

CR 81-128



State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

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December 7, 1981

Office of the Secretary of State
244 West Washington Avenue
Madison, Wisconsin 53702

Revisor of Statutes Bureau
411 West Capitol
Madison, Wisconsin 53702

Mesdames and Gentlemen:

Re: Filing of Certified Copies of
Order Adopting Rules/Clearing-
house Rule 81-128

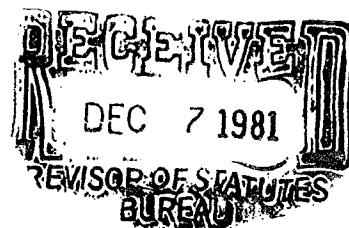
Pursuant to the requirements of sec. 227.023(1), Wis. Stats., a certified copy is herewith filed of the above-referenced rule in the form prescribed by sec. 227.024, Wis. Stats., as adopted by this agency on December 7, 1981.

Very truly yours,

Randall E. Schumann
General Counsel

RES:klr

Enclosure



1-122

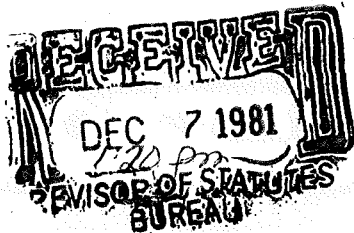
CERTIFICATE

STATE OF WISCONSIN)
OFFICE OF THE) SS
COMMISSIONER OF SECURITIES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard R. Malmgren, Commissioner of the State of Wisconsin Office of the Commissioner of Securities and 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, Ch. 552, the Wisconsin Corporate Take-Over Law and Ch. 553, Wis. Stats., the Wisconsin Franchise Investment Law, with respect to securities and franchise registration exemptions, registration requirements and procedures, securities broker-dealer licensing requirements and procedures, fraudulent practices, fees and administrative procedure, were duly approved and adopted by this agency on December 7, 1981.

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 7th day of December, 1981.

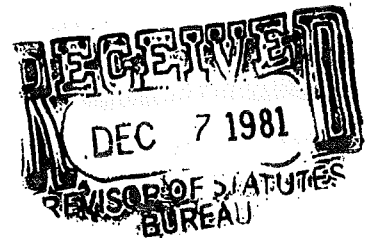
(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities
State of Wisconsin

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

To repeal SEC 4.05(9), SEC 4.06(1)(u), SEC 4.09(2) and SEC 34.02; to renumber SEC 7.01(7) and (8) and SEC 9.01(1)(b)6. through 12.; to renumber and amend SEC 3.17 and SEC 4.09(1); to amend SEC 2.01(1)(a)3., SEC 2.01(3)(a), SEC 2.02(10)(d), SEC 3.02(1)(a), SEC 3.03(Intro.) and (4), SEC 3.28(1), SEC 4.01(1) and (3), SEC 4.03(1)(r), SEC 4.03(4), SEC 4.05(1)(b) and (6), SEC 4.06(2)(h), SEC 7.01(2)(d), SEC 7.02(1)(d) and (2), SEC 8.07, SEC 9.01(1)(b)2., SEC 23.01(1), SEC 31.01(10), SEC 32.01(3), SEC 32.05(1)(Intro.), SEC 32.11, SEC 32.13 and SEC 35.02(2)(b); and to create SEC 2.01(7m), SEC 2.01(9)(c), SEC 3.17, SEC 7.01(7) and SEC 9.01(1)(b)6., relating to the Rules of the Commissioner of Securities with respect to securities and franchise registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fraudulent practices, fees and administrative procedure.



Pursuant to authority vested in the Office
of the Commissioner of Securities by
secs. 551.63(1), 551.63(2), 552.13(2) and 553.58(1),
Wis. Stats., the Commissioner of Securities
hereby repeals, amends and adopts rules
as set forth below

1 SECTION 1. Section SEC 2.01(1)(a)3. of the Wis. Adm. Code
2 is amended to read:

3 SEC 2.01(1)(a)3. A notice of the proposed offering is filed
4 with the commissioner prior to the offering, including a trust
5 indenture meeting the requirements of s. SEC 3.24, Wis. Adm.
6 Code, an official statement or a prospectus meeting the require-
7 ments of s. SEC 3.23, Wis. Adm. Code, that contains financial
8 statements for the enterprise meeting the requirements of s.
9 SEC 3.22(1)(p), Wis. Adm. Code, and such additional information
10 as the commissioner may require, and the commissioner does not by
11 order deny the exemption within 20 days of the date the notice is
12 filed. The financial statement requirement in this subdivision
13 is not applicable if the revenue obligations being offered are
14 the subject of an irrevocable letter of credit from a bank in
15 favor of holders of the revenue obligations providing for payment
16 of principal and interest on the revenue obligations, and the
17 letter of credit is accompanied by an opinion of counsel stating
18 that: a.i. payment of debt service will not constitute a pre-
19 ference under the U.S. bankruptcy code in the event of a filing
20 of a petition in bankruptcy with respect to the enterprise, or
21 ii. the letter of credit will provide for reimbursement to holders
22 of the revenue obligations in the event they are required by
23 order of a U.S. bankruptcy court to disgorge as a preference any
24 payment of debt service, or a combination of i. and ii.; and
25 stating that b. the enforceability of the letter of credit would
26 not be materially affected by the filing of a petition under the
27 U.S. bankruptcy code with respect to the enterprise or any person
28 obligated to reimburse the bank for payments made pursuant to the
29 letter of credit.

COMMENT: The amendment to this Section requires
that financial statements in filings under the
rule meet the financial statement requirements

set forth in the cited administrative rule that apply to registered offerings. The reason for such a requirement is that the nature of the staff examination of a filing under the rule is essentially the same as a registration review because it is as if the underlying enterprise that will be making use of the revenue bond proceeds were offering its securities directly to investors.

In a revision to this SECTION as a result of comments received to the initial rule revision draft, new language is added at the end of the subdivision to provide that the financial statement requirement is not applicable if a bank letter of credit is present covering payment of the revenue obligations where the underlying enterprise is unable to make payment. Where a bank letter of credit situation is involved, the financial condition of the underlying enterprise is irrelevant because the bank letter of credit will be the source for payment of bond principal and interest. A provision is included requiring that the bank letter of credit be accompanied by an opinion of counsel indicating that the letter of credit has built-in protections so that bond purchasers will not be deprived of the benefits of the letter of credit in bankruptcy situations.

1 SECTION 2. Section SEC 2.01(3)(a) of the Wis. Adm. Code is
2 amended to read:

3 (3)(a) Any evidence of debt issued by a domestic non-profit
4 corporation to persons other than its members is exempted under
5 s. 551.22(8), Stats., if the issuer or a licensed broker-dealer
6 files a notice of the proposed issuance with the commissioner
7 prior to the offering, including: a trust indenture meeting the
8 requirements of s. SEC 3.24, Wis. Adm. Code, under which the
9 evidence of debt is proposed to be issued; a prospectus describing
10 the issuer, the trust indenture and the evidence of debt proposed
11 to be issued, which shall be given or sent to each person to whom
12 an offer of such evidence of debt is made at the time or times
13 specified in s. SEC 3.23(1), Wis. Adm. Code; and such additional
14 information as the commissioner may require; and the commissioner
15 does not by order deny or revoke the exemption within 10 days.
16 In addition, if the domestic non-profit corporation is or operates
17 as a church, the offering shall meet the requirements of s. SEC 3.14,
18 Wis. Adm. Code.

COMMENT: This amendment provides that offerings of debt securities by Wisconsin non-profit corporations who are or operate as churches that make filings seeking to qualify for use of the registration exemption under the rule, must meet the substantive requirements in section SEC 3.14, Wis. Adm. Code, applicable to registrations for debt securities issued by churches or congregations. The reason for requiring an offering seeking use of the exemption to meet the registration requirement is because once use of the exemption is allowed, offers and sales of the church's securities in the offering can be made to the general public.

1 SECTION 3. Section SEC 2.01(7M) is created to read:

2 (7M) An issuer meets the conditions in sub. (7)(b) to (d) if
3 either the issuer or the issuer and the issuer's predecessor,
4 taken together, meet those conditions and if: (i) the succession
5 was primarily for the purpose of changing the state of incorpo-
6 ration of the predecessor or forming a holding company and the
7 assets and liabilities of the successor at the time of succession
8 were substantially the same as those of the predecessor; or
9 (ii) all predecessors met the conditions at the time of succession
10 and the issuer has continued to do so since the succession.

COMMENT: This amendment corrects an inadvertent omission in the so-called "blue chip" registration exemption provision in section SEC 2.01(7), Wis. Adm. Code, as it relates to "tacking" by an issuer of predecessor earnings and operations. This issue was not addressed by the North American Securities Administrators Association, Inc. ("NASAA") Committee that developed the "blue chip" rule. When the rule was ratified in October 1977 by the membership of NASAA, (of which Wisconsin is a member), and when Wisconsin formally by rule adopted the provision effective October 1, 1978, the problem was not evident.

Current language requires an "issuer" of securities seeking to qualify under the rule to meet specific earnings, default, etc., tests set forth therein, several of which tests (namely, those in paras. (b), (c) and (d)) must be met for various periods of years. The basic problem occurs in connection with situations involving entities that have reorganized into a holding company format, or have merged or changed their

state of incorporation. In those situations, the "new" (reorganized/successor) entity is, in law and in fact, the "issuer" of the securities to be offered, but because of its brief history of existence and operations it is unable to meet the various 3, 5 and 7 year tests under the exemption -- even though there may have been no material changes in the business or operations of the entity as a result of the reorganization, etc.

The problem cannot be resolved in Wisconsin by interpretation because the term "issuer" is a defined term under sec. 551.02(8), Wis. Stats., and does not include language relating to predecessors, and because there is nothing specifically in the language of the "blue chip" rule to indicate that consideration should be given to the earnings, operations or existence of any other entity, predecessor or otherwise, for purposes of the rule. The problem is remedied in the rule by adopting language based on that used by the federal Securities and Exchange Commission when it addressed the same problem in the context of requirements to be met by issuers of securities for use of Registration Form S-7 under the Securities Act of 1933. In that regard, the Securities and Exchange Commission took the position that tacking would be permitted where the succession was primarily for the purpose of changing the state of incorporation of the predecessor or for forming a holding company where the assets and liabilities of the successor were substantially the same as the predecessor (see Commerce Clearing House, Federal Securities Law Reporter, para. 80,651, 1976-77 Transfer Binder). The amended language is strictly limited in its coverage to provide that "tacking" is permitted only when there is no material change in the assets and liabilities of the subject entity/entities so as to prevent misuse of the exemption.

The numbering of the new rule provision as (7M) is a numbering convention recommended by the Legislative Reference Bureau for use in this situation because the wording of the new provision, due to its content, cannot be made parallel with that of existing rule subsections SEC 2.01(7)(a) through (h), Wis. Adm. Code.

As a result of a comment by the Rules Clearinghouse, the structure of the rule was changed from its comment draft form of one long sentence to 2 subsections separated by semicolons.

1 SECTION 4. Section SEC 2.02(9)(c) of the Wis. Adm. Code is
2 created to read:

3 (c) In addition, if the non-profit corporation is or
4 operates as a church, the offering shall meet the requirements of
5 s. SEC 3.14, Wis. Adm. Code.

COMMENT: This amendment provides that offerings of debt securities by non-profit corporations who are or operate as churches that make filings seeking to qualify for use of the registration exemption under the rule, must meet the substantive requirements in section SEC 3.14, Wis. Adm. Code, applicable to registrations for debt securities issued by churches or congregations. The reason for requiring an offering seeking use of the exemption to meet the registration requirement is because once use of the exemption is allowed, offers and sales of the church's securities in the offering can be made to the general public.

6 SECTION 5. Section SEC 2.02(10)(d) of the Wis. Adm. Code is
7 amended to read:

8 (d) Any transaction incident to a vote of security holders
9 of any issuer other than a corporation, pursuant to its organi-
10 zational instrument or the applicable statute of any state, on a
11 reorganization or a sale or transfer of assets in consideration
12 of the issuance of securities of another person, ~~if the issuer~~
13 ~~files with the commissioner prior to the offering a notice~~
14 ~~specifying the terms of the reorganization, sale or transfer of~~
15 ~~assets, including any proxy solicitation or other material to be~~
16 ~~delivered to security holders in connection with the transaction,~~
17 ~~and the commissioner does not by order disallow the exemption~~
18 ~~within 10 days.~~

COMMENT: This amendment removes the 10 day notice-filing requirement for use of the registration exemption provided by the rule. The purpose of the amendment is to allow non-corporate entities (such as trusts, limited partnerships and banking associations) to effectuate reorganizations and sales of assets under a self-executing registration exemption provision, provided that the transactions are

pursuant to the vote of security holders in the same manner that reorganizations, sales of assets and mergers by corporations are "automatically" exempt from registration where they are made pursuant to a vote by a corporation's stockholders. The public policy reason for allowing security holders the right to self-determination by vote are as applicable with respect to trusts and partnerships as they are for corporations, particularly since the experience of the Office of the Commissioner of Securities in reviewing filings made under the rule indicates that no substantial problem exists in these kinds of transactions that requires regulatory filing and review.

1 SECTION 6. Section SEC 2.03(1) of the Wis. Adm. Code is
2 repealed and recreated to read:

3 SEC 2.03 EXEMPTION PROCEEDINGS. (1) A notice of exemption
4 pursuant to s. 551.22 or 551.23, Stats., shall be accompanied by
5 a copy of any prospectus, circular or other material to be
6 delivered to offerees, the fee prescribed by s. SEC 7.01(2), Wis.
7 Adm. Code, and a cover letter describing how the offering will
8 meet all the requirements for use of the exemption sought to be
9 utilized.

COMMENT: This rule as recreated lists the specific information and materials required to be submitted for a notice filing to be considered received in complete form.

10 SECTION 7. Section SEC 3.02(1)(a) of the Wis. Adm. Code is
11 amended to read:

12 SEC 3.02(1)(a) The price for the stock does not exceed 25
13 times the issuer's net earnings per share for the last 12 months
14 and or does not exceed 25 times its average annual net earnings
15 per share for the last 3 years,-- prior to the proposed offering
16 date, or does not exceed such other multiple of net earnings as
17 the commissioner may prescribe; or

COMMENT: This amendment will make the 25-times price/earnings registration requirement easier for applicants to meet since in its amended form the ratio need be met either for the latest year or the last three years.

1 SECTION 8. Section SEC 3.03 (Intro.) of the Wis. Adm. Code
2 is amended to read:

3 SEC 3.03 OPTIONS AND WARRANTS. The amounts and kinds of
4 options and warrants to purchase securities issued or sold, other
5 than ratably to purchasers, in connection with a proposed offering
6 of equity securities or securities convertible into equity
7 securities, as well as the amounts and kinds of options and
8 warrants issued or reserved for issuance at the date of the
9 public offering, shall be reasonable. Options and warrants are
10 presumed reasonable if they satisfy the following conditions:

COMMENT: This Section amends the introductory
portion of the rule restricting the amounts
of permitted options and warrants to clarify
that the restrictions apply not only to those
options and warrants that are issued/sold in
connection with a public offering, but also
to those options and warrants that are
issued and outstanding at the date of the
public offering. The existence of excessive
amounts of options and warrants already out-
standing at the time of a public offering
dilute a purchaser's proportional ownership
in the same manner as if excessive amounts of
options and warrants are being issued incident
to the offering.

11 SECTION 9. Section SEC 3.03(4) of the Wis. Adm. Code is
12 amended to read:

13 (4) The total amount of options and warrants issued or
14 reserved for issuance at the date of the public offering, excluding
15 those issued to financing institutions, ~~-(other than under-~~
16 ~~writers)-,~~ and those issued in connection with acquisitions, does
17 not exceed either 10% of the shares to be outstanding upon
18 completion of the offering or 10% of the shares outstanding
19 during the period the registration statement is effective. The
20 number of options and warrants reserved for issuance may be
21 disregarded if the issuer ~~files an undertaking or~~ states in the
22 prospectus that the amount of outstanding options and warrants
23 shall not exceed the above amount during the period the regi-
24 stration statement is effective.

COMMENT: The amendment to this rule removes the "filing of an undertaking" alternative for resolving a securities registration concern relating to the amounts of options and warrants. Undertakings filed with the Office of the Commissioner of Securities would not provide the necessary disclosure to investors of the fact that the issuer is under restrictions as to future issuances of options and warrants. The rule revision will ensure that the necessary disclosure will be provided in the prospectus given the investor.

1 SECTION 10. Section SEC 3.17 of the Wis. Adm. Code is
2 renumbered section SEC 3.20, and subsection SEC 3.20(1) is
3 amended to read:

4 SEC 3.20 OTHER CAUSES FOR DENIAL, SUSPENSION OR REVOCATION.

5 (1) The enumeration of causes stated in ss. SEC 3.01 to SEC ~~3.16~~
6 3.17, Wis. Adm. Code, is not exclusive, and the commissioner may
7 issue a stop order denying effectiveness to, or suspending or
8 revoking the effectiveness of, any registration statement for any
9 cause stated in s. 551.28(1), Stats., whether similar to or
10 different from the causes enumerated in these sections, when
11 necessary or appropriate in the public interest ~~or~~ and for the
12 protection of purchasers.

COMMENT: This Section renumbers current rule Section SEC 3.17, Wis. Adm. Code, a section of general applicability, to make room for a separate rule created in Section 11. that adopts a specific registration policy. The Section also amends the cross-reference in sub. (1) to reflect the new rule provision added in Section 11. The amendment in the last line makes the language of the rule consistent with the language in the general rule order authority provision of sec. 551.63(2), Wis. Stats., where it requires that for the Commissioner to issue an order, a finding must be made that the order is necessary or appropriate in the public interest, as well as for the protection of purchasers.

13 SECTION 11. Section SEC 3.17 of the Wis. Adm. Code is
14 created to read:

1 3.17 REAL ESTATE INVESTMENT TRUSTS. The offer or sale of
2 securities of a corporation, trust or association, other than a
3 real estate syndication, engaged primarily in investing in equity
4 interests in real estate, including fee ownership and leasehold
5 interests, or in loans secured by real estate, or both, may be
6 deemed unfair and inequitable to purchasers unless the offering
7 complies with the provisions of the North American Securities
8 Administrators Association Statement of Policy on Real Estate
9 Investment Trusts, adopted April 28, 1981. Copies of the
10 Statement of Policy are available from the commissioner's office
11 for a prepaid fee of \$4. The Statement of Policy is published in
12 Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and
13 is on file at the offices of the Wisconsin secretary of state and
14 the revisor of statutes.

COMMENT: Consistent with the provisions of
Sec. 551.63(2), Wis. Stats., this rule helps
achieve maximum uniformity among states in
matters of registration policy by adopting
the Registration Policy on Real Estate Investment
Trusts ("Policy") adopted by members of the
North American Securities Administrators
Association, Inc. ("NASAA"), including Wisconsin,
on April 28, 1981. The Policy facilitates the
ability of real estate investment trusts to
offer and sell their securities to the general
public by establishing objective standards
which, if met, will enable registration of the
offering to take place in Wisconsin and other
states applying the Policy. The Policy adopted
by NASAA in April, 1981 replaces two earlier
regulatory guidelines on the subject, a 1970
NASAA policy and a 1963 policy of the Midwest
Securities Commissioners Association. The new
Policy differs from the previous policies in
two principal respects:

(1) There must be independent trustees on
the board of each REIT, and independents must
comprise a majority of all board committees. The
Policy defines the term "independent" to exclude
professionals, such as attorneys and accountants,
who have a business relationship with the REIT.

(2) The term "operating expenses" has been
defined to include specified cost items paid
by the REIT relating to loan administration,
servicing, engineering and inspection, and an
expense limitation is established that deems

total annual operating expenses of the REIT to be excessive if they exceed the greater of 2% of its average invested assets or 25% of its net income for the year.

1 SECTION 12. Section SEC 3.28(1) of the Wis. Adm. Code is
2 amended to read:

3 SEC 3.28 PERIODIC REPORTS. (1) Each issuer or registrant of
4 securities registered under ss. 551.25 or 551.26, Stats., except
5 an issuer or registrant specified in sub. (2) shall file with the
6 commissioner promptly after each 90-day period in which securities
7 have been sold during the effectiveness of the registration
8 statement, a report on the appropriate form designated in s. SEC
9 9.01(1), Wis. Adm. Code, specifying the number of shares or units
10 of securities sold in this state pursuant to the registration
11 statement and the aggregate selling price thereof, unless the
12 issuer or registrant has paid the maximum filing fee for the
13 registration statement ~~and the securities are registered under~~
14 ~~the securities act of 1933.~~

COMMENT: This amendment removes the report of sales filing requirement for all registrants that pay the maximum securities registration fee, irrespective of whether the offering was registered under the federal Securities Act of 1933, by removing the federal registration criteria. The existence of a federal registration for an offering is not a relevant basis upon which to determine whether reports of sales to the Commissioner are necessary or warranted.

15 SECTION 13. Section SEC 4.01(1) of the Wis. Adm. Code is
16 amended to read:

17 SEC 4.01 LICENSING PROCEDURE. (1) Applications for initial
18 and renewal licenses of broker-dealers and agents shall be filed
19 with:

20 (a) The commissioner on forms prescribed by the commissioner
21 in Wis. Adm. Code section s. SEC 9.01(1) and, Wis. Adm. Code. An
22 application shall include all information required by the forms
23 and any other information the commissioner may require; or

1 (b) The central registration depository of the national
2 association of securities dealers as developed under contract
3 with the north american securities administrators association, on
4 forms established for the central registration depository.

COMMENT: This amendment designates the National Association of Securities Dealers ("NASD"), a self-regulatory organization for securities broker-dealers authorized under the federal Securities Exchange Act of 1934, as the organization where broker-dealer and agent licensing applications and information can be submitted under the Central Registration Depository ("CRD") adopted April 14, 1980 by the North American Securities Administrators Association, Inc., of which Wisconsin is a member. The Commissioner was given the authority to adopt CRD in Chapter 53, Laws of 1981, effective January 1, 1982.

The CRD eliminates duplicative filing and licensing requirements for broker-dealers and their securities agents that do business in a number of states by providing for a single, central automated system for filing and processing licensing application information and materials. Under CRD, broker-dealer and agent applicants for license submit the required information to the NASD at its Washington, D.C. main office, where the information is placed in a computer bank. Each state that is a member of the CRD system is hooked up to the central computer via video terminals where all licensing information can be examined and retrieved, thus eliminating the need for the state to receive, process and file paperwork relating to those license applicants.

As a result of a comment by the Rules Clearinghouse, the structure of the rule was changed from its comment draft form of one long sentence to 2 subsections separated by semicolons.

5 SECTION 14. Section SEC 4.01(3) of the Wis. Adm. Code is
6 amended to read:

7 (3) Each applicant for an initial license as a broker-
8 dealer or agent is required to pass a written examination pre-
9 scribed by the commissioner, unless the requirement is waived
10 under sub. (4). The examination shall relate to ch. 551, Stats.,
11 the rules of the commissioner thereunder, the applicable federal
12 securities laws and the rules of the U.S. securities and exchange

1 commission thereunder, general matters concerning the securities
2 business, and such other matters as the commissioner may deter-
3 mine. The commissioner may prescribe different examinations for
4 different classes of applicants, and may require an applicant to
5 retake and successfully pass the examination, in whole or in
6 part, if: (a) the applicant has not passed the written examination
7 prescribed by the commissioner within two years prior to the date
8 the application for license is filed; or (b) the applicant has
9 not passed the written examination prescribed by the commissioner
10 and, within 2 years prior to the date the application is filed,
11 has not been licensed or registered as an agent or broker-dealer
12 under the securities law of another state.

COMMENT: This amendment provides that the Commissioner may require an applicant for a securities agent license to retake and successfully pass the examination if more than two years has elapsed since the applicant has passed the required examination. In a revision to the SECTION as a result of comments received to the initial rule revision draft, the rule is modified to make it clear that a re-examination will not be required of an applicant who has passed the examination more than two years prior to the date a license application is filed, provided that the applicant has been licensed as an agent or broker-dealer under the securities law of any state within two years prior to the date the application is filed.

The requirement to retake and successfully pass the examination would not apply if the applicant qualified under any of the waiver-of-examination provisions of section SEC 4.01(4), Wis. Adm. Code, such as para. (c) that applies if the applicant has been licensed as an agent in Wisconsin within two years prior to the date the agent license application is filed.

13 SECTION 15. Section SEC 4.03(1)(r) of the Wis. Adm. Code is
14 amended to read:

15 (r) A register relating to each offering participated in by
16 the broker-dealer under the registration exemption provisions of
17 s. 551.23(10) and (11), Stats., or made pursuant to an order of
18 exemption issued under s. 551.23(18), Stats., limiting the
19 number of offers or sales permitted in Wisconsin, containing

1 information disclosing the name and address of each offeree of
2 the broker-dealer, the date the offer was made, the control
3 number on any offering circular or other advertising material
4 given to the offeree, the names of all persons making the offer,
5 and the date of any sale as a result of the offer.

COMMENT: This amendment requires broker-dealers to record, on an offeree register, private placement offers and sales made pursuant to an Order of Exemption issued under s. 551.23(18), Wis. Stats., in addition to recording offers made pursuant to the limited offering exemptions in secs. 551.23(10) and (11), Wis. Stats., as is now the case.

6 SECTION 16. Section SEC 4.03(4) of the Wis. Adm. Code is
7 amended to read:

8 (4) The records required in sub. (3) shall be preserved at
9 the branch office for a period of not less than 3 years, the
10 first 2 years in an easily accessible place, except that customer
11 new account forms shall be preserved for a period of not less
12 than 3 years after the closing of the account. After a record or
13 document has been preserved for one year as required under this
14 subsection, a microfilm copy thereof may be substituted for the
15 remainder of the required period.

COMMENT: This amendment clarifies that the records required to be prepared by branch offices under section SEC 4.03(3), Wis. Adm. Code, must be kept and retained at the branch office and cannot be transferred or kept at the broker-dealer firm's principal/home office or at another branch office.

In a revision to the SECTION made as a result of comments received to the initial rule revision draft, the words "that prepared the records" (which was additional underscored language after the "at the branch office" language) was deleted because some records required to be retained at the branch office are not prepared by the branch but rather are furnished to the branch office by the home/principal office. The language of the rule in the initial draft unintentionally would have eliminated that latter category of branch office records from having to be retained.

1 SECTION 17. Section SEC 4.05(1)(b) of the Wis. Adm. Code is
2 amended to read:

3 (b) If applicable, compliance with rule ~~15e1-4(b)~~ 10b-10 of
4 the securities exchange act of 1934 shall be deemed compliance
5 with this rule.

COMMENT: This amendment revises the federal
rule citation in the section to reflect the
fact that the federal rule was recently renumbered.

6 SECTION 18. Section SEC 4.05(6) of the Wis. Adm. Code is
7 amended to read:

8 (6) Every licensed broker-dealer, except broker-dealers
9 engaged solely in the offer and sale of redeemable securities of
10 investment companies registered under the investment company act
11 of 1940, shall require each of its licensed agents to have and
12 keep current, and each agent shall have and keep current, the
13 following records in para. (a) and (b) of this subsection
14 relating to customer securities transactions, which record
15 requirements may not be satisfied by maintaining a file of
16 confirmations unless permitted by order of the commissioner.
17 Although the originals of such records are considered records of
18 the broker-dealer, a broker-dealer shall within 15 days following
19 receipt of a written request provide photocopies of the agent's
20 customer records as may be requested by an agent within 30 days
21 from the date of termination of his or her employment with the
22 broker-dealer.

COMMENT This amendment clarifies that the
original records which the rule requires
broker-dealers to have their agents prepare and
keep current pertaining to their customers
securities transactions are considered records
of the broker-dealer firm and not records of
the agent that agents can take upon termination
of their employment.

Original customer securities transaction
records are extremely important from a broker-
dealer supervisory standpoint as well as from
a regulatory oversight standpoint when the staff
of the Office of the Commissioner of Securities

is conducting a field examination of the broker-dealer and looking at customer account activity and agent sales practices. It is essential that the original customer securities transaction records, even though they may be initially prepared and kept current by an agent, remain with the broker-dealer. For those reasons, the original customer transaction records that are the subject of the rule are designated records of the broker-dealer and not records of the agent.

An additional revision to the SECTION is made as a result of comments received to the initial rule revision draft. The purpose of the original amendment is retained -- namely, that the originals of the customer records are considered to be records of the broker-dealer. The additional language will require broker-dealers to furnish copies of those records to any agent leaving the broker-dealer's employ upon written request of the agent within 30 days after termination of employment.

1 SECTION 19. Section SEC 4.05(9) of the Wis. Adm. Code is
2 repealed.

COMMENT: This subsection of SEC 4.05 is repealed as being redundant because an identical provision is in section SEC 4.03(1)(s), Wis. Adm. Code. The other provision is retained, rather than section SEC 4.05(9), Wis. Adm. Code, because the other provision is under the broker-dealer recordkeeping section and therefore is a more appropriate place for what is essentially a recordkeeping requirement.

3 SECTION 20. Section SEC 4.06(1)(u) of the Wis. Adm. Code is
4 repealed.

COMMENT: As a result of comments received to the initial rule revision draft, this rule is repealed instead of being amended because operation of the rule can result in a broker-dealer being in violation of the rule due to the actions of a third party who the broker-dealer cannot control. This is due to the fact that compliance with the requirements of the Investment Adviser's Act, as is mandated under the existing rule, is solely within the control of the investment adviser involved, not the broker-dealer. Con-

sequently, it would be unfair to impose liability on a broker-dealer for something it has no control over.

1 SECTION 21. Section SEC 4.06(2)(h) of the Wis. Adm. Code is
2 amended to read:

3 (h) Engaging in any of the practices specified in sub. (1)(b),
4 (c), (d), (e), (f), (g), (h), (o), (p), (q), (r), and (t),
5 ~~(u) and (v)~~.

COMMENT: These amendments to the rule have been added in order to make required changes in cross-references as a result of the repeal of section SEC 4.06(1)(u), Wis. Adm. Code, in SECTION 20, and to correct an error in sub. (2)(h) which in its current form erroneously refers to sub. (1)(v), a paragraph that does not exist.

6 SECTION 22. Section SEC 4.09(1) of the Wis. Adm. Code is
7 renumbered section SEC 4.09 and as renumbered is amended to read:

8 SEC 4.09 DENIAL, SUSPENSION, REVOCATION AND CENSURE. Any
9 order denying, suspending or revoking the license of a broker-
10 dealer or agent or censuring a licensee may include such other
11 sanctions as the commissioner finds appropriate.

COMMENT: The rule is renumbered because sub. (2), the only other subsection of SEC 4.09, Wis. Adm. Code, is repealed in Section 23. The amendment adding the term "or agent" remedies an inadvertent omission in the coverage of the rule in its current form and is necessary to authorize the imposition of additional appropriate sanctions (such as requiring the Wisconsin agent examination to be retaken and successfully passed) against an agent in connection with license denial, suspension or revocation proceedings as well as incident to censure proceedings.

12 SECTION 23. Section SEC 4.09(2) of the Wis. Adm. Code is
13 repealed.

COMMENT: This rule provision is repealed as unnecessary as a result of amendments to sec. 551.34(1)(j), Wis. Stats., in Ch. 53, Laws of 1981, effective January 1, 1982. The amendments to the statutory section operate

to provide that any licensee may be sanctioned for failure to meet supervisory responsibilities as provided in the statute.

1 SECTION 24. Section SEC 7.01(2)(d) of the Wis. Adm. Code is
2 amended to read:

3 (d) Notice filed under s. 551.22(10) or (14), Stats., or
4 under s. 551.23(12), Stats., or under s. SEC 2.02(10)(b) ~~7-~~
5 or (c), ~~or (d)~~ ~~7-~~ Wis. Adm. Code \$50.

COMMENT: This amendment removes the reference to section SEC 2.02(10)(d), Wis. Adm. Code, because of the amendment in Section 5 removing the notice filing requirement as a condition for availability of that exemption.

6 SECTION 25. Sections SEC 7.01(7) and (8) of the Wis. Adm.
7 Code are renumbered sections SEC 7.01(8) and (9).

COMMENT: This renumbering amendment is necessary to make room for creation of a separate rule relating to establishing a fee for retrieving information and documents in files located at the State of Wisconsin Records Center (as discussed in the Comment to Section 26). The new rule is added in sequence after the current rule dealing with photocopying fees.

8 SECTION 26. Section SEC 7.01(7) of the Wis. Adm. Code is
9 created to read:
10 SEC 7.01(7) State records center information or file retrieval
11 fee \$1 per file retrieved.

COMMENT: This is a new rule authorizing the Office of the Commissioner of Securities to charge a fee to persons when they request information or documents which are in files located in the State of Wisconsin Records Center and must be retrieved. The \$1 per file retrieval fee specified in the rule is the current fee that the State Records Center charges this office to have a file retrieved.

1 SECTION 27. Section SEC 7.02(1)(d) of the Wis. Adm. Code is
2 amended to read:

3 (d) Advertising published or circulated by a broker-dealer
4 or investment adviser licensed in this state relating to the
5 licensee's own services, business or operations, or by a broker-
6 dealer relating to securities that have been registered under
7 ch. 551, Stats., or by an investment company registered under
8 ch. 551, Stats., unless the commissioner otherwise provides by
9 order;

COMMENT: This amendment provides that the advertising filing exclusion in this section applicable to licensed broker-dealers and investment advisers extends only to: (1) advertising distributed by such entities relating to their own services and businesses and (2) advertising distributed by a broker-dealer relating to securities that have been registered under the Wisconsin Uniform Securities Law. The rule as amended prevents the section from being used as an across-the-board exclusion allowing those entities to act as a conduit for distributing advertising relating to any securities or securities offering. Advertising relating to securities is excluded from the advertising filing requirements of sec. 551.53, Wis. Stats., under the rule as amended, only if the advertising relates to securities registered under the Wisconsin Uniform Securities Law and is distributed by a broker-dealer (in which case the advertising is filed with and reviewed by the National Association of Securities Dealers), or if the advertising otherwise can meet the requirements of some other filing exclusion in section SEC 7.01(2), Wis. Adm. Code.

10 SECTION 28. Section 7.02(2) of the Wis. Adm. Code is
11 amended to read:

12 (2) All advertising required ~~to be filed by a licensee or~~
13 ~~registrant shall be filed with the commissioner not later than~~
14 ~~the date of use. All advertising required~~ to be filed by any
15 other person shall be filed in duplicate not less than 10 days
16 prior to the date of use or such shorter period as the commis-
17 sioner may permit, and shall not be used in this state until the
18 commissioner has allowed its use.

COMMENT: The amendments to this rule provide adequate time for the staff of the Office of Commissioner of Securities to review any advertising material required to be filed under the Wisconsin Uniform Securities Law. If any problems or concerns are found in the advertising materials, the problems can be resolved before the materials are distributed and any "damage" (in terms of misleading or erroneous claims or information) is done. Although the simultaneous filing provision for "licensees and registrants" is removed in this amendment, the removal has little practical effect on licensees because the advertising filing exclusion of section SEC 7.02(1)(d), Wis. Adm. Code, discussed in Section 27., is applicable to broker-dealer and investment adviser advertising concerning their own businesses and services. The change also has minimal impact on registrants, because advertising relating to the securities in the registered offering would also be excluded under section SEC 7.02(1)(d), Wis. Adm. Code, from having to be filed if it is published and circulated by a broker-dealer licensed in this state. The distinction between the treatment of advertising material for securities registrants on the basis of whether or not it is distributed through a licensed broker-dealer is due to the fact that where a licensed broker-dealer is involved, the broker-dealer must file the advertising with the National Association of Securities Dealers ("NASD") for review. Consequently, there is no need to file the same materials with the Office of the Commissioner of Securities. When no licensed broker-dealer is involved in a securities offering, however, it becomes important that prior review be made of the advertising materials by the Office of the Commissioner of Securities since neither a licensed broker-dealer nor the NASD will be involved in checking the accuracy or content of the materials before their use.

1 SECTION 29. Section SEC 8.07 of the Wis. Adm. Code is
2 amended to read:

3 SEC 8.07 EFFECTIVENESS OF ORDERS OR OTHER DOCUMENTS, NOTICE.

4 Every order or other document is effective when signed. Mailing
5 of any order, ~~notice~~ or other document under this chapter to the
6 last known address of any person, or personal service, constitutes
7 notice thereof to the person.

COMMENT: This amendment, with grammatical changes from its initial form in the draft sent out for comment, adds language paralleling that in the second sentence of the rule to provide that the effectiveness, as well as notice, of orders and other documents are treated identically. There is nothing in Chapter 227 of the Wisconsin Statutes dealing with administrative procedure that would warrant or justify treating the effectiveness of orders issued by this office differently from the effectiveness of notices or other documents.

1 SECTION 30. Section SEC 9.01(1)(b)2. of the Wis. Adm.
2 Code is amended to read:

3 2. U-4. Uniform application for ~~securities-and-commodities~~
4 industry-representative-and/or-agent securities industry
5 registration.

COMMENT: This amendment is necessary to reflect a change in the name of the form referred to in the rule. The name was recently changed by the printers of the Uniform Forms.

6 SECTION 31. Section SEC 9.01(1)(b)6. through 12. inclusive
7 are renumbered sections SEC 9.01(1)(b)7. through 13., respectively.

COMMENT: This amendment renumbers various subdivisions to make room for the new rule created in Section 32.

8 SECTION 32. Section SEC 9.01(1)(b)6. of the Wis. Adm. Code
9 is created to read:

10 AIR. Application for renewal of an agent for issuer license.

COMMENT: This new rule identifies the proper form to be submitted for renewal of an agent for issuer license.

11 SECTION 33. Section SEC 23.01(1) of the Wis. Adm. Code
12 is amended to read:

13 SEC 23.01 FILING OF REGISTRATION STATEMENT. (1) Any person
14 who proposes to make a take-over offer involving a target company

1 in this state or to acquire any equity securities of a target
2 company pursuant to the offer, or who is the subject of an order
3 of exemption allowing a conditional take-over offer to commence,
4 shall file with the commissioner a registration statement on
5 form TO-1 and, not later than the date of filing, send a copy of
6 such registration statement by certified mail to the target
7 company at its principal office and, on the date of filing,
8 except in the case of a conditional take-over offer subject to an
9 order of exemption, publicly disclose in the manner specified in
10 s. SEC 21.01~~(4)~~~~(6)~~, Wis. Adm. Code, the material terms of the
11 proposed offer.

COMMENT: The first amendment to this rule clarifies that the registration statement filing requirement and procedure is applicable to situations where an Order of Exemption is issued by the Office of the Commissioner of Securities under sec. 552.05(1) of the Wisconsin Corporate Take-Over Law (as amended effective June 17, 1981, by Chapter 16, Laws of 1981), and under section SEC 28.01(2), Wis. Adm. Code, allowing a conditional take-over offer to commence. The second amendment to the rule excludes the "public disclosure" requirement for registration statements relating to a conditional offer being made pursuant to an Order of Exemption because public disclosure of the offer as well as distribution of the offering materials will already have been made. The final amendment to this rule corrects an erroneous cross-reference.

12 SECTION 34. Section SEC 31.01(10) of the Wis. Adm. Code is
13 amended to read:

14 (10) "Timely" within the meaning of s. 553.41(4), Stats.,
15 ~~shall mean~~ means at least ~~48-hours~~ 10 business days prior to the
16 execution of an agreement or the taking of consideration consti-
17 tuting the sale of a franchise.

COMMENT: This amendment changes from 48 hours to 10 days the advance disclosure requirement in the rule to be consistent with identical changes made in the statutory advance disclosure requirements of the Wisconsin Franchise Investment Law, secs. 553.22 and 553.27, Wis. Stats., as a result of enactment of Chapter 54,

Laws of 1981, effective January 1, 1982. The change from 48 hours to 10 days makes the Wisconsin law consistent with the Federal Trade Commission rule requirements for advance disclosures in the sale of franchises.

1 SECTION 35. Section SEC 32.01(3) of the Wis. Adm. Code is
2 amended to read:

3 (3) File with the commissioner a copy of the either an
4 offering circular, prospectus or disclosure document containing
5 the information required to be disclosed under s. 553.22(3),
6 Stats. to prospective investors prepared in the form required by
7 s. SEC 32.06, Wis. Adm. Code, or a disclosure document prepared
8 in the form required by 16 CFR Part 436, the federal trade
9 commission's disclosure requirements and prohibitions concerning
10 franchising and business opportunity ventures, together with a
11 consent to service of process as required by s. 553.22(4), Stats.

COMMENT: The changes in this rule are necessitated by the recreation of sec. 553.22(3) of the Wisconsin Franchise Investment Law in Chapter 54, Laws of 1981, effective January 1, 1982, which grants the Office of the Commissioner of Securities rule-making authority to establish disclosure requirements for use of the registration exemption in sec. 553.22, Wis. Stats. The amendment to the rule reduces regulation of exempt franchisors by permitting them to use either of the two designated standard disclosure documents, both of which are currently used to meet disclosure requirements under state and federal law.

12 SECTION 36. Section SEC 32.05(1) (Intro.) of the Wis. Adm.
13 Code is amended to read:

14 SEC 32.05 EXEMPTIONS BY THE COMMISSIONER. (1) The following
15 transactions, in addition to those transactions exempted under
16 s. SEC ~~32.02~~ 32.01, Wis. Adm. Code, shall, pursuant to s. 553.25,
17 Stats., be exempted from s. 553.21, Stats. :-:

COMMENT: The amendment to this rule corrects an erroneous cross-reference.

1 SECTION 37. Section SEC 32.11 of the Wis. Adm. Code is
2 amended to read:

3 SEC 32.11 SIGNING OF APPLICATIONS. An application for
4 registration under s. 553.26, Stats., a registration renewal
5 statement under s. 553.30, Stats., ~~or~~ an application to amend a
6 registration statement under s. 553.31, Stats., or an application
7 for an opinion confirming an exemption from registration under
8 s. 553.22, Stats. ~~should~~ shall be signed by an officer or general
9 partner of the applicant, as the case may be, however, it may be
10 signed by another person holding a power of attorney for such
11 purposes from the applicant and, if signed on behalf of the
12 applicant pursuant to such power of attorney, ~~should~~ shall include,
13 as an additional exhibit, a copy of said power of attorney or a
14 copy of the corporate resolution authorizing the person signing
15 to act on behalf of the applicant.

COMMENT: The amendments to this rule provide
that an application for an opinion confirming
an exemption under sec. 553.22, Wis. Stats.,
is to be signed on behalf of an applicant in
the same manner as prescribed for franchise
registration applications and for renewals
or amendments of registrations.

16 SECTION 38. Section SEC 32.13 of the Wis. Adm. Code is
17 amended to read:

18 SEC 32.13 SURETY BOND IN LIEU OF ESCROW. In lieu of the
19 imposition of an escrow condition under s. 553.27(2), Stats., and
20 s. ~~SEC 32.13~~ 32.12, Wis. Adm. Code, a franchisor may post a
21 surety bond in such amount as shall be required by the commis-
22 sioner. ~~Such~~ The bond shall be issued by a corporate surety
23 authorized to transact business in the state of Wisconsin,
24 conditioned upon the completion by the franchisor of ~~his~~ its obli-
25 gations under the franchise contract to provide real estate,
26 improvements, equipment, inventory, training or other items
27 included in the offering.

COMMENT: The amendments to this rule make non-
substantive language changes and correct an erroneous
cross-reference.

1 SECTION 39. Section SEC 34.02 of the Wis. Adm. Code is
2 repealed.

COMMENT: The amendment repeals as being unnecessary section SEC 34.02, Wis. Adm. Code, which lists specific practices that are deemed "false, fraudulent or deceptive." The majority of the situations listed in the rule are already covered by requirements in the Uniform Franchise Offering Circular, and the language of the statutory anti-fraud provision in sec. 553.41, Wis. Stats., is sufficiently broad to cover any other situation where the Office of the Commissioner of Securities would take appropriate enforcement action.

3 SECTION 40. Sections SEC 35.02(2)(b) (Intro.) and (1) of
4 the Wis. Adm. Code are consolidated and amended to read:

5 (b) All advertising shall make reference to:

6 ~~1. The the~~ name and address of the person using the adver-
7 tisement or making the offer.

8 ~~2. The commercial symbol of the franchiser.~~


COMMENT: This amendment repeals the require-
ment in subparagraph 2 that the "commercial
symbol" of the franchisor appear in all printed
advertisements because it results in excessive
and unnecessary printing costs. The rule as
amended provides sufficient disclosure to
assure that the reader of the advertising
is aware of the true identity of the company
offering the franchise.

* * * * *

The rules, amendments and repeals contained in this Order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in sec. 227.026(1) (Intro.), Wis. Stats.

Dated this 7th day of December, 1981.

(SEAL)


RICHARD R. MALMGREN
Commissioner of Securities

RRM:RES:dg

Analysis Prepared by the
Office of the Commissioner of Securities
Relating to Proposed Amendments to the
Rules of the Commissioner of Securities

(a) Proposed Findings of Fact

(1) The Office of the Commissioner of Securities has made its annual review of its Administrative Rules promulgated under the Wisconsin Uniform Securities Law, the Wisconsin Corporate Take-Over Law, and the Wisconsin Franchise Investment Law for the following purposes: making clarifications to existing rule provisions where language is vague or ambiguous; adopting or amending rules necessary to effectively regulate new circumstances or developments which have occurred in the industry and the marketplace that require regulatory treatment; formally adopting and incorporating by reference certain specific securities registration guidelines, and amendments to such guidelines, previously adopted by a national securities administrators association of which Wisconsin is a member; and adopting numerous rule changes necessitated by statutory amendments to Ch. 551, the Wisconsin Uniform Securities Law, in Chapter 53, Laws of 1981 (effective January 1, 1982), to Ch. 552, the Wisconsin Corporate Take-Over Law, in Chapter 16, Laws of 1981 (effective June 17, 1981), and to Ch. 553, the Wisconsin Franchise Investment Law, in Chapter 54, Laws of 1981 (effective January 1, 1982).

(2) Copies of the Comment Draft of the proposed rule revisions containing Explanatory Notes to each amended section were distributed in a mailing during July, 1981 (based on the Office's mailing list of its monthly Wisconsin Securities Bulletin), to the general public, securities licensees and registrants, franchise registrants, securities law and franchise law practitioners, securities and franchise trade associations and regulatory bodies, and to other interested persons. The Comment Draft was accompanied by a letter soliciting written comments on the proposed revisions or testimony at the public hearing that was held on September 10, 1981 in Room 318 Southwest of the State Capitol in Madison, Wisconsin.

under sec. 551.63(2), Wis. Stats., to cooperate with the securities administrators of other states and the Securities and Exchange Commission to achieve uniformity and eliminate duplicative filing and licensing requirements for broker-dealers and their securities agents doing business in a number of states, and to exercise his authority under sec. 551.32(1)(a), Wis. Stats., as amended by Chapter 53, Laws of 1981, (effective January 1, 1982), to designate by rule in Section 13 the National Association of Securities Dealers, a self-regulatory organization authorized under the federal Securities Exchange Act of 1934, as the organization where broker-dealer and agent licensing applications and information can be submitted under the Central Registration Depository designated by a national securities administrators organization of which Wisconsin is a member.

- (9) It is appropriate in the public interest and for the protection of investors for the Wisconsin Commissioner of Securities to exercise his authority under secs. 553.58 and 551.63(2), Wis. Stats., to cooperate with the administrators of franchise laws of other states and with the Federal Trade Commission in its regulation of the sale of franchises on a national basis, and to exercise his authority under sec. 553.22(3), Wis. Stats., as amended by Chapter 54, Laws of 1981 (effective January 1, 1982), to adopt and incorporate by reference in Section 35 of the Proposed Rules the disclosure document form prescribed in 16 CFR Part 436, entitled The Federal Trade Commission Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures.
- (10) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to seek to exercise his rule-making authority under secs. 551.63(1), 551.63(2), 552.13(2), and 553.58(1), Wis. Stats., to propose to repeal, amend and adopt the proposed rules as attached to carry out the purposes of the Wisconsin Uniform Securities Law, the Wisconsin Corporate Take-Over Law, and the Wisconsin Franchise Investment Law.

The principal areas of the revisions to the Rules under the Wisconsin Franchise Investment Law include: (1) deleting section SEC 34.02, Wis. Adm. Code, which lists specific practices that are deemed "false, fraudulent or deceptive" (Section 39); and making amendments to two existing rules dealing with an advance disclosure requirement and an exemption disclosure requirement that are necessitated by statutory amendments to Ch. 553, Wis. Stats. in Chapter 54, Laws of 1981 (effective January 1, 1982). (Sections 34 and 35).

Copies of the Comment Draft of the Proposed Rule Revisions containing COMMENTS to each amended section were distributed (based on the mailing list for the agency's monthly Wisconsin Securities Bulletin) to the general public, securities licensees and registrants, franchise registrants, securities law and franchise law practitioners, securities and franchise trade associations and regulatory bodies, and to other interested persons soliciting written comments on the proposed revisions or testimony at the public hearing that was held on September 10, 1981, in Room 318 Southwest of the State Capitol in Madison, Wisconsin. During the comment period, seventeen letters were received setting forth specific comments. At the public hearing, testimony was presented by six persons (other than staff) who set forth additional comments. Several of the comments presented in the letters and the public hearing testimony resulted in changes and modifications of the Proposed Rules as identified in sub. (c) of this Analysis. In addition, authorization was requested in writing by the Commissioner of Securities and was received from the Wisconsin Attorney General and the Revisor of Statutes permitting the incorporation by reference of securities registration policies and guidelines adopted by a national association of securities law administrators, of which Wisconsin is a member, and of a franchise disclosure form of the Federal Trade Commission.

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

--For a variety of reasons, several SECTIONS of the initial Comment Draft are not being proposed for adoption. Eleven SECTIONS of the prior Comment Draft relating to investment adviser representatives are not being adopted because certain statutory amendments proposed in Senate Bill 127 to require licensing of investment adviser representatives were deleted in the

office" language) was deleted because some records required to be retained at the branch office are not prepared by the branch but rather are furnished to the branch office by the home/principal office. The language of the rule in the initial draft unintentionally would have eliminated that latter category of branch office records from having to be retained.

--Page 14, lines 16 through 22 dealing with SEC 4.05(6) in SECTION 18. An additional revision to the SECTION is made as a result of comments received to the initial rule revision draft. The purpose of the original amendment is retained--namely, that the "originals" of the customer records are considered to be the records of the broker-dealer. The additional language will require broker-dealers to furnish copies of those records to any agent leaving the employ of the broker-dealer upon written request by the agent within thirty days after termination of employment.

--Page 15, line 3 dealing with section SEC 4.06(1)(u) in SECTION 20. As a result of comments received to the initial rule revision draft, this rule is repealed instead of being amended because operation of the rule can result in a broker-dealer being in violation of the rule due to the actions of a third party who the broker-dealer cannot control. This could occur due to the fact that compliance with the requirements of the Investment Advisers Act of 1940, as is mandated under the existing rule, is solely within the control of the investment adviser involved, not the broker-dealer. Consequently, it would be unfair to impose liability on a broker-dealer for something it has no control over.

--Page 16, lines 4 and 5 dealing with SEC 4.06(2)(h) in SECTION 21. These amendments to the rule have been added in order to make required changes in cross-references as a result of the repeal of section SEC 4.06(1)(u), Wis. Adm. Code, in SECTION 20 and to correct an error in sub. (2)(h) which in its current form erroneously refers to sub. (1)(v), a paragraph that does not exist.

--Page 19, lines 3 through 5 dealing with SEC 8.07 in SECTION 29. Minor grammatical changes were made to this section.

memorandum dated August 14, 1981, from Dennis M. Tuohy of the Licensing & Regulation Division of the Office of Commissioner of Securities, 111 West Wilson Street, Box 1768, Madison, Wisconsin 53701.

letter dated August 10, 1981, received August 17, 1981 from Raymond Aronson, Bear Stearns & Co., 55 Water Street, New York, New York 10041.

letter dated August 24, 1981, received August 26, 1981 from Attorney Terry F. Peppard, Wendel, Center, Lipman & Peppard, Suite 317, 222 West Washington Avenue, P. O. Box 2034, Madison, Wisconsin 53701.

letter dated August 28, 1981, received August 29, 1981 from Paul E. Magnuson, DiVall Real Estate Investment Corp., 111 North Pinckney Street, Madison, Wisconsin 53703.

letter dated August 27, 1981, received September 2, 1981 from Renee Borchardt Pazan, Association of Registration Management, P. O. Box 133, Bowling Green Station, New York New York 10274.

letter dated September 8, 1981, received September 8, 1981 from Charles J. Finlayson, Lord, Abbett & Co., 63 Wall Street, New York, New York 10005.

letter dated September 3, 1981, received September 7, 1981 from Attorney George C. Baron, Booth & Baron, 122 East 42nd Street, New York, New York 10168.

memorandum dated September 8, 1981 from Ronald J. Burtch of Licensing & Regulation Division of the Office of Commissioner of Securities, 111 West Wilson Street, Box 1768, Madison, Wisconsin 53701.

letter dated September 8, 1981, received September 9, 1981 from Thomas D. Maher, Investment Company Institute, 1775 K Street N.W., Washington, D.C. 20006.

letter dated September 2, 1981, received September 9, 1981 from Renee Borchardt Pazan, Association of Registration Management, P. O. Box 133, Bowling Green Station, New York, New York 10274.

- The Rules Clearinghouse comment in para. c. under (2) Form, Style and Placement in Administrative Code indicated that the use of parentheses such as in SECTION 11, involving section SEC 3.17, Wis. Adm. Code, should be avoided. Accordingly, the parentheses in that SECTION were deleted and substituted for with commas. The same revision was made in SECTION 33 relating to section SEC 23.01(1), Wis. Adm. Code.
- The Rules Clearinghouse comment in para. d. under (2) Form, Style and Placement in Administrative Code indicated that the word "subsection" should just be "sub." in SECTION 12 relating to section SEC 3.28(1), Wis. Adm. Code. The appropriate change was made in the section.
- The Rules Clearinghouse comment in para. e. under (2) Form, Style and Placement in Administrative Code suggested that the structure of section SEC 4.01(1), Wis. Adm. Code in SECTION 13 of the Rule would be clearer if it were structured as two separate subsections rather than one long sentence. Accordingly, the format of the subsection was changed to become two separate paragraphs separated by semicolons.
- The Rules Clearinghouse comments in paras. f., g., h. and m. under (2) Form, Style and Placement in Administrative Code made specific suggestions regarding the form and style of four specific SECTIONS of the proposed rule. Although each of the Rules Clearinghouse comments were appropriate and would have been implemented, the comments are rendered moot because none of the four proposed rule provisions are being adopted in final form.
- The Rules Clearinghouse comment in para. i. under (2) Form, Style and Placement in Administrative Code suggested that when a division of a rule is affected by an amendment such as in SECTION 2 of the proposed rule relating to section SEC 2.01(3)(a), Wis. Adm. Code, the section number of the rule should precede the treatment. Accordingly, the section number of the rule in SECTION 2 is specifically set forth preceding the treatment.
- The Rules Clearinghouse comment in para. j. under (2) Form, Style and Placement in Administrative

occurred, no change is needed because the rule is not being proposed for adoption.

--The Rules Clearinghouse comment in para. d. under (5) Clarity, Grammar, Punctuation and Plainness suggested that the word "and" be inserted after the word "agent" and that certain commas should be deleted in section SEC 4.07(1), Wis. Adm. Code. Although each of the Rules Clearinghouse comments were appropriate and would have been implemented, they are rendered moot because the rule provision is not being proposed for adoption.

--The Rules Clearinghouse comment in para. e. under (5) Clarity, Grammar, Punctuation and Plainness indicated that use of the language "dividing or otherwise splitting" in the proposed amendment to section SEC 5.06(2)(b), Wis. Adm. Code, was redundant and that just the word "dividing" should be used. Although this was an appropriate comment and would have been implemented, it is rendered moot because the rule provision is not being proposed for adoption.

--The Rules Clearinghouse comment in para. f. under (5) Clarity, Grammar, Punctuation and Plainness indicated that the use of a slash mark between "file/information" in section SEC 7.01(7), Wis. Adm. Code, (SECTION 26) should not be used. Accordingly, the slash mark was deleted and the word "or" substituted.

(2) Acceptance of recommendations in part; (3) Rejection of recommendations; and (4) Reasons for not accepting recommendations.

--Not applicable.

* * * * *



State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

APPLICATION FOR RENEWAL:
AGENT LICENSES FOR ISSUER

111 WEST WILSON STREET
BOX 1768
MADISON, WISCONSIN 53701

SEE SUPPLEMENTAL INFORMATION ON PAGE 4

1. Exact name, principal business address, mailing address (if different) and telephone number of issuer:

(a) Full name of issuer:

(b) Name under which business is conducted:

(c) Address of principal place of business:

(Number and Street) (City) (State) (Zip)

(d) Mailing address:

(e) Telephone number:

(Area Code) (Telephone Number) (WATS Line, if any)

2. Branch offices of issuer located in Wisconsin:

Office Address

Name of Person In Charge

Table with 2 columns: Office Address, Name of Person In Charge. Multiple rows of blank lines for data entry.

(Attach supplementary sheet as Exhibit 1 if space provided is insufficient.)

3. Description and offering prices of securities being offered and sold in Wisconsin:

Complete Description

Offering Price

Table with 2 columns: Complete Description, Offering Price. Multiple rows of blank lines for data entry.

4. There have been no material changes in the information contained in the latest application for each agent's license, renewal thereof, or amendments thereto, except as follows:

(Attach supplementary sheet as Exhibit 2 if space provided is insufficient.)

5. The name of the issuer's officer or general partner who is responsible for the offer and sale of the issuer's securities and the activities of the issuer's licensed securities agents:

(Attach supplementary sheet as Exhibit 3 if space provided is insufficient.)

6. Neither the issuer nor any of its officers, directors, partners, nor any of its agents licensed in this state, has had a registration or license as a broker-dealer or agent in securities denied, revoked, or suspended by any state, federal public or private regulatory agency, nor has any such person been convicted of the commission of any criminal offense involving fraud, breach of fiduciary obligation, or violation of state or federal securities laws; nor has any such person been the subject of any adverse judgment in any civil proceeding involving any securities transactions or the violation of state or federal securities laws since the date of its last application for license, except as follows:

(Attach supplementary sheet as Exhibit 4 if space provided is insufficient.)

7. No complaint has been filed against the applicant or any of its officers, directors, partners, or any of its agents licensed in this state in any civil or criminal proceeding, or in any administrative proceeding by any state or federal public or private regulatory agency, concerning its general securities business or financial condition, or any of its securities transactions or customers in this state since the date of its last application for license, except as follows:

(Attach supplementary sheet as Exhibit 5 if space provided is insufficient.)

8. The name, title, business address, area code, telephone and extension numbers of the individual who may be contacted for additional information, corrections or clarification with respect to this application:

Applicant hereby makes application to the Commissioner of Securities for renewal of the securities agent licenses of the following individuals, authorizing said individuals to represent the undersigned issuer in the sale of securities in Wisconsin. The application is accompanied by the \$20.00 filing fee for each individual named below, and the applicant agrees to pay any expenses reasonably attributable to any investigation or examination of the agent(s) that the Commissioner may find necessary with respect to this application. The undersigned issuer takes responsibility for the acts of the agent(s) in the sale of securities in this state. If, prior to the end of the license period, any of the agents named below cease to represent the issuer in the sale of securities or the issuer completes its offering(s) in Wisconsin, the applicant agrees to make application for withdrawal of said agent(s) securities licenses pursuant to Wis. Adm. Code section SEC 4.08(2):

Last name, First name, Middle initial and Address of Residence (list alphabetically)	Business Address (Location from which agent operates on a daily basis)
1. _____ _____ _____	_____ _____ _____
2. _____ _____ _____	_____ _____ _____
3. _____ _____ _____	_____ _____ _____
4. _____ _____ _____	_____ _____ _____
5. _____ _____ _____	_____ _____ _____

6. _____

7. _____

(Attach supplementary sheet as Exhibit 6 if space provided is insufficient.)

Applicant certifies that this application is true, correct, and complete, and agrees that any material changes in any statements made herein or in any exhibits attached hereto shall be reported to the Commissioner within 30 days after the occurrence of such changes. Applicant agrees to comply with the provisions of the Wisconsin Uniform Securities Law and all rules and orders of the Commissioner thereunder. All statements made herein and exhibits attached hereto shall be deemed representations made to the Commissioner in connection with any determination made or license issued with respect to this application.

Dated this _____ day of _____, 19____.

(SEAL)

Name of Issuer
By _____
Signature and Title

SUPPLEMENTAL INFORMATION

1. The expiration date of a securities agent license to represent an issuer under the Wisconsin Uniform Securities Law is July 31st, and the license renewal form must be received by the Commissioner's office not later than July 1st. If the renewal form is not filed by that date, it will be necessary for the Commissioner to issue an Order granting accelerated licensing (to avoid an interruption of the issuer's licensed agents securities activities in Wisconsin), the fee for which is \$50.
2. Answer all questions or insert "Not Applicable"; reference to prior applications is not acceptable.
3. All exhibits attached hereto should be on 8-1/2 in. x 11 in. paper.

Questions concerning this application may be directed to Licensing & Regulation Division of the Office of the Commissioner of Securities at (608) 266-3693.

(This space reserved for the use of the Securities Office)

Filing Fees \$ _____ Receipt Number _____ Date Received _____