exchange is designated as a national securities exchange qualifying for registration exemption status under s.551.22(7), Stats., but only with respect to Tier 1 securities listed on that exchange, subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-34429 (July 22, 1994) 59 Federal Register 38998 (August 1, 1994), as contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Pacific stock exchange and the North

American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(d) The Philadelphia stock exchange is designated as a national securities exchange qualifying for registration exemption status under s.551.22(7), Stats., but only with respect to Tier 1 securities listed on that exchange subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-34235 (June 17, 1994) 59 Federal Register 32736 (June 24, 1994), as contained in the Memorandum of Understanding dated October 12, 1994, entered into between the Philadelphia stock exchange and the North American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order,

registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

ANALYSIS: These two rule provisions designate the Pacific Stock Exchange and the Philadelphia Stock Exchange as national securities exchanges qualifying for registration exemption status under s. 551.22(7), Stats., but only with respect to Tier 1 securities listed and traded on those exchanges. Each of the Exchanges, as a result of rule changes approved by the U.S. Securities and Exchange Commission during 1994 (on June 24 with respect to the Philadelphia, and August 1 with respect to the Pacific) increased both their quantitative and qualitative listing standards and requirements. Both Exchanges have provided that the listing requirements for Tier 1 equity securities will be equivalent to the standards employed both by the American Stock Exchange (which for some years has been an exchange specified in s. 551.22(7), Stats.) and by the National Association of Securities Dealers NASDAQ/National Market System that was added to s. 551.22(7), Stats., in legislation during 1990. By specifying in the rule that the exemption exists only for Tier 1 Securities, the securities listed on "Tier 2" of each Exchange--which have appreciably lower quantitative and qualitative standards--will not qualify for use of the exemption.

Each separate rule paragraph also incorporates by reference a Memorandum of Understanding ("MOU") separately entered into dated October 12, 1994 by each of the Exchanges with the North American Securities Administrators Association, Inc. ("NASAA") which provides the basis for the grant (by means of these rules) of exemption status under s. 551.22(7), Stats., for Tier 1 securities traded on each exchange.

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

(1) The Pacific and Philadelphia exchanges have established the listing

and maintenance standards, as well as specified corporate governance provisions, for equity securities to qualify for trading on those Exchanges that are equivalent to the standards and requirements currently applied by the American Stock Exchange and NASDAQ/NMS.

(2) A decertification/termination process is established whereby the Commissioner can decertify/ terminate the designation of either the Pacific or Philadelphia Exchange as qualifying for registration exemption status under s. 551.22(7), Stats., by issuance of an order upon a determination that the requirements for listing or maintenance have been so changed or insufficiently applied that the protection of investors contemplated by the exemption designation no longer exists. Additionally, the Commissioner by order can deny or revoke exemption status with respect to a specific issue of securities or category of securities. The MOU establishes the procedure to be followed with respect to the decertification/termination process, including notice of, and opportunity for, hearing, written findings of fact and conclusions of law, and judicial review.

SECTION 7. SEC 2.02(1)(a) is amended to read:

SEC 2.02(1)(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; but if the sale is effected through a broker-dealer, the transaction is deemed isolated only if it is one of not more than ~~3~~ 5 such transactions effected by or through the broker-dealer in this state during the prior 12 months; and

ANALYSIS: The amendment to this rule under the "isolated nonissuer transaction" registration exemption of s. 551.23(1), Stats., increases to 5 (from 3) the number of transactions during a 12 month period that may be made by a broker-dealer relating to a particular issuer's securities and still be deemed "isolated".

SECTION 8. SEC 2.02(4)(c) 2 is amended to read:

SEC 2.02(4)(c)2. Being a corporation, partnership or association ~~that has been in existence for 5 years or~~ whose net assets exceed ~~$250,000~~ $1,000,000 and either:

ANALYSIS: This SECTION amends one of the criteria for designation as a "venture capital company" in rule SEC 2.02(4)(c) for purposes of qualifying under the "financial institution"/"institutional investor" registration exemption in s. 551.23(8), Stats. The amendment substitutes for the alternative criteria currently in the rule (either having been in existence 5 years or having net assets exceeding $250,000) a $1 million minimum net assets requirement for the reasons that: (1) merely having been in existence for a period of time is not a logical basis for determining status as a venture capital company, particularly in the absence of any net asset test to be used in conjunction with the "in existence" criteria; and (2) an entity with net assets of only $250,000 is not substantial enough to realistically provide much in the nature of "venture capital" for business financing needs.

SECTION 9. SEC 2.02(4)(h) is created to read:

SEC 2.02(4)(h). Any "accredited investor" as defined and listed in sec. 230.501(a)(1), (2), (3) or (7) under Regulation D under secs. 3(b) and 4(2) of the securities act of 1933.

ANALYSIS: This SECTION adds to the expanded listing by administrative rule authority of additional categories of "institutional investors" for purposes of the registration exemption in s. 551.23(8), Stats. Added are the four categories of entities (as contrasted with individuals) who are designated as "accredited investors" under the federal Regulation D exemption in federal rule sections 230.501(a)(1), (2), (3) and (7) which relate to: (i) [in para (1)] designated financial institutions and certain employee benefit plans; (ii) [in para. (2)] private business development companies as defined; (iii) [in para. (3)] entities with assets exceeding $5 million;

and (iv) [in para (7)] trusts with assets exceeding $5 million whose investments are directed by a "sophisticated person" as defined.

Wisconsin by statute and rule during 1994 added to its listing of "institutional investors"/"exempt accounts" for purposes of s. 551.23(8), Stats., the 3 categories of "individual" accredited investors (subject to the sophistication requirement added by statute therein) corresponding to rule paragraphs 230.501(a)(4), (5) and (6) under federal Regulation D. That was accomplished by statutorily designating "individual accredited investors" as a category in s. 551.23(8)(g), Stats., to be defined by rule, which were subsequently particularized in s. SEC 2.02(4)(g)1, 2 and 3.

Such statute and rule designations of "exempt accounts" under s. 551.23(8), Stats., reflect the determination that persons meeting the requirements specified are not in need of the protections accorded by the securities registration process or the review process for exemptions requiring a regulatory filing. The U.S. Securities and Exchange Commission in its Regulation D exemption framework does not provide different regulatory treatment for entity--as contrasted with individual--accredited investors, and these rule additions will parallel that treatment for Wisconsin purposes under s. 551.23(8), Stats.

SECTION 10. SEC 2.02(5)(d)1 is amended to read:

SEC 2.02(5)(d)1. Except as provided in this subdivision, any offer or sale of interests in a limited partnership ~~irrespective of the kind of assets held or business engaged in by the partnership~~ that is or will be primarily engaged in oil, gas or mining activities, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds $100,000, unless prior to

the offering the issuer files a notice of the proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption within 10 days. This ~~subdivision~~ paragraph is not applicable to any offer or sale made by a broker-dealer licensed in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control;

ANALYSIS: This SECTION--which has been revised from its public comment draft form as a result of comment letters and public hearing testimony received--partially removes a restriction on usage of the "10 offeree per 12 month period" private offering exemption in s. 551.23(11), Stats., contained in current rule SEC 2.02(5)(d)1. The current rule requires a pre-filing notice for any offering of $100,000 or more of either: (i) oil, gas or mining interests or production payments; or (ii) limited partnership interests or investment contract securities, irrespective of the kind of assets held or business to be engaged in by the partnership or investment contract issuer; unless the offering is made by an unaffiliated broker-dealer licensed in Wisconsin.

The amendment to this rule as revised would make the restriction on use of the exemption by a limited partnership issuer apply only for a limited partnership that is or will be engaged primarily in oil, gas or mining activities. The abusive tax-shelter-oriented limited partnership offerings prevalent from the 1970s to the mid-1980s (particularly in the real estate area) which prompted adoption of this rule in 1977 that currently restricts use of the exemption for limited partnerships irrespective of the type of business engaged in, have not been present since the 1986 federal tax law changes. Currently, there are relatively few filings made under SEC 2.02(5)(d)1 for limited partnership issuers because most limited partnership private placement offerings are the subject of filings made under the Wisconsin "Regulation D" exemption in s. 551.23(19), Stats. Only three other states have restrictions on use of their "limited offeree" exemption for specific types or categories of offerings. However, the restriction on use of the exemption for

any limited partnership engaged primarily in oil, gas or mining-related activities (which continue to present enforcement-related concerns to this Office) is retained from the public comment draft version of the proposed amended rule.

The other revision made to this SECTION from its public comment form as a result of comment letters and hearing testimony received deleted proposed amendments relating to restrictions on use of the exemption for "investment contract" securities offerings (which terminology applies to unusual types of investment arrangements). As a result, the rule is retained in its current form restricting use of the exemption by any investment contract issuer--irrespective of the type of assets held or business engaged in--because the enforcement experience of this Office has demonstrated that an inordinately high percentage of investment contract offerings involve fraud (as contrasted with corporate debt and equity offerings or limited partnership offerings). A particular example is the large number of investment contract security offerings made during the past two years on a national basis involving wireless cable business activities that have been the subject of dozens of federal and state securities enforcement actions (including by this Office) involving fraud.

SECTION 11. SEC 2.02(5)(d)2 is repealed and recreated to read:

SEC 2.02(5)(d)2. Any offering of securities if the issuer, any of its officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in s. 551.23(19), Stats., as a result of any of the causes specified in par. (c)1a to d in that subsection, except for any person or persons subject to a disqualification who meets the conditions for waiver in par. (c)2a or for any person who receives a waiver by the commissioner upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be withdrawn.

ANALYSIS: This SECTION substitutes a "bad boy" disqualification-from-use provision for the current rule in SEC 2.02(5)(d)2 (that withdraws use of the "10 offeree per 12 month period" exemption in s. 551.23(11), Stats., for certain resales of equity securities by controlling persons of a ch. 551 registrant). The disqualification provision precludes use of the exemption by persons who have been the subject of specified criminal, civil or administrative enforcement actions by federal or state regulatory authorities. An equivalent disqualification-from-use provision is contained in the Wisconsin "Regulation D" exemption in s. 551.23(19), Stats., and this rule shortens the provision by cross-referencing the applicable language already contained in s. 551.23(19)(c)1a to d. Ten states currently impose a "bad boy" disqualifier precluding use of their "limited offeree" private offering exemption.

SECTION 12. SEC 2.02(5)(d)3 is repealed:

ANALYSIS: This SECTION repeals the rule in SEC 2.02(5)(d)3 which restricts use of the "10 offerees per 12 month period" private offering exemption in s. 551.23(11), Stats., for securities offerings made federally either pursuant to a registration statement under the Securities Act of 1933 or Regulations A or B thereunder. Only two other states currently have such a restriction on use of their "10 offeree" exemption. Also, the statutory language in s. 551.23(11), Stats., currently requires offerors relying on the exemption to have a reasonable basis to believe that all persons in this state are purchasing "for investment"--a requirement which issuers in registered or Regulation A public offerings generally would not be able to meet in the absence of obtaining an "investment intent" letter from a purchaser (commonplace in federal private placement offerings, but not in public offerings).

SECTION 13. SEC 2.02(9)(i) is repealed:

ANALYSIS: This SECTION repeals the transactional exemption rule in 2.02(9)(i) created in 1983 under the discretionary authority in s. 551.23(18), Stats. (relating to the sale of debt securities by an issuer to its employees) because there has only been only one notice

filing made under the exemption since its adoption.

SECTION 14. SEC 2.02(9)(j) to (n) are renumbered SEC 2.02(9)(i) to (m).

ANALYSIS: This renumbering is necessary to reflect the repeal of current SEC 2.02(9)(i) in the preceding SECTION.

SECTION 15. SEC 2.02(9)(i), as renumbered, is amended to read:

SEC 2.02(9)(i) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. SEC ~~2.025 or~~ 2.027 or 2.028.

ANALYSIS: These amendments do the following: (1) delete the cross-reference to SEC 2.025 which was repealed incident to the 1994 annual rule revision process; and (2) designate transactional exemption status for purposes of s. 551.23(18), Stats., to the "testing the waters" transactional exemption created in SEC 2.028 in a following SECTION.

SECTION 16. SEC 2.02(9)(l), as renumbered, is amended to read:

SEC 2.02(9)(l)1. Any offer, other than a solicitation of interest made pursuant to SEC 2.028, sale or option to purchase equity securities issued by a new Wisconsin business corporation if that offer or sale is made by, or the option is offered by, the issuing corporation to its employes, officers or directors. In this subsection, "new Wisconsin business corporation" means a business incorporated under ch. 180, Stats., with its principal office in this state ~~which, on the date of the offer, sale or issuance of the option, has been operating 5 years or less, has no more than 50 employes and has annual gross receipts of $5,000,000 or less~~.

2. Prior to any offering made in this state under this paragraph, the corporation shall provide the commissioner with at least ~~20~~ 10 days' advance written notice of the offering. The notice shall include a copy of a written

disclosure document to be provided to each offeree setting forth, without limitation as to other types of information that can be provided, the amount of funds being raised in the offering; how the proceeds will be expended; basic information about the corporation's business activities and historical operations to date; the identity of its officers, directors and controlling persons; the current ownership levels of the corporation's securities, together with the price per share paid by persons for those shares; and audited or reviewed financial statements for the corporation.

ANALYSIS: The amendments to this transactional registration exemption created under the discretionary exemption authority in s. 551.23(18), Stats., (relating to the sale of equity securities by a "new Wisconsin business corporation" to its employees) do the following: (1) In subd. 1, delete the definitional criteria for use of the exemption (relating to maximum years in operation, maximum number of employees and maximum annual gross receipts) to attempt to facilitate use of this exemption. There have been no filings with this Office under the exemption since its original adoption in 1989. (2) Also, in subd. 1, language is added to clarify the interrelationship of the rule with the new "test the waters" exemption in SEC 2.028. The added language clarifies that offers in the form of solicitation of interest made pursuant to SEC 2.028--which have their own exemption status thereunder--need not look to this rule for exemption status. Thus the filing requirement in subd. 2 will not be adversely affected or made complicated in instances where use of the exemption in this rule is preceded by use of solicitations of interest pursuant to SEC 2.028. (3) In subd. 2, reduce from 20 days to 10 days the agency review period for the disclosure materials filed for purposes of the exemption to conform to the 10 day review period for all other notice-type exemption filings. (4) Also in subd. 2, permit the financial statements contained in the disclosure materials to be either audited or reviewed.

SECTION 17. SEC 2.02(9)(n) is created to read:

SEC 2.02(9)(n). Offers or sales of a security by an issuer pursuant to a written compensatory benefit plan including, without limitation, a purchase, savings, option, bonus, stock appreciation, profit-sharing, thrift, incentive, pension or similar plan, and interests in any such plan, provided that the offers and sales qualify for use of the registration exemption in rule 230.701 under sec. 3(b) of the securities act of 1933.

ANALYSIS: This SECTION adopts a transactional registration exemption under the discretionary exemption authority in s. 551.23(18), Stats., for offers or sales of securities by issuers pursuant to employee compensatory benefit plans qualifying for federal registration exemption status pursuant to Rule 701 under Section 3(b) of the Securities Act of 1933. The federal rule (adopted in 1988) specifically lists each of the categories of employee plans recited in this rule. Federal Rule 701 imposes substantive requirements on issuers in connection with use of the exemption including: (i) limitations on dollar amounts of securities offered or sold which reflect so-called "integration" provisions that count offers and sales by the issuer in the preceding twelve months; (ii) limitations on the aggregate price of securities subject to offers relying on Rule 701 as a percentage (not to exceed 15%) of the issuer's total assets; (iii) limitations on the number of securities of the issuer subject to offers relying on Rule 701 as a percentage (not to exceed 15%) of the issuer's outstanding securities of that class; and (iv) limitations on resales of securities issued under Rule 701 because the U.S. Securities and Exchange Commission ("SEC") deems them to be "restricted securities." Additionally, issuers relying on the federal Rule 701 exemption must not only meet the substantive requirements summarized above, but also are required to comply with applicable annual and periodic filing requirements with the SEC under Rule 702(T), and may not be "bad boy disqualified" under Rule 703(T).

The statutory registration exemption in s. 551.22(10), Stats., currently provides an "automatic" exemption for employee benefit plans of the types specified in the statute that are either "qualified" plans under Section 401 of the Internal Revenue Code or do not provide for contributions by employees. However, stock option

plans are not included in the listing of plans in s. 551.22(10), Stats. Consequently, stock option plans as well as the categories of employee plans in s. 551.22(10), Stats., that are not Section 401-qualified and provide for contribution by employees, must file exemption applications with this office meeting the substantive requirements of current rules SEC 2.02(9)(f) or SEC 2.01(6), respectively. The exemption requirements in SEC 2.02(9)(f) and SEC 2.01(6) will continue to be applicable for stock option plans or other employee compensatory benefit plans that do not qualify for the federal Rule 701 exemption.

SECTION 18a. SEC 2.027(1)(intro.) is amended to read:

SEC 2.027(1) The securities are sold to not more than ~~50~~ 100 persons in this state excluding:

ANALYSIS: See below.

SECTION 18b. SEC 2.027(4) is amended to read:

SEC 2.02(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed ~~$500,000~~ $1,000,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502(a) of Regulation D under the securities act of 1933.

ANALYSIS: See below.

SECTION 18c. SEC 2.027(5) is repealed:

ANALYSIS: See below.

SECTION 18d. SEC 2.027(6) to (9) is renumbered SEC 2.027(5) to (8):

ANALYSIS: See below.

SECTION 18e. SEC 2.027(7)(a), as renumbered, is amended to read:

(a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form, except that the financial statements may be either audited or reviewed; or

ANALYSIS: See below.

SECTION 18f. SEC 2.027(8)(b) is renumbered SEC 2.027(8)(c), and as renumbered, is amended to read:

SEC 2.027(8)(c). A copy of all advertising, other than the offering document and except for solicitation of interest materials previously filed pursuant to s. SEC 2.028, to be used in connection with the offer and sale of the securities, not later than the date of its first use in this state, and a copy of all material amendments to the offering document, not later than the date of first use of each material amendment in this state.

ANALYSIS: See below.

SECTION 18g. SEC 2.027(8)(b) is created to read:

SEC 2.027(8)(b). A letter specifying how the requirements for use of this exemption contained in the introduction and in subs. (1) to (7) of this section are met or will be met; and

ANALYSIS: The preceding seven SECTIONS--including a new paragraph added by this Office following the rule-making hearing--make separate creations, amendments or repeals to facilitate use of the Wisconsin-Issuer-Registration-Exemption-By-Filing rule adopted under the discretionary exemption authority of s. 551.23(18), Stats. The current rule provides an "expanded Regulation D" - type exemption for Wisconsin-based issuers meeting certain requirements that not only allows use of the Form U-7/SCOR question-and-answer disclosure format in lieu of regular Federal Registration D disclosure materials, but also permits the use of general advertising. The rule, originally adopted in 1986 and amended several times subsequently, has been the subject of less than 30 filings since its inception, and these revisions make the following changes to facilitate its use by more Wisconsin issuers: (1) increases to 100 (up from 50), the number of permitted purchasers; (2) increases to $1 million (up from $500,000) the amount of proceeds that can be raised per offering using the exemption (subject to the integration language); (3) deletes the $3 minimum per share price requirement for common stock offerings using the exemption; (4) permits the Form U-7/SCOR disclosure document to contain either audited or reviewed financial statements; (5) provides that solicitation of interest materials previously filed pursuant to the "test the waters" exemption in SEC 2.028 relating to the offering are not part of the filing package for purposes of use of the exemption in SEC 2.027; and (6) in a non-substantive revision made by this Office following the rule-making hearing, a new paragraph (8)(b) was created which adds as part of the information package required to be filed under sub. (8) for purposes of claiming use of the exemption, a letter specifying how the requirements for use of the exemption contained in the

introduction and in subs. (1) to (7) of SEC 2.027 are met or will be met.

SECTION 19. SEC 2.028 is created to read:

SEC 2.028. **EXEMPTION FOR SOLICITATIONS OF INTEREST PRIOR TO REGISTRATION OR EXEMPTION**. (1) A transaction exemption is available under s. 551.23(18), Stats., for an offer, but not a sale, of a security made by or on behalf of an issuer pursuant to delivery of a written document or use of a newspaper publication or scripted media broadcast containing the information prescribed in the form in s. SEC 9.01(1)(c), for the sole purpose of soliciting an indication of interest from prospective purchasers in receiving a prospectus, private placement memorandum or equivalent disclosure document for the security, if the following conditions are satisfied, except to the extent that sub. (2) is applicable.

(a) The issuer intends that sales of the security be either:

1. Registered under ch. 551, Stats.; or

2. Exempt from registration under an available exemption in any subsection of s. 551.23, Stats.

(b) Not later than the date of the initial solicitation of interest made under this section, the offeror shall file with the commissioner a completed solicitation of interest form as prescribed in s. SEC 9.01(1)(c), together with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published. Material amendments to the solicitation of interest form or to any related materials used to conduct solicitations shall be filed with the commissioner not later than the date of their first use. Any written document under this subsection may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing

the name, address and telephone number of the prospective purchaser.

(c) Any published notice or script for broadcast, and any printed material delivered apart from the solicitation of interest form, shall contain the disclosures specified in the solicitation of interest form in s. SEC 9.01(1)(c).

(d) The offeror does not know, and in the exercise of reasonable care could not know, that any of the issuer's officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in s. 551.23(19), Stats., as a result of any of the causes specified in par. (c)1a to d in that subsection, except for any person or persons subject to a disqualification who meets the conditions for waiver in par. (c)2a.

(e) Solicitations of interest pursuant to this section shall not be made after the filing of either a registration statement under ch. 551, Stats., the filing of materials required for a claim of registration exemption under s. 551.23, Stats., or use of any available self-executing exemption under s. 551.23, Stats.;

(f) Sales of the securities that are the subject of solicitations of interest under this section shall not be made until 20 calendar days after the last delivery of a solicitation of interest document or a radio or television broadcast or other media publication.

(2)(a) A failure to comply with any of the conditions in sub. (1) will not result in the loss of the securities registration exemption under this section for any offer to a particular individual or entity if the offeror demonstrates each of the following are met:

1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity; and

2. The failure to comply was insignificant with respect to the offering as a whole; and

3. A good faith and reasonable attempt was made to comply with the conditions in pars. (1)(a) to (f).

(b) Where an exemption is established only through reliance upon this sub. (2), the failure to comply with the conditions in pars. (1)(a) to (f) shall constitute a basis for action that may be taken by the commissioner under s. 551.57, Stats., and shall constitute a basis for action that may be taken by the commissioner under s. 551.24, Stats., to deny or revoke the exemption as to a specific security or transaction.

ANALYSIS: This SECTION creates a Wisconsin transactional exemption rule to adopt an expanded version of the so-called "test the waters" concept created in 1992 by the U.S. Securities and Exchange Commission (SEC) in Rule 254 under Regulation A of the Securities Act of 1933 to facilitate the capital-raising process for issuers of securities. The rule permits an issuer of securities to publicly solicit indications of interest from prospective investors in Wisconsin to assess the probability of success of a securities offering prior to incurring the considerable expense involved in making regulatory filings for registration or exemption purposes under state and federal securities laws. The risk of harm to investors through use of the exemption is limited inasmuch as the rule exempts only offers. Sales may be made only in subsequent offerings that are either registered in Wisconsin or meet the qualifications for use of available registration exemptions.

The scope of the Wisconsin rule is expanded in par. (1)(a) beyond the federal rule and beyond the scope of a 1993 NASAA "test the waters" model provision (currently being utilized by nine states in a pilot project) in that: (i) Under subd. (1)(a)1, any subsequent sales of the securities that are registered in Wisconsin are not subject to any restriction regarding federal registration or exemption status. The current federal "test the waters" rule is limited to Regulation A offerings (although the SEC recently has issued a Concept Release relating to expanding usage with regard to "regular" SEC registrations for an initial public offering by an issuer), and the NASAA model provision is limited to state registrations for offerings made federally under Regulation A or Rule 504 under Regulation D. (ii) Under subd. (1)(a)2, subsequent sales of the securities may be made pursuant to any available registration exemption under s. 551.23, Stats., including the Wisconsin

Regulation D exemption in s. 551.23(19), Stats. Thus, a user of the proposed Wisconsin "test the waters" rule intending to make any subsequent sales under the federal and state versions of the Regulation D exemption could use written and verbal testing--subject, however, to federal Regulation D restrictions precluding general solicitation or general advertising. It is to be noted that users of the "expanded Wisconsin Regulation D exemption" in SEC 2.027, Wis. Stats., are able to use general advertising, and an amendment was made in that exemption referencing use of SEC 2.028.

The filing requirement under par. (1)(b) of the rule conforms to the not-later-than-the-initial-date-of-use provision in the federal rule, rather than the filing-10-days-prior-to-use approach in the NASAA model. The Commissioner has the ability to revoke use of this or any exemption, including by summary order under s. 551.24(2), Stats. Additionally, "test the waters" offers made under this rule would be subject to the anti-fraud provisions of s. 551.41, Wis. Stats., which provide a basis for administrative, injunctive, or potential criminal enforcement action by this Office. Also under sub. (2), the filing of material amendments are subject to the same not-later-than-first-use language, and the last sentence permitting use of a returnable coupon is included from the federal rule.

Under par. (1)(c), an offeror of securities using this exemption must include in all solicitations--whether by use of the newly-created one-page Solicitation of Interest Form cross-referenced in SEC 9.01(1)(c) or in any media publications or broadcasts--the required four "legend-type" disclosure items from the Form, plus disclosures required by the federal rule regarding identifying the issuer's chief executive officer and describing the issuer's business and products. The first three "legend" disclosures are taken from the federal rule, and the fourth is from the NASAA Solicitation of Interest Form. Those prescribed "legend" disclosures: (i) provide that no money or consideration is being solicited and none will be accepted; (ii) provide that no sales or commitments to buy will be accepted until a complete disclosure document is provided; (iii) provide that an indication of interest by a prospective investor involves no obligation or commitment of any kind; and (iv) provide that the offering is made pursuant to an exemption from registration under federal and state securities laws, and that no sale can be made until the securities are registered or exempted in Wisconsin. A copy of

the Solicitation of Interest Form is contained at the end of this rulemaking package.

Paragraph (1)(d) is a so-called "bad boy" disqualifier-from-use provision which precludes use of the exemption by persons who have been the subject of specified criminal, civil or administrative enforcement actions by federal or state regulatory authorities. The NASAA model rule contains a disqualifier provision that recites the entirety of the language contained in the NASAA Uniform Limited Offering Exemption for federal Regulation D offerings under Rules 505 or 506. The Wisconsin disqualifer provision is shortened by cross-referencing the applicable language already contained in the Wisconsin Regulation D exemption in s. 551.23(19)(c)1a to d, Stats.

Paragraphs (1)(e) and (f) follow equivalent provisions in the federal rule and provide that: (i) [in par. (1)(e)] solicitations may not be made after the filing of a registration statement, with expanded language in this Wisconsin rule relating to exemptions from registration; and (ii) [in par. (1)(f)] no solicitation for sales of the securities can be made until 20 calendar days after the last solicitation of interest made by document or by media publication.

Subsection (2) is based on sub (2) of the NASAA model provision--which language in turn, was taken from Rule 508 of the federal Regulation D exemption entitled "Insignificant Deviations From a Term, Condition or Requirement of Regulation D." The subsection (2) language provides that a failure to comply with the conditions in pars. (1)(a) to (f) will not result in the loss of the exemption under SEC 2.028 where the "insignificant" criteria in (2)(a)1, 2 and 3 are met. However, par. (2)(b) provides--as does the NASAA model "test the waters" provision and the federal Regulation D Rule 508 language--that the failures to comply "shall" constitute a basis for injunctive or exemption revocation action that may be taken by the Commissioner.

SECTION 20. SEC 3.001 is created to read:

SEC 3.001. **LIMITATION ON APPLICABILITY OF CERTAIN**

REGISTRATION REQUIREMENTS IN THIS CHAPTER. The requirements in ss. SEC 3.01 to SEC 3.20 are applicable except with respect to a registration statement filed under s. 551.25 or 551.26, Stats., relating to an offering that meets the requirements in any of the following subsections (1) to (4):

(1) An offering of equity securities, including warrants or subscription rights, of an issuer having equity securities that meets the requirements in one of the subdivisions in par. (a) and meets the requirements in one of the subdivisions in par. (b):

(a) The issuer's equity securities of the same class are either of the following:

1. Traded on any national securities exchange registered under the securities exchange act of 1934.

2. Designated for inclusion in the national association of securities dealers automated quotation system established under the securities exchange act of 1934 for national market system issuer securities.

(b) The equity securities are the subject of one of the following:

1. A registration statement filed for registration under the securities act of 1933, and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

2. An offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in a offering statement qualified by the U.S. securities and exchange commission.

(2) An offering of debt securities of any issuer that, together with any predecessor, has been in continuous operation for at least five years, provided there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer or predecessors with a fixed maturity or a fixed interest or

dividend provision, and provided that the debt securities are either:

(a) The subject of a registration statement filed for registration under the securities act of 1933, and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission; or

(b) The subject of an offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in an offering statement qualified by the U.S. securities and exchange commission.

(3) An offering of the securities of any issuer with its principal office in Wisconsin and the securities are any of the following:

(a) The subject of a registration statement under the securities act of 1933 and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

(b) The subject of an offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in an offering statement qualified by the U.S. securities and exchange commission.

(c) Exempt from registration pursuant to Rule 504 under Regulation D of the securities act of 1933 and are the subject of a registration statement filed under s. 551.26, Stats., and sales cannot be made until the registration statement is declared effective by the commissioner.

(4) An offering of the redeemable securities issued by an open-end management investment company registered under the investment company act of 1940, provided that the securities are the subject of a registration statement under the securities act of 1933 and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

ANALYSIS: This new rule section SEC 3.001 provides that the

specific "merit"/"fair and equitable" registration rules in s. SEC 3.01 to 3.20 will not be applicable to registration applications filed by coordination or qualification in Wisconsin for specified kinds of offerings listed in subs. (1) to (4). The rule operates as an exclusion from applicability of various "merit" rule requirements and is not an exemption from registration. Each subdivision contains as a requirement for availability of the exclusion-from-merit review that the offering be pursuant to use of a disclosure document allowed for national use with investors in public offerings under either the full registration or the Regulation A filing and review requirements of the federal Securities Act of 1933.

Sub.(1)--which contains one revision from its public comment draft form made by the Office following the rule-making hearing--relates to offerings of equity securities (including warrants or subscription rights) for an issuer whose equity securities of the same class are either traded on any national securities exchange or designated as a NASDAQ/National Market System security, provided that the offering is either registered or is the subject of an offering statement under Regulation A under the federal Securities Act of 1933. The rationale for the rule in sub. (1) is that: (i) where an offering of equity securities is subject to the full disclosure standards and requirements of the federal securities laws either in a registration or Regulation A context involving disclosure documents allowed for national use with investors; and (ii) there exists a public trading market for the securities as specified in the rule (thus not only providing liquidity for investors but also providing for listing and maintenance requirements for the securities to continue to be traded), such can be relied upon to provide protection to Wisconsin investors in lieu of application by the agency of various, specific "merit" regulatory requirements in chapter SEC 3 of the rules. The revision made to sub.(1) following the public hearing deleted applicability of the subsection for offerings of securities traded on the NASDAQ Small-Capitalization marketplace. Such deletion is made for investor protection purposes because: (i) the listing and maintenance requirements for NASDAQ/Small-Cap are substantially lower than the requirements for NASDAQ/NMS securities; and (ii) the trading market for NASDAQ Small-Cap securities generally has restricted breadth and depth as well as limited numbers of market-makers, thus impairing trading liquidity.

Sub. (2) relates to offerings of debt securities of an issuer meeting

the substantive requirements specified therein, provided that the offering is either registered or is the subject of an offering statement under Regulation A under the federal Securities Act of 1933. The substantive requirements in sub.(2) (relating to being in continuous operation for a minimum of five years and that there cannot have been defaults during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest or dividends on debt or preferred stock) are taken from the Registration By Notification provisions contained in sub.(a)(1)(A) of Section 302 of the Uniform Securities Act of 1956. The rationale for the rule is that: (i) where an issuer of debt securities has been in operation for at least five years with no defaults on its outstanding debt or preferred stock during the current fiscal year or three preceding fiscal years; and (ii) the offering is subject to the full disclosure standards and requirements of the federal securities laws either in a registration or Regulation A context involving disclosure documents allowed for national use with investors; such can be relied upon to provide protection to Wisconsin investors in lieu of specific "merit" regulatory requirements.

Sub.(3) relates to offerings of securities of any issuer with its principal office in Wisconsin, provided that the offering is either registered federally, exempt under federal Regulation A, or is exempt under federal Rule 504 under Regulation D, but is registered by Qualification under s. 551.26 of the Wisconsin Uniform Securities Law. The rationale for the rule is that: (i) where the offering is subject to the full disclosure standards and requirements of the federal securities laws either in a registration or Regulation A context, or alternatively is a federal Rule 504/Regulation D exempt offering, but is registered by Qualification under s. 551.26, Stats., allowing for a full disclosure prospectus review by the Commissioner's staff under SEC 3.23(3); and (ii) because the issuer has its principal office in Wisconsin enabling the Commissioner to be able to readily use the authority in s. 551.27(5), Stats., to have staff make an examination of the business and records of the registration applicant to verify the accuracy of disclosures made; such can be relied upon to provide protection to Wisconsin investors in lieu of application by the agency of various, specific "merit" regulatory requirements in ch. SEC 3 of the rules.

Sub.(4) relates to offerings of redeemable securities issued by an

open-end management company registered under the Investment Company Act of 1940 (a mutual fund), provided that the offering is the subject of a registration statement under the Securities Act of 1933. The rationale for the rule in sub. (4) is that as an investment company registered under the federal Investment Company Act of 1940, the mutual fund is already subject to an array of substantive "merit"-type requirement contained in that federal law. Those federal requirements, which include asset-diversification requirements and restrictions on the amount of non-liquid securities permitted in a funds' portfolio, are substantially equivalent to various of the "merit" requirements applicable to mutual funds in current rule SEC 3.09(1). Consequently, the existence of federal "merit"-type requirements for mutual funds registered under the Investment Company Act of 1940, coupled with the full disclosure registration under the Securities Act of 1933 for the offering of mutual fund shares can be relied upon to provide protection to Wisconsin investors in lieu of application by the agency of the largely duplicative merit requirements in SEC 3.09(1). So-called "hedge funds" which are not registered under the Investment Company Act of 1940 (because they have fewer than 100 holders and thus are excluded from the definition of "investment company") will not be able to utilize subd.(4). This new rule subdivision would supersede the effects of the 1994 rule change in SEC 3.09(7) which provided an exclusion from the applicability of "merit" requirements for "blue chip" mutual funds.

Related amendments to this SECTION are made to the prospectus disclosure rule in SEC 3.23(3) and the financial statements rule in SEC 7.06(2) in following SECTIONS.

SECTION 21. 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 requirement of this subsection~~, or a prospectus or offering circular

relating to the debt or equity securities of an issuer that meets the requirements in s. SEC 3.001(1), (2) or (3)(a) or (b), shall not be subject to disclosure adequacy review or comment by the commissioner. 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~~ or SEC 3.001(4) shall not be subject to disclosure adequacy review or comment by the commissioner. 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~~ is an acceptable disclosure format and shall be subject to disclosure adequacy review and comment by the commissioner.

ANALYSIS: These amendments to the prospectus requirements rule in SEC 3.23(3) are created in conjunction with new rule SEC 3.001. The amendments do the following: (1) provide that a prospectus or offering circular filed with an application to register securities (filed under either s. 551.25 or 551.26, Stats.) relating to the debt or equity securities of an issuer that meets the requirements in SEC 3.001(1), (2) or (3)(a) or (b) shall not be subject to disclosure adequacy review or comment by the agency. Each of those cross-referenced subsections and paragraphs of SEC 3.001 contains the requirement that the securities offered be either registered or the subject of an offering statement under Regulation A under the federal Securities Act of 1933. The amendment is based on the position that where the disclosure document for an offering is subject to the full disclosure standards and requirements of the federal securities laws either in a registration or Regulation A context, and results in a disclosure document allowed by the U.S. Securities and Exchange Commission for national use with public investors, such disclosure document will not be subject to a

separate disclosure adequacy review or comment by the Wisconsin Commissioner's Office. (2) Paragraph (3)(c) of SEC 3.001 (relating to Rule 504 offerings under Regulation D) is not included for purposes of this rule because such an offering would not involve any disclosure document allowed for national use with public investors for federal registration or Regulation A purposes. It is intended that the disclosure materials for offerings made in Wisconsin pursuant to Rule 504 of Regulation D under the Securities Act of 1933 [as referred to in SEC 3.001(3)(c)] be subject to full disclosure review by the Commissioner's Office--whether the disclosure format used is the traditional prospectus/"legalese" format or the NASAA Form U-7/SCOR question-and-answer format. (3) In that regard, the last sentence of SEC 3.23(3)--which currently makes specific reference to the NASAA Form U-7/SCOR document with regard to federal Rule 504/Regulation D Offerings--is amended to provide that while the Form U-7/SCOR is an acceptable disclosure format, it is subject to disclosure adequacy review and comment by the Commissioner's Office.

As a result of comment letters and public hearing testimony received, a revision was made to the public comment draft form of this SECTION by adding to the third sentence a cross-reference to SEC 3.001(4) relating to federally-registered mutual funds. Such revision is warranted because inasmuch as new rule SEC 3.001(4) excludes all federally-registered mutual funds from merit review requirements--not just those mutual funds meeting the "blue chip" requirements in SEC 3.09(7)(b)--it would be inconsistent to not also have such federally-registered mutual funds under SEC 3.001(4) be excluded from prospectus adequacy review by the staff. The citation in the third sentence of the rule to SEC 3.09(7)(b) is retained to preserve the existing availability of the exclusion therein to Form S-6 prospectuses for unit investment trusts which are not covered by new rule SEC 3.001(4).

SECTION 22. SEC 4.01(3)(intro.) is amended to read:

SEC 4.01(3) Unless waived under sub. (4), each applicant for an initial license as a broker-dealer or agent is required to pass <u>either</u> the <u>Series 63</u> Uniform

Securities Agent State Law Examination or the Series 66 Uniform Combined State Law Examination with a grade of at least 70% and pass with a grade of at least 70% one of the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to pass each examination in pars. (b) to (e) that relates to the applicant's proposed securities activities:

ANALYSIS: This amendment to the Wisconsin examination requirement for agents and broker-dealers adds an alternative examination which can be passed to satisfy the requirement. The new examination is the Series 66 Uniform Combined State Law Examination that was recently developed and adopted by NASAA for use by all member jurisdictions, including Wisconsin. The new Combined/Series 66 examination provides for testing equivalent to that in the current Series 63 USASLE (for securities agents), and the Series 65 Uniform Investment Adviser Representative Examination (for investment adviser representatives). Consequently, a person passing the Combined/Series 66 examination will satisfy the examination requirements both for licensing as a securities agent under this rule and under rule SEC 5.01(3) for investment adviser representatives (which rule is similarly amended in a later SECTION).

SECTION 23. SEC 4.01(4)(e) is renumbered SEC 4.01(4)(f).

ANALYSIS: This renumbering [to keep the examination-waiver-by-order-of-the-commissioner paragraph as the last provision in SEC 4.01(4)] is necessary because of the creation of a new examination waiver provision in the following SECTION.

SECTION 24. SEC 4.01(4)(e) is created to read:

SEC 4.01(4)(e). The applicant is currently registered and in good standing

with The Securities and Futures Authority of Great Britain and has passed the Series 17 Modified General Securities Representative Qualification Examination for United Kingdom Representatives, except that the applicant's activities may not include the offer and sale of municipal securities unless the applicant passes the examination listed in sub. (3)(d).

ANALYSIS: This SECTION creates an additional waiver under SEC 4.01(4) from the Wisconsin securities agent examination requirement. The waiver parallels an NASD examination waiver (from the need to pass the NASD Series 7 General Securities Representative Examination) adopted in 1990 that allows a person who is qualified as a representative and is registered with the U.K. equivalent of the U.S. Securities and Exchange Commission to become a registered representative in the United States by passing the Series 17 Modified Examination which covers securities laws and practices peculiar to the U.S. securities markets.

SECTION 25. SEC 4.01(5) is amended to read:

SEC 4.01(5). Prior to issuance of an initial license as a broker-dealer, at least one employe shall be designated in the license application on the form prescribed in s. SEC 9.01(1)(b) and filed with the commissioner 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: This amendment clarifies a misimpression by many licensees who believe that their filing of designated supervisor information with the NASD on NASD forms satisfies the requirement under this rule. The amendment specifies that the designated supervisor information required under the rule must be on forms prescribed [in existing rule SEC 9.01(1)(b)(9)] by and filed with this Office.

SECTION 26. SEC 4.03(3)(c) is amended to read:

SEC 4.03(3)(c) Blotters, or other records of original entry, setting forth an itemized daily record of all receipts and deliveries of securities, including certificate numbers, and all receipts and disbursements of cash. The record shall show the account for which each entry is made.

ANALYSIS: This amendment adds to the broker-dealer branch office record-keeping rule regarding blotters, equivalent language to that contained in rule SEC 4.01(1)(a) requiring blotters at a broker-dealer's principal office to identify the account for which each receipt or disbursement of cash or securities is made. The amendment to require account identification data is necessary because the staff has found during branch office examinations that some branch offices who are using copies of checks or other documents to comply with the requirements of this rule do not provide a clear identification of the account for which a receipt or disbursement is made.

SECTION 27. SEC 4.03(6) is renumbered SEC 4.03(7).

ANALYSIS: This renumbering [to keep the waiver-by-order-of-the-commissioner paragraph as the last provision in SEC 4.03] is necessary because of the creation of a new provision in the following SECTION.

SECTION 28. SEC 4.03(6) is created to read:

SEC 4.03(6). A broker-dealer may utilize alternative records to satisfy the requirements in subs. (1) and (3) upon application to and approval by the commissioner, provided that the alternative records provide equivalent information to that required by those subsections, and provided that the alternative records are preserved and accessible in conformance with sub. (2) and (4).

ANALYSIS: This new rule provides regulatory flexibility by allowing broker-dealer firms to utilize alternative forms and formats of records to satisfy the books and record-keeping requirements for broker-dealer principal offices and branch offices in SEC 4.03(1) and (3). The need to provide such flexibility has developed particularly as a result of the advanced use of computer record-keeping by broker-dealer firms whose records may vary in form and format from the records listed in subs. SEC 4.03(1) and (3). This new rule will allow the staff to review the form, content and format of an alternative record, and upon verification that the information provided is equivalent and will be preserved and accessible in accordance with existing retention requirements, approve (without the need to issue an Order of the Commissioner) use of the alternative record .

SECTION 29. SEC 4.04(8)(b) is amended to read:

SEC 4.04(8)(b) Each broker-dealer shall notify the commissioner in writing ~~at least~~ not later than 14 days after the closing in this state of any "branch office" as defined in s. SEC 1.02(7)(a), which notice shall specify the effective date of the closing.

ANALYSIS: These amendments both: (1) clarify that the written notification of the closing of a branch office must be provided not later than 14 days after the closing; and (2) require that the notice specify the effective date of the closing.

SECTION 30. SEC 4.05(5) is amended to read:

SEC 4.05(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information form prescribed under s. SEC 4.03(1)(k), not later than 20 days after the customer's account is first established on the books and records of the broker-dealer. Each contract or agreement and new account form for a customer whose account involves both an introducing broker and a clearing broker who provides services to the customer, shall contain or be accompanied by a disclosure of the identity and address of each broker-dealer. A copy of any material amendment to a customer's contract, agreement or customer information form shall be provided to the customer within 20 days from the date of the material amendment. In this subsection, a material amendment is presumed to exist, without limitation, in the event the broker-dealer receives from the customer and records on the customer information form, changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the agent's ability to make suitable recommendations for the customer as required under s. SEC 4.06(1)(c).

ANALYSIS: Some broker-dealers act as "introducing brokers" where they utilize the services of another broker-dealer known as a "clearing broker" to provide transaction execution and administrative services for the customer's account. The agency staff in its periodic examinations of introducing and clearing brokers has noted that introducing brokers often utilize the contracts and forms of the clearing broker which identify only the clearing broker and do not mention the introducing broker. To enable customers in such arrangements to know the identity and address of each broker-dealer firm providing services for their account, this amendment will require that a customer's contracts, agreements and new account information form must contain or be accompanied by disclosure of the identity and address of each broker-dealer.

SECTION 31. SEC 4.05(6) is amended to read:

SEC 4.05(6) Every licensed broker-dealer shall employ at least one person designated in writing ~~to~~ on the form prescribed in SEC 9.01(1)(b) and filed with 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 subsection, it has 45 days from the first date of non-compliance to meet the requirements of this subsection.

ANALYSIS: This amendment parallels a similar amendment made to SEC 4.01(5) in an earlier SECTION to clarify a misimpression by many licensees who believe that their filing of designated supervisor information with the NASD on NASD forms satisfies the requirements under this rule.

SECTION 32. SEC 5.01(3) is repealed and recreated to read:

SEC 5.01(3). Unless waived under sub. (4), each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative after January 1, 1996, and each applicant whose application has not become effective by January 1, 1996, is required to pass either of the following examinations with a grade of at least 70%:

(a) The North American Securities Administrators Association Series 65 Uniform Investment Adviser Law Examination; or

(b) The North American Securities Administrators Association Series 66 Uniform Combined State Law Examination.

ANALYSIS: This SECTION restructures and revises the examination requirement for investment advisers and investment adviser representatives in the following respects: (1) adds [in par. (b)] as a separate, alternative examination whose passage will satisfy the exam requirement, the new Series 66 Uniform Combined State Law Examination that was recently developed and adopted by NASAA for use by all member jurisdictions, including Wisconsin; (2) specifies January 1, 1996 as the date following which applicants may utilize passage of either examination in satisfaction of the requirement.

SECTION 33. SEC 5.01(4)(a) is amended to read:

SEC 5.01(4)(a). The applicant has passed, or has received a waiver from the need to pass, the National Association of Securities Dealers, Inc. Series 2, 7 or 24 examination, or predecessor examination, and in addition has passed or has received a waiver from the need to pass either the North American Securities Administrators Association Series 63 or Series 66 Examination.

ANALYSIS: The amendments to this investment adviser examination waiver provision do the following: (1) add the new Series 66 Combined Examination as an alternative to passage of the Series 63 Examination, consistent with the related amendment to SEC 4.01(3) in an earlier SECTION; (2) add equivalent "waiver" language to that in the first part of the rule to allow acceptance of an examination waiver granted to the applicant by another NASAA jurisdiction from the need to pass either the Series 63 or Series 66 state law examinations.

SECTION 34. SEC 5.01(5) is amended to read:

SEC 5.01(5). Prior to issuance of a license as an investment adviser, at least one employe located at the principal office of the investment adviser must be designated in the license application on the form prescribed in s. SEC 9.01(1)(b)

and filed with the commissioner to act in a supervisory capacity and be qualified as an investment adviser representative for the investment adviser, and must ~~pass the Wisconsin Investment Adviser Representative Examination~~ satisfy the examination requirement in sub. (3) unless the examination is waived under sub. (4).

ANALYSIS: These amendments do the following: (1) add language paralleling an equivalent amendment made to the broker-dealer designated supervisor requirement to provide that the designation must be on the prescribed Wisconsin form and be filed with the Commissioner; (2) substitute for the current language in the rule (referring by name to the Wisconsin Investment Adviser Representative Examination) a cross-reference to the examination requirement in SEC 5.01(3) that lists all of the examination alternatives now prescribed.

SECTION 35. SEC 5.02(1) is amended to read:

SEC 5.02 NET CAPITAL REQUIREMENT. (1) Every investment adviser that collects advisory fees six months or more in advance or collects more than $2,000 in advance fees for preparing a financial plan shall maintain net capital of not less than $5,000, which shall be in the form of cash or securities or other liquid assets as determined by the commissioner.

ANALYSIS: This amendment will reduce regulatory requirements for many investment advisers by excluding from the $5,000 net capital requirement in the rule, those advisers who either: (1) collect advisory fees less than 6 months in advance; or (2) charge less than $2,000 in advance fees for preparing a financial plan for a client. A major purpose of the net capital requirement for investment advisers is to provide evidence of minimal financial responsibility to satisfy the adviser's performance obligations--particularly to clients who have paid in advance for advisory services to be performed in the future, whether in the form of preparing a financial plan or providing investment advice. Accordingly, this amendment ties the requirement to maintain

$5,000 in net capital to whether the adviser charges advance fees for services in excess of the duration/dollar levels specified.

SECTION 36. SEC 5.03(1)(m) is created to read:

SEC 5.03(1)(m) A record or information demonstrating compliance with the net capital requirement in s. SEC 5.02.

ANALYSIS: This new rule, together with the repeal and recreation of SEC 5.04(1) in a following SECTION, will significantly reduce the regulatory burden on investment adviser licensees relating to the net capital requirement. The changes involve substituting for the requirement in current SEC 5.04(1) that an investment adviser must file annual financial information with this Office demonstrating compliance with the net capital rule, an internal record-keeping requirement. Staff examiners can look to such internal record during field examinations of an investment adviser's office and be able to determine compliance with the net capital rule at the time of the examination. Substituting this record-keeping requirement for the existing annual filing requirement in SEC 5.04(1) is warranted also because the amendment to SEC 5.02(1) in an earlier SECTION will eliminate the need for many investment advisers to maintain net capital if they do not charge advance fees in excess of the duration/dollar levels specified.

SECTION 37. SEC 5.03(1)(n) is created to read:

SEC 5.03(1)(n) A record that complies with Rule 204-2(a)(12) under Section 204 of the investment advisers act of 1940 containing information for all securities transactions effected for the account of the investment adviser or any of its employees subject to that rule, including the title and amount of the security involved, the date and nature of the transaction, the execution price, and information regarding customer transactions in the same security.

ANALYSIS: This SECTION creates an equivalent Wisconsin version of the U.S. Securities and Exchange Commission's rule cited which requires investment advisers to maintain records containing certain prescribed information relating to securities transactions effected for its own account or any of its employees subject to that rule, together with information regarding customer transactions in the same securities.

A technical revision to this rule from its public comment draft form was made as a result of public comment to clarify the scope of the term "employees." Specifically, the phrase "subject to that rule" was added after the term "employees" to clarify that the scope of this Wisconsin rule (in terms of which employees of an investment adviser are covered) is the same as the federal rule cited which contains a particularized list of the categories of advisory firm employees covered by the federal rule.

SECTION 38. SEC 5.04(1) is repealed and recreated to read:

SEC 5.04(1) Every investment adviser shall file with the commissioner immediate notice via facsimile whenever the net capital of the investment adviser is less than is required under s. SEC 5.02(1), specifying the amount of net capital on the date of the notice and the steps the investment adviser has taken or will take to come into compliance.

ANALYSIS: This is another of the several rule revisions necessary to effectuate the significant deregulatory changes made to the investment adviser net capital requirement and related record-keeping requirement set forth in earlier SECTIONS. This SECTION repeals the current rule which imposes an annual filing requirement of financial statement data demonstrating compliance with the net capital rule, and substitutes a notification requirement whenever an investment adviser's net capital falls below the prescribed levels. As previously noted in the revision made to SEC 5.02(1), investment advisers will not be subject to any net capital requirement unless the adviser charges advance fees for services in excess of the duration/dollar levels specified in SEC 5.02(1).

SECTION 39. SEC 5.05(7) is amended to read:

SEC 5.05(7) Every licensed investment adviser shall employ at its principal office or designated office of supervision in accordance with s. SEC 5.03(1), at least one person designated in writing ~~to~~ on the form prescribed in SEC 9.01(1)(b) and filed with the commissioner to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. SEC 5.01(5). If a licensed investment adviser 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.

ANALYSIS: This amendment--which parallels a similar amendment made in an earlier SECTION to the broker-dealer Rule of Conduct provision in SEC 4.05(6)--clarifies that the filing of designated supervisor information must be with this Office on the prescribed form.

SECTION 40. SEC 7.01(7)(c) is amended to read:

SEC 7.01(7)(c) Delinquent filing of broker-dealer ~~or investment adviser~~ annual financial statements.....$100.

ANALYSIS: This amendment deletes applicability of the delinquency fee provision regarding annual financial statements for investment advisers because the filing requirement for investment advisers in SEC 5.04(1) is repealed in an earlier SECTION.

SECTION 41. SEC 7.01(7)(e) is amended to read:

SEC 7.01(7)(e) Delinquent filing of agent or investment adviser

representative termination notice on Form U-5.....$100.

ANALYSIS: This amendment provides for a delinquency fee if an investment adviser is not timely in filing a termination notice for an investment adviser representative required under SEC 5.08(2).

SECTION 42. SEC 7.01(9) is repealed and recreated to read:

SEC 7.01(9). Reports based on computer databases:

(a) Writing of a computer program for the purpose of creating a report $20

(b) Hard copy printout of report. . . . . $25 for the first 100 pages of printed report or portion thereof, and $0.25 per page beyond 100 pages

(c) Copy of report in text format on 3.5 inch, high-density floppy disk . . . . . $5 per disk

(d) 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 SECTION restructures (with minor amendments) the fee-related rules created in this Office's 1994 rule revision concerning writing programs and printing reports of information from the Office's computer databases. The three rules in (a), (b) and (d) of this SECTION are retained from 1994 with minor language changes. The fees under (a) and (d) remain the same. The fee under (b) is slightly reduced in that the $25 cost is for the first 100 pages of printed report (up from 75 pages) and language is added to provide that $25 is the minimum charge for a hard copy printout of any number of pages up to 100. Also under (b), a fee of $0.25 per page beyond the first 100 pages is provided. Paragraph (c) adds a new rule providing that a copy of a report from our computer databases can be made available on a computer

disk at a cost of $5 per disk.

SECTION 43. SEC 7.06(2) is amended to read:

SEC 7.06(2). Financial statements meeting the requirements of regulation S-X are deemed to satisfy the requirements of sub. (1), and financial statements in registration statements for an issuer that meets the requirements in s. SEC 3.001 (1), (2) or (3)(a) or (b) shall not be subject to disclosure adequacy review or comment by the commissioner.

ANALYSIS: This amendment to the financial statement provision in SEC 7.06(2) is created in conjunction with new rule SEC 3.001 and the amendments to SEC 3.23(3) in prior SECTIONS. Those changes provide that merit review and prospectus disclosure review rules will not be applicable to registration applications for certain categories of offerings meeting specified requirements, including a common requirement that the offering be subject to the full disclosure standards and requirements of the federal securities laws, either in a registration or Regulation A context, and results in a disclosure document allowed by the U.S. Securities and Exchange Commission for national use with public investors. This companion amendment expressly provides that the financial statements contained in registration statements for issuers meeting SEC 3.001(1), (2) or (3)(a) or (b) are not subject to disclosure adequacy review or comment by the Commissioner's Office.

SECTION 44. SEC 9.01(1)(a)8 is amended to read:

SEC 9.01(1)(a)8. ~~USR~~ BDUSR(WI). Acknowledgement of understanding of supervisory responsibilities of broker-dealers under Wisconsin statutes and administrative code.

ANALYSIS: This amendment to the abbreviation for this form (acknowledging supervisory responsibilities) clarifies that the form

is for filings by broker-dealers, to contrast it with a similar form created in a following SECTION that relates to supervisory responsibilities for investment advisers.

SECTION 45. SEC 9.01(1)(a)18 and 19 are created to read:

SEC 9.01(1)(a)18. IAUSR(WI). Acknowledgment of understanding of supervisory responsibilities of investment adviser under Wisconsin statutes and administrative code.

SEC 9.01(1)(a)19. IAFC(WI). Financial certification by investment adviser that it will comply with the net capital requirement at all times.

ANALYSIS: This SECTION creates two new investment adviser-related forms that: (1) in subd. (a)18 creates a form for investment advisers paralleling the form for broker-dealers in subd. (a)8 acknowledging their supervisory responsibilities; and (2) in subd. 19 creates a new form to be filed by an investment adviser with its license application acknowledging its responsibility to continually be in compliance with the net capital requirement. The one-time filing of the form is in the nature of a trade-off for the elimination in an earlier SECTION of the annual financial statement filing requirement for an investment adviser regarding its net capital.

SECTION 46. SEC 9.01(1)(c) is created to read:

SEC 9.01(1)(c) SOI Solicitation of interest form

ANALYSIS: This new one-page Form (see copy attached) has been created for purposes of use of the Wisconsin version of a "test the waters" rule created as SEC 2.028 in an earlier SECTION. The discussion regarding the origin and composition of the disclosures required on the Form is contained in the ANALYSIS to that SECTION referring to par. (1)(c) of the rule.

The rules and amendments contained in this Order shall take effect as provided in s. 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, 1995.

[SEAL]

PATRICIA D. STRUCK
Commissioner of Securities

Tommy G. Thompson
Governor

Daniel J. Eastman
Commissioner

Patricia D. Struck
Deputy Commissioner

STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF SECURITIES

FORM BDDS (WI)
12/94 LR16

P. O. Box 1768
Madison, WI 53701
(608) 266-3693

DESIGNATION OF SUPERVISOR

Pursuant to section 4.01(5), Wis. Adm. Code, at least one employe shall be designated to act in a supervisory capacity. The designated supervisor shall be licensed as an agent for the broker-dealer and shall have immediate access to the records maintained pursuant to section SEC 4.03(1), Wis. Adm. Code. The designated supervisor shall meet the examination requirements set forth in section SEC 4.01(3) Wis. Adm. Code, and shall pass with a grade of at least 70% the examination in 4.01(3)(a), Wis. Adm. Code, unless the broker-dealer's activities are restricted, in which case the designated supervisor is required to pass each examination in paragraphs 4.01(3)(b) to (d), Wis. Adm. Code, that relates to the broker-dealer's securities activities, unless the examination is waived under 4.01(4), Wis. Adm. Code.

FIRM INFORMATION

FIRM'S NAME:_____
FIRM'S ADDRESS:_____
_____
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:_____
ADDRESS OF OFFICE OF EMPLOYMENT:_____
_____
SUPERVISOR'S CRD #:_____
LIST EXAMS TAKEN AND PASSED BY SUPERVISOR:_____
DATE LICENSED/PENDING IN WISCONSIN:_____

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

_____
_____

THIS FORM IS TO BE SIGNED BY AN OFFICER OF THE FIRM OTHER THAN THE SUPERVISOR

_____
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.

STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson
Governor

Daniel J. Eastman
Commissioner

Patricia D. Struck
Deputy Commissioner

FORM IADS
12/94 LR14

P. O. Box 1768
Madison, WI 53701
(608) 266-3693

DESIGNATION OF SUPERVISOR

Pursuant to section SEC 5.05(7), Wis. Adm. Code, every licensed investment adviser shall employ at its principal office or designated office of supervision in accordance with s. SEC 5.03((1), Wis. Adm. Code, at least one person designated in writing to the commissioner to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. SEC 5.01(5).

FIRM INFORMATION

FIRM'S NAME: _____
FIRM'S 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: _____
SOCIAL SECURITY NUMBER: _____
HOME ADDRESS OF DESIGNATED SUPERVISOR: _____
_____
ADDRESS OF OFFICE OF EMPLOYMENT: _____
(Must be Principal or Designated Office) _____
DATE QUALIFIED/PENDING IN WISCONSIN: _____

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 to section SEC 5.04(4), Wis. Adm. Code.)

STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson
Governor

Daniel J. Eastman
Commissioner

Patricia D. Struck
Deputy Commissioner

FORM IAFC(WI)
12/94 LR19

P. O. Box 1768
Madison, WI 53701
(608) 266-3693

FINANCIAL CERTIFICATION

Pursuant to section SEC 5.02, Wis. Adm. Code, every investment adviser must maintain net capital of not less than $5000 which must be in the form of cash, securities or other liquid assets. If the investment adviser is an individual, the capital used to meet the net capital requirement must be segregated from the individual's personal assets and used solely for the business for which the adviser is licensed.

FIRM'S NAME: _____

FIRM'S ADDRESS: _____

_____

I, the undersigned, do hereby certify that the above mentioned firm has and will continue to maintain at all times the net capital sufficient to meet the requirements in Section SEC 5.02, Wis. Adm. Code.

I further certify that the accompanying financial statements are true to the best of my belief & knowledge.

_____

Typed Name and Title of an Officer of the Company

_____ _____

Signature Date

STATE OF WISCONSIN
OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson
Governor

Daniel J. Eastman
Commissioner

Patricia D. Struck
Deputy Commissioner

Form SOI
10/95

P. O. Box 1768
Madison, WI 53701
(608) 266-3693

SOLICITATION OF INTEREST FORM

_____

Name of Issuer

Street Address of Principal Office:

Issuer Telephone Number:

Date of Organization:

Amount of the Proposed Offering: _____

Name of Chief Executive Officer: _____

THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.

NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING.

AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.

THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER [THE FEDERAL AND] STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE SECURITIES ARE REGISTERED OR EXEMPTED IN WISCONSIN.

Describe briefly and in general what business the company does or proposes to do, including what products or goods are or will be produced or what services are or will be rendered.

1995 Session

LRB or Bill No./Adm. Rule No.

FISCAL ESTIMATE
DOA-2048 N(R10/94)

XX ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

Amendment No. if Applicable

Subject Proposed amendments to Rules of the Commissioner of Securities under Chapters SEC 2, 3, 4, 5, 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 Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☒ Decrease Existing Revenues
☐ Create New Appropriation ☐ 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 ☐ WTCS 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 1995, 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) No one-time revenue fluctuations.

(2) An estimated reduction of $20,000 in annual registration exemption filing fee revenue as a result of rule revisions impacting the following rules: (i) The self-executing registration exemption created in rule SEC 2.02(9)(n) for employee compensatory benefit plans qualifying under the federal Rule 701 exemption will eliminate the current requirement for such Rule 701 Plans to file for registration exemption status under the Wisconsin exemptions in SEC 2.01(6) and 2.02(9)(f). An estimated 75 fewer filings X $200 filing fee apiece = $15,000 in reduced annual exemption fees. (ii) The amendments to SEC 2.02(5)(d)1 regarding use of the exemption rule in 551.23(11) will eliminate the need for filings relating to offerings of non-oil, gas or mining limited partnership or investment contract-offerings. An estimated 25 fewer filings X $200 filing fee apiece = $5,000 in reduced annual exemption fees. The new exemption created in SEC 2.028 relating to solicitations of interest is expected to result in filings (each requiring a $200 fee) claiming its use, but it is too speculative to quantify.

(3) Long-range fiscal implications will result from the new rule in SEC 3.001 limiting application of merit requirements for certain categories of registration filings in terms of an expected increase in registration applications and resulting annual registration filing fee revenue. However, any such increase is too speculative to quantify.

Long-Range Fiscal Implications

None beyond annual fiscal effects.

Agency/Preparer (Name & Phone No.)	Authorized Signature/Telephone No.	Date
WI Comm of Securities Office 266-3414 Randall E. Schumann, Gen Counsel	Daniel J. Eastman 266-3434 Commissioner of Securities	8/22/95

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL

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

Subject: Proposed amendments to Rules of the Commissioner of Securities under Chapters SEC 2, 3, 4, 5, 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):**
None

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	-0-	- 20,000
SEG/SEG-S		-
TOTAL State Revenues	$ -0-	$ - 20,000

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 0	$ 0
NET CHANGE IN REVENUES	$ -$20,000	$ 0

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
266-3414 WI Comm of Securities Office Randall E. Schumann, General Counsel	266-3434 Daniel J. Bastman Commissioner of Securities	8-22-95

LCRC FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE **95–158**

AN ORDER to repeal SEC 2.01 (1) (c) 2. and 3. and (d) 2. and 3., 2.02 (5) (d) 3. and (9) (i) and 2.027 (5); to renumber SEC 2.01 (1) (c) 4., 5. and 6. and (d) 4., 5 and 6. and (9) (j) to (n), 2.027 (6) to (9), 4.01 (4) (e) and 4.03 (6); to amend SEC 2.01 (1) (a) 3., 2.02 (1) (a), (4) (c) 2., (5) (d) 1. and (9) (i) and (L), 2.027 (1) (intro.), (4), (7) (a) and (8) (b), 3.23 (3), 4.01 (3) (intro.) and (5), 4.03 (3) (c), 4.04 (8) (b), 4.05 (5) and (6), 5.01 (4) (a) and (5), 5.02 (1), 5.05 (7), 7.01 (7) (c) and (e), 7.06 (2) and 9.01 (1) (a) 8.; to repeal and recreate SEC 2.02 (5) (d) 2., 5.01 (3), 5.04 (1) and 7.01 (9); and to create SEC 2.01 (3) (c), (d) and (e), 2.02 (4) (h) and (9) (n), 2.028, 3.001, 4.01 (4) (e), 4.03 (6), 5.03 (1) (m) and (n) and 9.01 (1) (a) 18. and 19. and (c), relating to 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**

08–22–95 RECEIVED BY LEGISLATIVE COUNCIL.
09–18–95 REPORT SENT TO AGENCY.

RNS:DLS:jt;wu

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 ☑

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95–158

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 October 1994.]

2. Form, Style and Placement in Administrative Code

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

b. In s. SEC 2.01 (3) (e), first sentence, the two sets of parentheses should be deleted.

c. In the treatment clause to SECTION 15, ", respectively" should be deleted.

d. In s. SEC 2.027 (9) (b), page 16, line 8, "s." should be inserted before "SEC 2.028." This change needs to be made in a number of provisions of the rule.

e. SECTION 20 in the rule should be restructured as follows:

(1) A transaction exemption is available under...document for the security, if the following conditions are satisfied, except to the extent that sub. (2) is applicable:

(a) The issuer intends that sales of the security be either of the following:

1. Registered under ch. 551, Stats.

2. Exempt from registration....

(b) Not later than the date of the initial solicitation...purchaser.

(c) Any published notice or script....

(d) The offeror does not know....

(e) Solicitations of interest pursuant to....

(f) Sales of the securities....

(2) (a) A failure to comply with any of the conditions in sub. (1)....

(b) Where an exemption is established only through reliance on sub. (1)...transaction.

f. In s. SEC 3.001, line 3, "s." should be "ss." and in line 5, "subsections (1) to (4)" should be deleted. Subsection (1) should be rewritten as follows:

(1) An offering of equity securities...that meets the requirements in one of the subdivisions in par. (a) and meets the requirements in one of the subdivisions in par. (b):

(a) The issuer's equity securities of the same class are either of the following:

1. Traded on....

2. Designated for....

(b) The equity securities are the subject of one of the following:

1. A registration statement....

2. An offering statement....

g. On page 23, line 16, "are either" should be "are any of the following." All of the paragraphs should end with periods rather than "; or." This latter error should be corrected throughout the rule. [See s. 1.03 (intro.), Manual.]

h. In s. SEC 4.01 (5), page 30, line 3, "s." should be inserted before the cite.

i. In s. SEC 4.03 (3) (c), the parentheses which occur in two places in the first sentence should be deleted and replaced by commas.

j. On page 38, line 4, "taken" should follow "has."

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

a. Throughout the rule, U.S. Code cites should replace cites to the Securities Act of 1933. If references to the Act are also needed, they could be included in notes.

b. In the second sentence of s. SEC 2.01 (3) (e), line 11, "in this subsection" should be "in this paragraph."

c. In s. SEC 2.02 (4) (h), please check to see if the citation to "4(2)" is correct.

d. In s. SEC 2.02 (5) (d) 2., the two citations to s. 551.23 (19), Stats., should read "par. (c) 1. a. to d. in that subsection" and "par. (c) 2. a." This comment also applies to s. SEC 2.028 (4).

e. In s. SEC 4.01 (4) (e), page 29, line 6, "par." should be "sub."

f. Can a Code of Federal Regulations citation be substituted for "Rule 204-2 (a) (12) under Section 204 of the investment advisers act of 1940" in s. SEC 5.03 (1) (n)?

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 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 changes to simplify and streamline the process by which issuers register or exempt securities offerings in Wisconsin; 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 1995 rule revision contains 46 separate SECTIONS that make changes to the securities rules chapters relating to registration exemptions, registration requirements and procedures, broker-dealer and investment adviser licensing requirements and procedures, fraudulent practices, fees and forms. Each SECTION of 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 received, including from the Boston Stock Exchange which is the subject the specific rule involved, the Office has withdrawn the proposed rule in SECTION 7 of the public comment draft that related to SEC 2.01(3)(e). That proposed rule would have designated the Boston Stock Exchange as a national securities exchange qualifying for registration exemption status under s. 551.22(7), Wis. Stats., but only with respect to securities listed or to be listed for issuers meeting the standards for "Tier 1" listing on the Pacific Stock Exchange and the Philadelphia Stock Exchange. The Office had proposed a "Tier 1"-type rule for the registration exemption for the Boston Stock Exchange (even though that Exchange's regular listing standards are of a lower "Tier 2" nature) so as to provide equivalent exemption treatment to that given in SECTION 6 for the Pacific Stock Exchange and the Philadelphia Stock Exchange which apply only for Tier 1 securities listed thereon. The Office's action to withdraw the proposed rule is based on the following factors: (i) The Office feels strongly that there needs to be a consistent minimum level of listing standards (namely, Tier 1) for designation as a qualifying stock exchange for purposes of s. 551.22(7), Wis. Stats.; and (ii) The Boston Stock Exchange requested in a September 25, 1995 letter that in the event the Office was unable to grant an exemption based on the Boston Stock Exchange's current listing standards and requirements, the Office remove the Boston Stock Exchange from exemption consideration.

-- As a result of comment letters and public hearing testimony received, revisions were made to the proposed amendments to SEC 2.02(5)(d)1 in SECTION 11 of the public comment draft (now SECTION 10). The amendments to this rule as revised would make the restriction on use of the exemption by a limited partnership issuer apply only for a limited partnership that is or will be engaged primarily in oil, gas or mining activities. The abusive tax-shelter-oriented limited partnership offerings prevalent from the 1970s to the mid-1980s (particularly in the real estate area) which prompted adoption of this rule in 1977 that currently restricts use of the exemption for limited partnerships irrespective of the type of business engaged in, have not been present since the 1986 federal tax law changes. Currently, there are relatively few filings

made under SEC 2.02(5)(d)1 for limited partnership issuers because most limited partnership private placement offerings are the subject of filings made under the Wisconsin "Regulation D" exemption in s. 551.23(19), Stats. Only three other states have restrictions on use of their "limited offeree" exemption for specific types or categories of offerings. However, the restriction on use of the exemption for any limited partnership engaged primarily in oil, gas or mining-related activities (which continue to present enforcement-related concerns to this Office) is retained from the public comment draft version of the proposed amended rule.

The other revision made to this SECTION from its public comment form as a result of comment letters and hearing testimony received deleted proposed amendments relating to restrictions on use of the exemption for "investment contract" securities offerings (which terminology applies to unusual types of investment arrangements). As a result, the rule is retained in its current form restricting use of the exemption by any investment contract issuer--irrespective of the type of assets held or business engaged in--because the enforcement experience of this Office has demonstrated that an inordinately high percentage of investment contract security offerings involve fraud (as contrasted with corporate debt and equity offerings or limited partnership offerings). A particular example is the large number of investment contract security offerings made during the past two years on a national basis involving wireless cable business activities that have been the subject of dozens of federal and state securities enforcement actions (including by this Office) involving fraud.

-- Following the rule-making hearing, the Office determined to make a non-substantive revision to SEC 2.027 which contains the Wisconsin-Issuer-Registration-Exemption-By-Filing rule adopted under s. 551.23(18), Wis. Stats. That registration exemption rule was the subject of amendments to five of its subsections contained in SECTIONS 19(a) to (f) (now in SECTION 18)of the comment draft form of the rules. The revision involved creating a new paragraph (8)(b) which adds as part of the information package required to be filed under sub. (8) for purposes of claiming use of the exemption, a letter specifying how the requirements for use of the exemption contained in the introduction

and subs. (1) to (7) of the rule are met or will be met.

-- Following the rule-making hearing, the Office determined to make a revision to sub.(1) of SEC 3.001 in SECTION 21 of the public comment draft (now SECTION 20). The new rule in SEC 3.001 provides that the specific "merit"/"fair and equitable" registration rules in s. SEC 3.01 to 3.20 will not be applicable to registration applications filed by coordination or qualification in Wisconsin for specified kinds of offerings listed in subs. (1) to (4). Sub.(1), as revised from its public comment draft form, applies to offerings of equity securities for an issuer whose equity securities of the same class are either traded on any national securities exchange or are designated as a NASDAQ/National Market System security, provided that the offering is either registered or is the subject of an offering statement under Regulation A under the federal Securities Act of 1933. The revision made to sub.(1) deleted applicability of the subsection for offerings of securities designated and traded on the NASDAQ Small-Capitalization marketplace. Such deletion is made for investor protection purposes because: (i) the listing and maintenance requirements for NASDAQ/Small-Cap issuers are substantially lower than the requirements for NASDAQ/National Market System securities; and (ii) the trading market for NASDAQ Small-Cap securities generally has restricted breadth and depth as well as limited numbers of market-makers, thus impairing trading liquidity.

-- As a result of comment letters and public hearing testimony received, a revision was made to the public comment draft form of SECTION 22 (now SECTION 21) regarding the prospectus disclosure review rule in SEC 3.23(3). The revision involved adding to the third sentence of the rule a cross-reference to SEC 3.001(4) relating to federally-registered mutual funds. Such revision is warranted because inasmuch as new rule SEC 3.001(4) excludes all federally-registered mutual funds from merit review requirements--not just those mutual funds meeting the "blue chip" requirements in SEC 3.09(7)(b)--it would be inconsistent to not also have such federally-registered mutual funds that are covered by SEC 3.001(4) be excluded from prospectus adequacy review by the staff. The citation in the third sentence of the rule to SEC 3.09(7)(b) is retained to preserve the existing availability of the exclusion therein for Form S-6 prospectuses for unit investment

trusts [which are not covered by new rule SEC 3.001(4)].

-- As a result of public comment, a technical revision was made to the investment adviser recordkeeping rule in SEC 5.03(1)(n) from its public comment draft form in SECTION 38 (now SECTION 37) to clarify the scope of the term "employees" used in that rule. Specifically, the phrase "subject to that rule" was added after the term "employees" to clarify that the scope of this Wisconsin rule (in terms of which employees of an investment adviser are covered) is the same as the federal rule cited therein which contains a particularized list of the categories of advisory firm employees covered by the federal rule.

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Deputy Commissioner of Securities Patricia D. Struck, 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.

-- Kenneth L. Hojnacki, Administrator of the Division of Market Licensing of the Office of the Commissioner of Securities provided hearing testimony.

-- David A. Cohen, Chief Attorney of the Legal Services Division of the Office of the Commissioner of Securities provided hearing testimony.

-- Daniel J. Eastman, former Commissioner of Securities, provided hearing testimony.

-- Tamara Cain, Assistant Counsel of the Investment Company Institute, Washington, DC, provided hearing testimony.

Comment Letters Received

-- Comment letter dated September 8, 1995, from Richard Imperiale, President, Uniplan, Inc. Investment Counsel, Milwaukee, WI.

-- Comment letter dated September 25, 1995, from Anthony Stankiewicz, Member Services Manager, for and on behalf of the Boston Stock Exchange, Boston, MA.

-- Comment letter dated September 28, 1995, from Tamara Cain, Assistant Counsel, for and on behalf of the Investment Company Institute, Washington, DC.

-- Comment letter dated September 28, 1995, from Steven Paggioli, for and on behalf of Wadsworth and Associates, New York, NY.

-- Comment letter dated September 28, 1995, from Steven Paggioli, New York, NY, in his personal capacity.

-- Comment letter dated September 29, 1995, from Brooke Billick, for and on behalf of Marshall & Ilsley Trust Company, Milwaukee, WI.

-- Comment letter dated September 29, 1995, from Attorney James McDaniel of the Schiff, Hardin & Waite law offices, Chicago, Illinois, for and on behalf of the Pacific Stock Exchange Incorporated.

-- Written version of public hearing testimony given October 2, 1995, by Tamara Cain for and on behalf of the Investment Company Institute, Washington, DC.

-- Comment letter dated September 28, 1995, for and on behalf of Fidelity Investments, Boston, MA.

-- Comment letter dated October 2, 1995 from Chief Attorney David Cohen of the Legal Services Division, Wisconsin Commissioner of Securities Office.

-- Comment letter dated October 2, 1995 from Kenneth L. Hojnacki, Administrator of the Division of Market Licensing, Wisconsin Commissioner of Securities Office.

-- Comment letter dated October 3, 1995 from Attorney Scott Moehrke, Godfrey & Kahn Law Offices, Milwaukee, WI.

(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 prior to the text of the various rule revisions, the terminology "sections" is changed to "ss," and "Wis. Stats." is changed to "Stats."

-- Consistent with the Rules Clearinghouse comment in para. b. regarding SEC 2.01(3), the two sets of parentheses in the first sentence are deleted.

-- Consistent with the Rules Clearinghouse comment in para. c. regarding SEC 2.02(9)(j) to (n), the terminology "respectively" in the treatment clause is deleted.

-- Consistent with the Rules Clearinghouse comment in para. d. regarding SEC 2.027(9)(b), "s" is inserted before the citation to SEC 2.028. An identical change is made in SECTIONS 19(f), 26, 35 and 37.

-- Consistent with the Rules Clearinghouse comment in para. e. regarding SEC 2.028 in SECTION 20, the numbering of the various provisions of the rule is restructured in the manner recommended.

-- Consistent with the Rules Clearinghouse comment in para. f. SEC 3.001, "s" is changed to "ss", the language "subsections (1) to (4)" is deleted, and the numbering of subsection (1) is restructured in the manner recommended.

-- Consistent with the Rules Clearinghouse comment in para. g. regarding SEC 3.001(3), the language "are either" is changed to "are any of the following", and the following paragraphs are ended with periods rather than "; or".

-- Consistent with the Rules Clearinghouse comment in para. h. regarding SEC 4.01(5), "s" is inserted before the citation to SEC 9.01(1)(b).

-- Consistent with the Rules Clearinghouse comment in para. i. regarding SEC 4.03(3)(c), the two sets of parentheses in the first sentence are deleted and replaced with commas.

-- Consistent with the Rules Clearinghouse comment in para. j. regarding SEC 5.04(1), the word "taken" is added after the word "has" in line 4.

Under 4. Form, Style and Placement in Administrative Code

-- Consistent with the Rules Clearinghouse comment in para. b. regarding SEC 2.01(3)(e), the phrase "in this subsection" in line 11 is changed to "in this paragraph."

-- Consistent with the Rules Clearinghouse comment in para. c. regarding SEC 2.02(4)(h), it has been verified that the citation to "4(2)" is correct.

-- Consistent with the Rules Clearinghouse comment in para. d. regarding SEC 2.02(5)(d)2, the two cross-references are changed to read "par.(c)1a to d in that subsection," and "par.(c)2a." An equivalent change also is made in SEC 2.028(4).

-- Consistent with the Rules Clearinghouse comment in para. e. regarding SEC 4.01(4)(e), the term "par." is changed to "sub."

(2) Rejection of recommendations and reasons therefor:

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

-- With respect to the Rules Clearinghouse comment in para. a. regarding citations to the U.S. Code, the citations in the rules to the federal securities law statutes--such as the Securities Act of 1933--are retained rather than replaced by U.S. Code cites for the following reasons: (1) the federal securities statutes, including the federal Securities Act of 1933, the Securities and Exchange Act of 1934 and the Investment Advisers Act of 1940 (referenced in the following paragraph) are all defined terms under s. 551.02(12) of the Wisconsin Uniform Securities Law that use citations to the statutes rather than U.S. Code citations; (2) currently, throughout the Rules of the Commissioner of Securities, the citations used to date are and have been to the federal statutes, not the U.S. Code cites; (3) the national publication services (such as Commerce Clearing House) used for reference purposes by the securities industry, broker-dealer and investment adviser licensees and securities law legal practitioners are based on citations to the federal statutes, not U.S. Code cites.

-- With respect to the Rules Clearinghouse comment in para. f. regarding SEC 5.03(1)(n), the citation to the federal statute therein is retained rather than replaced by a U.S. Code cite for the same reasons discussed in the preceding paragraph.

(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.