

APR 26 2001



State of Wisconsin
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

April 26, 2001

The Honorable Judith Robson, Co-Chair
Wisconsin Senate
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53707

✓ The Honorable Glenn Grothman, Co-Chair
Wisconsin Assembly
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
State Capitol
Madison, WI 53707

Re: Division of Securities Request for 60-day Extension
(Through July 29, 2001) of Emergency Rule Effectiveness

Dear Senator Robson and Representative Grothman:

Pursuant to sec. 227.24(2), Wis. Stats., The Division of Securities of the Department of Financial Institutions ("DFI") hereby requests that the Joint Committee For Review of Administrative Rules take action to extend for 60 days (through July 29, 2001) the effectiveness of the emergency rules adopted effective January 1, 2001 by the Division under the Wisconsin Uniform Securities Law relating to adopting for use in Wisconsin the Investment Adviser Registration Depository ("IARD").

The Division has instituted and proceeded with the permanent rule-making process to adopt permanent rules in this matter, including: (1) filing a Scope Statement as required under sec. 227.135, Wis. Stats.; (2) issuing a Notice of Rule-Making Hearing and circulating a Public Comment Draft of the proposed permanent rules; (3) conducting a Public Rule-Making Hearing On April 18, 2001; and (4) filing the rules (as Clearinghouse Rule 01-025) in their proposed final form on April 20, 2001 with the legislature for forwarding to each of the Division's legislative oversight committees [the Senate Committee on Privacy, Electronic Commerce and Financial Institutions, and the Assembly Financial Institutions Committee].

Although the Division will take action immediately after successful completion of the Senate and Assembly legislative committee's review period to issue an Order to adopt the permanent rules, the printing and publication process necessary for effectiveness of the permanent rules cannot be completed until after the May 30, 2001 expiration of the 150-day effectiveness period of the emergency rules.




Joint Committee for Review
of Administrative Rules
Page 2

An emergency continues to exist which necessitated the January 1, 2001 adoption of the rules for the preservation of the public peace, health, safety or welfare, because the facts constituting the emergency as set forth in the attached copy of the Finding of Emergency remain the same as at the time of the emergency rule adoption. Namely, the need to enable applicants for licensure as investment advisers in Wisconsin to utilize the centralized, paperless, electronic filing system (known as the Investment Adviser Registration Depository) developed by all 50 states (including Wisconsin) and the U.S. Securities and Exchange Commission, which system became available for use by all states on January 1, 2001. Applicants for investment adviser licensure in Wisconsin have been using the IARD system since January 1, 2001, when the emergency rules became effective, and the adverse consequences to investment adviser license applicants of not being able to use the electronic IARD system can be avoided only by extending the emergency rules for a 60-day period (through July 29, 2001), so that the proposed permanent rules in Clearinghouse Rule 01-025 can become effective.

Copies are attached of the original emergency rules text accompanied by the Finding of Emergency, and pursuant to sec. 227.24(2)(am), Wis. Stats., a copy of this extension request is being provided to: (i) the presiding officer of each house of the legislature; and (ii) the Senate Privacy, Electronic Commerce and Financial Institutions Committee, as well as the Assembly Financial Institutions Committee, where the permanent rules in their proposed final form have been filed. Also attached for your information and files is a copy of the Division's Proposed Final Order to adopt the rules in permanent form as recently filed with each of the Division's legislative oversight committees.

Any questions with regard to this request may be directed to me as the person responsible for the Division's rule-making process, at my direct-dial telephone number 266-3414.

For the Division


Randall E. Schumann
Legal Counsel for the Division

cc: Patricia D. Struck, Administrator, Division of Securities, Department of Financial Institutions
David Anderson, Executive Assistant, Department of Financial Institutions
Mark Schlei, DFI Deputy General Counsel
President, Wisconsin State Senate
Speaker of the Assembly
Chairperson, Senate Privacy, Electronic Commerce and Financial Institutions Committee
Chairperson, Assembly Financial Institutions Committee

Enclosures (2)

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

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

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

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF SECURITIES

Rules Adopting for Use in Wisconsin
the Investment Adviser Registration Depository

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

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

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

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

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

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

DFI-Sec 5.01 Licensing procedure. (1) (a) The investment adviser registration depository operated by the National Association of Securities Dealers shall receive and maintain filings on forms established for the investment adviser registration depository and collect related fees from investment advisers and investment adviser representatives on behalf of the division.

(b) Unless otherwise provided under sub. (11) or by order of the division, applications for initial and renewal licenses of investment advisers and investment adviser representatives, as well as amendments, reports, notices, related filings and fees, shall be filed with the investment adviser registration depository.

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

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

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

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

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

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

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

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

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

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

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

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

2. An investment adviser is not required to offer or deliver the wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information that the investment adviser's wrap fee program brochure must contain.

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

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

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

(h) Nothing in this subsection shall relieve any investment adviser from any obligation pursuant to any provision of ch. 551, Stats., or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

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

are not permitted to be filed with, or cannot be accepted by, the investment adviser registration depository shall be filed directly with the division.

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

(3) Prior to January 1, 2002, the notice filing of a federal covered adviser that has filed a notice with the division under s. 551.32(1m)(a), Stats., expires on April 30. Each federal covered adviser seeking renewal of its notice filing shall file with the division a notice accompanied by the notice filing fee pro-rated from May 1 to December 31, 2001. Effective January 1, 2002, each federal covered adviser seeking renewal of its notice filing shall file for renewal with the investment adviser registration depository according to the depository's schedule and instructions. An application for renewal of a notice filing under this paragraph shall be deemed filed under s. 551.32(1m), Stats., when the fee on deposit with the investment adviser registration depository has been allocated to the division.

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

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

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

(4) Each investment adviser representative licensed or required to be licensed in this state shall resubmit its Form U-4 electronically with the investment adviser registration depository not later than a date prescribed by separate rule or order of the division, unless a hardship exemption has been granted by the division.

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

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

[SEAL]

Patricia D. Struck
Administrator

**REPORT PREPARED BY THE
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES
RELATING TO PROPOSED FINAL FORM OF RULES
ADOPTING FOR USE IN WISCONSIN
THE INVESTMENT ADVISER REGISTRATION DEPOSITORY**

(a) Statement Explaining Need for Rules

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

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

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

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

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and

Explanation of Modifications Made As a Result of the Public Hearing and Comment Process

- Because there were no comments received that suggested modifications be made to the public comment draft of the proposed permanent rules, no modifications have been made as result of the public hearing and comment process.

(b) List of Persons Appearing or Registering at Public Hearing Conducted by Administrator Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received.

- Randall E. Schumann, Legal Counsel for the Division of Securities, Department of Financial Institutions, made an appearance on behalf of the Division'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, Director of the Regulation & Licensing Section for the Division of Securities, Department of Financial Institutions, was present on behalf of the Division's staff to be available both to ask questions and to respond to licensing-related questions regarding hearing testimony.

* * * *

Comment Letters Received

- (1) Comment letter dated April 16, 2001 sent via facsimile from the Investment Counsel Association of America, Inc., Washington, D.C.
- (2) Comment letter dated April 17, 2001 from Midwest Asset Management, Inc., Madison, 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 paragraph a. regarding the treatment clause of Section 1, the word "through" was replaced by the word "to."

- Consistent with the Rules Clearinghouse comment in paragraph c. regarding DFI-Sec 5.11(3), the date "2000" was replaced by the date "2001."

* * * *

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

* * * *

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 N(R10/98)

Subject Investment Adviser Registration Depository

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

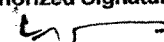
The emergency rules adopt for use in Wisconsin the Investment Adviser Registration Depository (IARD™), an electronic filing system for licensure of securities investment advisers that becomes available for use on a uniform basis in all 50 states on January 1, 2001. The IARD replaces a paper filing system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

The rule adoptions will not have any annualized state fiscal effects. However, there will be a one-time, appx. \$32,200 decrease in Division of Securities licensing revenue for the initial year of adoption of the IARD. This will result because the Division, for the purpose of defraying part of the \$150 one-time initial fee that Wisconsin state-licensed investment advisers will be required to pay to participate in the IARD, will be issuing a General Order that will operate to waive a pro-rated portion of investment adviser annual licensing fees for the period from their May 1, 2001 license renewal date through December 31, 2001. The particularized one-time fee reduction amounts for each investment adviser license fee category aggregating to the appx. \$32,200 is as follows: (1) 8/12ths of the \$200 annual license fee for 194 Wisconsin state-licensed investment advisers = appx. \$26,000; (2) 8/12ths of the \$30 annual license fee for 284 Wisconsin state-licensed investment adviser representatives = appx. \$5700; (3) 8/12ths of the \$30 annual fee for each state adviser branch office location (27 locations) = appx. \$500.

The rules do not involve any local government costs.

Long-Range Fiscal Implications None

Agency/Prepared by: (Name & Phone No.)
Dept. of Financial Institutions/Div of Securities
Randall Schumann, Legal Counsel 266-3414

Authorized Signature/Telephone No.

Patricia D. Struck, Administrator 266-3432

Date
12-21-00



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 01-025

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

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

03-01-01 RECEIVED BY LEGISLATIVE COUNCIL.

03-26-01 REPORT SENT TO AGENCY.

RS:DLS:jal;tlu



WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-025

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In the treatment clause of SECTION 1, the word "through" should be replaced by the word "to." The text of this section should begin with the notation "DFI-Sec 1.02."

b. In s. DFI-Sec 5.01 (2), the use of quotation marks with respect to the words "application" and "filed" should be eliminated. Also, the use of the phrase "under this paragraph" appears to be unnecessary.

c. In s. DFI-Sec 5.03 (1) (q), in order to maintain the structural format of this subsection, a period should be inserted following the notation "U-4" and the word "must" should be replaced by the phrase "These documents shall."

d. In s. DFI-Sec 5.05 (8) (a), the phrase "in this rule" should be replaced by a specific reference to provisions in the administrative code. For example, a reference to "this chapter" might be appropriate. See, also, the use of the word "rule" in s. DFI-Sec 5.05 (8) (h). Finally, in par. (h), the phrase "or any rules thereunder" is unnecessary and should be deleted.

e. In s. DFI-Sec 5.05 (8) (d), the quotation marks with respect to the phrase "limited partnership" should be eliminated.

f. In s. DFI-Sec 5.05 (8) (e) 1., the word "must" should be replaced by the word "shall."