CR 82-157

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., Stats., the Wisconsin Uniform Securities Law, and ch. 553, Stats., the Wisconsin Franchise Investment Law, with respect to registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fees and administrative procedure, were duly approved and adopted by this agency on November 22, 1982.

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 22nd day of November, 1982.

(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 4.01(4)(a), SEC 4.03(1)(s), SEC 4.05(6)(b) and SEC 7.01(7); to renumber SEC 3.21(2) and (3), SEC 4.01(4)(b), (c) and (d), SEC 4.05(7) and (8), SEC 4.06(2)(h) and SEC 7.01(8); to renumber and amend SEC 3.03(4), SEC 3.12, SEC 3.21(1) and SEC 4.05(6) (Intro.) and (a); to amend SEC 2.01(7)(d), SEC 2.02(3)(a) and (5)(d)1., SEC 2.03(1), SEC 3.01(1), SEC 3.02(Intro.), SEC 3.03(1), SEC 3.22(1)(c) and (m), SEC 4.01(3), (5) and (6), SEC 4.02(1), SEC 4.03(2),(3)(a) and (3)(e), SEC 4.01(1) and (7), SEC 4.06(1)(h), SEC 4.07(1), SEC 4.08(2), SEC 5.01(3), (4) and (5), SEC 5.04(1), SEC 5.05(7), SEC 5.08(2), SEC 7.01(1)(c), (2)(a) and (e), (3)(b) and (5)(b), SEC 32.02 and SEC 36.01; and to create SEC 2.02(10)(i), SEC 3.03(4)(b), SEC 3.12(2), SEC 3.18, SEC 4.04(1)(b), SEC 4.06(2)(h), SEC 5.04(1)(b) and SEC 35.01(3) and (4), relating to the operation of ch. 551., Stats., the Wisconsin Uniform Securities Law, and ch. 553, Stats., the Wisconsin Franchise Investment Law, with respect to registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fees and administrative procedure.

Pursuant to authority vested in the Office of the Commissioner of Securities by secs. 551.22(17), 551.23(18), 551.27(8), 551.28(1)(e), 551.32(4) and (7), 551.33(1), (2) and (6), 551.52(3), 551.63(1) and (2), 553.58(1) and 553.72(3), Wis. Stats., the Wisconsin Commissioner of Securities repeals, amends and adopts rules interpreting those sections as follows:

SECTION 1. SEC 2.01(7)(d) is amended to read:

(d) The issuer has had annual consolidated net income, ~~(before extraordinary items and the cumulative effect of accounting changes)~~, as follows: (i) at least one million dollars in 4 of its last 5 fiscal years including its last fiscal year, and (ii) if the offering is of interest bearing or of fixed or floating rate dividend securities, at least 1-1/2 times its annual interest and ~~fixed~~ dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds, ~~for~~ its last fiscal year. Floating rate dividends shall be calculated with reference to interest rates in the marketplace at the time of the offering. In this paragraph, "last fiscal year" means the most recent year for which audited financial statements are available, if the statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

ANALYSIS: These amendments make changes that are necessary to be able to apply the interest coverage requirement of paragraph (d) of the "blue chip" rule to offerings of a new kind of instrument in the securities marketplace--floating rate dividend preferred stock--as

well as to the traditional fixed dividend preferred stock. The new floating rate dividend preferred stock was not prevalent when this rule was originally promulgated in 1978 and does not come within the literal language of the current rule. However, floating dividend preferred stock clearly comes within the intent of the rule and should be subject to it because the issuer's obligation to pay interest on the floating rate preferred stock is fixed, even though the amount of interest to be paid may vary from year to year.

In a revision to this SECTION as a result of a comment by the Rules Clearinghouse of the Wisconsin Legislative Council, the reference to the calculation of floating rate interest was placed in a separate sentence, and the language pertaining to interest rates in the marketplace was clarified by adding the language "with reference to."

SECTION 2. SEC 2.02(3)(a) is amended to read:

(a) With respect to a security qualifying under s. 551.23(3)(c), Stats., the issuer or a licensed broker-dealer files a notice of the proposed sale with the commissioner prior to the offering, including the latest prospectus filed under the securities act of 1933 describing the securities proposed to be sold, a copy of the issuer's articles of incorporation and bylaws, or equivalents, as currently in effect, and the information concerning the public market for the security specified in s. SEC 3.02(1)(b)~~, Wis. Adm. Code~~. The exemption, unless denied or revoked by order of the commissioner within 10 days, is effective so long as the issuer is filing periodic information, documents and reports under section 15(d) of the securities exchange act of 1934.

ANALYSIS: This amendment requires an issuer to file its articles of incorporation and by-laws in connection with an application for secondary trading exemption authorization under sec. 551.23(3)(c), Wis. Stats. The content of the articles and bylaws are necessary and appropriate items for review by the staff in its determination whether secondary market transactions in the issuer's securities should be permitted. The amendment will make the informational requirements for a filing under this section consistent with the information required under para. SEC 2.02(3)(b), Wis. Adm. Code, (by means of a cross reference to section SEC 3.22, Wis. Adm. Code) for secondary trading exemption authorization under a companion statutory provision in sec. 551.23(3)(d), Wis. Stats.

The language "Wis. Adm. Code" is stricken in this SECTION and in several following SECTIONS as a result of a comment by the Rules Clearinghouse of the Wisconsin Legislative Council that pointed out that a note on page 12 of the Administrative Rules Procedures Manual states that references to "Wis. Adm. Code" should not be used when making external references to the Code.

SECTION 3. SEC 2.02(5)(d)1. is amended to read:

1. ~~Any~~ Except as provided in the last sentence of this subdivision, any offer or sale of interests in a limited partnership, irrespective of the kind of assets held or business engaged in by the partnership, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold

to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds $100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and such other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption within 10 days. This subdivision is not applicable to any offer or sale made by a broker-dealer licensed in Wisconsin if the broker-dealer is not affiliated with the issuer or sponsor of the issuer by means of direct or indirect common control;

ANALYSIS: The amendments to this rule are part of a comprehensive package of revisions being proposed by this Office both to the various private offering registration exemptions under the Wisconsin Uniform Securities Law and related administrative rules and to the securities registration standards in Chapter SEC 3 of the Wisconsin Administrative Code. The amendments are also based upon recommendations made in a February, 1982 Report submitted to the Commissioner of Securities by a Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin (hereafter referred to as Citizen Advisory Committee on Raising of Venture Capital in Wisconsin") that was appointed by the Commissioner in February, 1981.

The principal amendment to this rule removes the 10-day pre-filing and review requirement for use of the exemption where the offering is made through a securities broker-dealer licensed in Wisconsin that is not affiliated with the issuer or the sponsor of the issuer. It is anticipated that this amended exemption will be utilized primarily

by issuers of securities in "Rule 146"-type offerings (the predecessor to the U.S. Securities and Exchange Commission's Rule 506 under Regulation D) under the federal non-public offering exemption. The amendment accomplishes a regulatory "trade-off" in that the pre-filing review by the Office of the Commissioner of Securities for use of the exemption will not be required where an unaffiliated broker-dealer is involved in marketing the offering; in such cases the broker-dealer is subject to substantial liability if the offering involves any securities violation and also puts the business integrity of the broker-dealer and its interest in satisfying customers on the line. This amendment gives recognition to the due diligence obligation under federal and state securities laws of broker-dealers involved in marketing an offering to their customers. Because federal and state securities laws impose civil, administrative and criminal liability on a broker-dealer that does not adequately check the accuracy of the facts relating to the offering and its sponsors, the existence of the assets to be acquired and the accuracy of the disclosures made to public investors, these factors provide substantial investor protection.

SECTION 4. SEC 2.02(10)(i) is created to read:

(i) Any offer or sale of debt securities by an issuer to its employes or agents, provided there is filed with the commissioner prior to any offer or sale a notice as provided in s. SEC 2.03(1), and the commissioner by order exempts the offering. Without limiting the ability of the commissioner to refuse to issue an order on other grounds, the commissioner may find the issuance of an order inappropriate for the protection of investors unless:

1. The issuer's net earnings for its last fiscal year prior to the offering shall have been at least equal to the interest requirements on its debt securities for that year;

2. The debt securities being offered shall be of a fixed-term nature with maturities varying from not less than 90 days to not more than two years from the date of issue;

3. Any provision for renewal of the debt securities shall require that each holder receive 30 days prior written notice of the renewal accompanied by updated information described in subd. 5., that the renewal may not occur unless the holder signs at the time of the renewal a subscription agreement agreeing to the renewal, and that the term of the securities being renewed shall not extend beyond the expiration date of the Order of Exemption issued under this subdivision;

4. Each purchaser of debt securities shall be required to represent in a subscription agreement for purchase or

renewal of the debt securities that the dollar amount of the purchase does not exceed 25% of his or her liquid net worth, excluding equity in his or her house or personal property;

5. An Information Summary containing at least the following information shall be provided by the issuer to each offeree at the time of the offering:

a. Disclosure of the specific purposes for use of the funds raised from the sale of the debt securities;

b. A statement that the decision of an offeree whether or not to purchase or to agree to any renewal will not have any effect upon that offeree's advancement opportunities, raises or other benefits, nor will impact on the offeree's continued employment or job duties;

c. A representation that the issuer is not contemplating, and is not the subject of, any proposed merger, sale of assets or control of the issuer, receivership or bankruptcy, that it does not have current financial obligations that it is unable to meet, and that it has not been refused credit by any lending institution for the purposes for which the proceeds from sale or renewal of the debt securities will be used; and

d. Financial statements for the issuer's three previous fiscal years, or the duration of the issuer's existence, whichever is less, that shall be either audited or, if unaudited, accompanied by the issuer's federal income tax return with supporting schedules for the corresponding years;

6. Offerees shall be provided with a five-day period following their receipt of any offering materials, information or subscription agreement for purchase of the issuer's securities, before the subscription agreement can be returned to or accepted by the issuer; and

7. The issuer shall provide that upon the death or involuntary termination of employment of the holder, the debt securities will be redeemed by the issuer within 60 days of receipt by the issuer of a written request for repurchase from the holder or the holder's legal representative. The redemption price shall include principal plus accrued interest to the date of redemption.

ANALYSIS: This new rule adopts another recommendation in the Report of the Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin and relates to how an employer can obtain from the Commissioner of Securities an exemption from the securities registration requirement in order to sell its debt securities to employees.

The Committee observed that the purpose of regulation in such an area is to encourage participation of employees of a business (other than providing labor) in order to develop in the employee the spirit of participation in the business. The Committee also recommended the following protective provisions to provide basic investor protection: (a) financial soundness of the employer/business issuing the debt securities; (b) full disclosure to employees of relevant information regarding the securities offered, the use of proceeds, and the financial statements of the business; and (c) preventing unsuitable amounts of purchases by employees and possible coercion by an employer on the employe to purchase.

This rule incorporates all of the recommendations in those areas contained in the Report and adds two additional provisions: (1) A specific section dealing with "rollovers" of the securities is adopted that requires both 30 days prior notice to the holder of the debt security of the impending rollover and an affirmative step by the holder to agree to the rollover, because the decision to continue the investment is as much as an investment decision as the original decision to purchase; and (2) A specific provision is adopted providing for repurchase of a holder's debt securities in the event of a holder's death or involuntary termination of employment (patterned after a similar provision in section SEC 2.01(5)(d), Wis. Adm. Code, dealing with employee stock purchase or similar benefit plans).

Section 5. SEC 2.03(1) is amended to read:

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

ANALYSIS: This amendment makes a non-substantive language change to clarify that the notice referred to in the rule is not a specific or separately labeled document or form. Rather, it is comprised of the totality of the information required to be submitted under the rule.

SECTION 6. SEC 3.01(1) is amended to read:

SEC 3.01 Commissions and expenses. (1) The aggregate amount of underwriters' and sellers' discounts, commissions and other compensation shall be reasonable, and except for issuers specified in sub. (2), is presumed reasonable if it

does not exceed 10% of the aggregate selling price of the securities or if, when added to the other expenses paid or payable in connection with the offering and sale of the securities, the total of commissions and other expenses does not exceed 15% of the aggregate selling price of the securities. If the aggregate amount of underwriters' and sellers' discounts, commissions and other compensation does not exceed 10% of the aggregate selling price of the securities, the total of commissions and other offering expenses is not subject to limitation.

ANALYSIS: This amendment clarifies that this rule does not impose a limitation on the aggregate amount or percentage of combined offering expenses, including sales commissions, provided that sales commission and/or sales compensation-related items do not exceed 10% of the aggregate selling price of the securities. The amendment is based on a recommendation made in the February, 1982 Report issued by the Commissioner's Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin. The Committee reviewed all securities registration requirements in Chapter SEC 3 (subsections SEC 3.01 through SEC 3.16) applicable to securities offerings made in a public offering. The Committee made several recommendations to change those registration requirements.

The Committee recommended that this rule be amended so that small securities offerings are not placed at a disadvantage vis-a-vis large offerings. The Committee observed that under a restrictive reading of the current language of the offering expense limitation (to the effect that there is a 15% maximum limitation on the combined amount of commissions and other offering expenses in all circumstances), small offerings would be at a disadvantage because the non-commission categories of offering expenses--such as attorney's and accountant's fees and printing

costs--do not vary in direct proportion to the size of a securities offering. For instance, in a $5 million offering, the total of those expenses could be $200,000 while those expenses for a $1 million offering could be $100,000. In this example, the smaller offering has those expenses constituting 10% of the offering, leaving only 5% to cover all of the other expenses (including brokerage commissions). In comparison, the larger offering has non-commission expenses constituting only 4% of the total offering.

The specific recommendation in this area by the Commissioner's Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin was to scale the offering expense limitation based on the total dollar amount of the offering. This amendment goes beyond creating artificial offering amount and percentage categories and instead adds language to clarify that there is no maximum percentage of combined offering expenses and commissions, provided that sales commission-type items do not exceed the current 10% industry maximum established by the National Association of Securities Dealers.

SECTION 7. SEC 3.02 (Intro.) is amended to read:

SEC 3.02 Offering price. The offering price of any security shall be fair and equitable to purchasers. With respect to common stock, unless the offering is made pursuant to a firm commitment underwriting by a broker-dealer involving common stock issued by a Wisconsin corporation having its principal office in Wisconsin where the offering price of the common stock is at least $5 per share, the offering price shall be reasonably related to the existing public market for the stock or to the net earnings of the issuer as stated in the prospectus.

ANALYSIS: This amendment provides that the offering price requirement of the rule is not applicable where the offering is of the common stock of a Wisconsin corporation whose principal office is in Wisconsin and involves a "firm commitment" underwriting where a broker-dealer has taken a risk position by using its own funds to buy the entire offering of securities and then must resell the securities (as contrasted with a "best efforts" selling approach).

The amendment is based on another of the recommendations of the Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin dealing with the securities registration rules of Chapter SEC 3 of the Rules of the Commissioner of Securities. The amendment presumes that the pricing mechanism used by a broker-dealer in a firm commitment underwriting can be substituted for the registration criteria in this section for determining whether the offering price of a share of common stock is fair and reasonable. Because a broker-dealer in a firm commitment underwriting is, in effect, buying the stock with its own money and must resell the shares to receive its money, the broker-dealer will make sure that the offering price of the stock is not out of line with the price/earnings ratios of securities of comparable companies that investors can purchase in the market. Use of the amendment is restricted to Wisconsin corporations with their principal office in Wisconsin because the Office of the Commissioner of Securities is better able to be aware of the assets and facilities and to monitor the activities and operations of corporations within this state's borders for the protection of Wisconsin investors. The $5 minimum per share price requirement for use of the exclusion is added to the Committee recommendation to prevent misuse of the exclusion that could occur in connection with low-priced or "penny stock" securities offerings that typically involve exceptionally high-risk securities.

SECTION 8 . SEC 3.03(1) is amended to read:

(1) With respect to ~~restricted or qualified~~ stock options to employes for incentive purposes, including employe stock purchase agreements extending for a period of more than one year, the options are reasonable in number and method of exercise.

ANALYSIS: This amendment removes unnecessary language because the Internal Revenue Service no longer gives special recognition to "qualified" stock option plans. Consequently, the distinction drawn between kinds of stock option plans in the rule is unnecessary.

SECTION 9 . SEC 3.03(4) is renumbered SEC 3.03(4)(a) and amended to read:

(4) ~~The~~ (a) Except as provided in par. (b), the total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding ~~these~~ options and warrants issued to financing institutions, other than underwriters, and excluding those issued ~~in connection with acquisitions~~ to an entity being acquired, does not exceed either 10% of the shares to be outstanding upon completion of the offering or 10% of the shares outstanding during the period the registration statement is effective. The number of options and warrants reserved for issuance may be disregarded if the issuer states in the prospectus that the

amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective.

ANALYSIS: As a result of a Rules Clearinghouse comment, the renumbering and amending of this rule is done in a separate SECTION from the action taken with respect to the corresponding rule in SECTION 10. See the ANALYSIS to SECTION 10 for an explanation of the substantive changes to this rule and its counterpart.

SECTION 10. SEC 3.03(4)(b) is created to read:

(b) The total amount of options and warrants issued or reserved for issuance at the date of the public offering by a Wisconsin corporation having its principal office in Wisconsin, excluding options and warrants issued to financing institutions, other than underwriters, and excluding those issued to an entity being acquired, does not exceed 20% of the shares to be outstanding upon completion of the offering, with options and warrants not to exceed 10% for any one person, or 20% of the shares outstanding during the period the registration statement is effective. The number of options and warrants reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective.

ANALYSIS: SECTIONS 9 and 10 do the following: (1) The addition of the word "excluding" in line 5 of par. (a) clarifies that the clause specifies another item to be excluded from

the general 10% limitation on options and warrants in the rule. (2) Adding the phrase "to an entity being acquired" in line 6 and the deletion in lines 5 and 6 in par. (a) clarifies that the intent of the exclusion relating to options or warrants issued "in connection with acquisitions" was to exclude only options and warrants issued to the entity being acquired and should not extend to options or warrants issued to unaffiliated finders or to employees of the entity being acquired. Rather, the intent of the rule as clarified by the amendment is to include within the percentage limitations in the rule any options and warrants issued to finders in connection with acquisitions in the same manner that cheap stock issued to finders is included in the percentage limitations on cheap stock in section SEC 3.04(2), Wis. Adm. Code. (3) The principal amendment in new par. (b) increases the current limitation on options and warrants to insiders from 10% to a total of 20% for offerings by Wisconsin corporations having their principal office in Wisconsin, with not to exceed 10% for any one person. The provision establishing a maximum of 10% of options and warrants for any one person is a revision to the SECTION as a result of public comments received and is a substitute for language in the initial comment draft that established a 10% limitation on options and warrants for all officers and directors as a group. The change was made because under the language in the initial draft, half of the permitted options and warrants would be wasted for those issuers that did not have employees (other than officers or directors) who were considered sufficiently important to the issuer's future to be issued stock options and warrants. The amendment is based on a recommendation of the Citizen Advisory Committee on the Raising of Venture Capital in Wisconsin dealing with the securities registration rules of the Commissioner of Securities. The Committee reported that the current 10% limitation on options and warrants unduly hampers the ability of businesses to use stock options as an inducement to employ and keep high quality management and technical personnel. The Committee felt this was particularly important where a business is not in a financial

position to offer competitive salaries or fringe benefits to attract qualified personnel. Although the Committee recommended a 25% maximum, the rule as amended established a 20% maximum to parallel a recent change adotped by the Minnesota Commissioner of Securities to its registration rule on options and warrants. (4) The increase in permitted options and warrants is extended only to Wisconsin corporate issuers with their principal office in Wisconsin because the Office of the Commissioner of Securities is better able to be aware of the assets and facilities and to monitor the activities and operations of corporations within this state's borders for the protection of Wisconsin investors.

SECTION 11. SEC 3.12 is renumbered SEC 3.12(1) and amended to read:

SEC 3.12 Oil and gas programs. ~~The~~ (1) Except as provided in sub. (2), the offer or sale of interests in a limited partnership which will engage in oil or gas ~~programs~~ well drilling and exploration activities or the purchase of production from oil and gas wells may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs, adopted September 22, 1976, as amended October 12, 1977 and October 31, 1979. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: As a result of a Rules Clearinghouse comment, the renumbering and amending of this rule is done in a separate SECTION from the action taken with respect to the corresponding rule in SECTION 12. See the ANALYSIS to SECTION 12 for an explanation of the substantive changes to this rule and its counterpart.

SECTION 12. SEC 3.12(2) is created to read:

(2)(a) In addition to the provisions of subsection V.B.1.(a)(3) of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs ("NASAA Oil and Gas Program Registration Guidelines"), sponsor compensation, determined on a modified functional allocation basis, where the sponsor pays all capital costs on initial wells in a prospect and pays a corresponding pro-rata percentage of the costs on subsequent wells in a prospect, shall be presumed reasonable only if the aggregate of the costs contributed by the sponsor constitute at least 10% of the total program costs. If the costs contributed by the sponsor constitute at least 10% of the program costs, it shall be presumed reasonable for the sponsor to receive as compensation 25% of the program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs.

(2)(b) In addition to the provisions of subsection V.B.2.(a) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation determined on a carried interest or net profits interest basis shall be presumed reasonable only if:

1. With respect to compensation determined on a carried interest basis for sponsors that bear at least 10% of all program costs as defined in subparagraph 3., the sponsor receives as compensation not more than 25% of program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs;

2. With respect to compensation determined on a net profits interest basis for sponsors who bear less than 10% of all program costs as defined in subparagraph 3., the sponsor receives as compensation not more than 15% of the cash actually distributed by the program, plus the same percentage of cash that the sponsor's contributed costs bear to the program's total costs; and

3. For purposes of this subparagraph, "program costs" are defined as all costs incurred by a program, including those costs paid from capital contributions, assessments, borrowings and reinvested revenues, but excluding organizational and offering expenses and management fees where the total of such expenses and fees do not exceed 15% of initial program subscription proceeds.

(2)(c) In addition to the provisions of subsection VI.A.1.(4)(i) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation that includes overriding royalty interests in program wells payable to the sponsor, any affiliate or their respective employees, shall be presumed

reasonable if the total compensation, including the overriding royalties, does not exceed the presumed reasonable percentages permitted by the sponsor compensation provisions in either the NASAA Oil and Gas Program Registration Guidelines or in any alternative provision in s. SEC 3.12(2). However, an overriding royalty interest paid to a geologist employed by or affiliated with the sponsor shall not be included in the computation of sponsor compensation provided that:

1. the percentage of the overriding royalty is not greater than the percentage customarily charged or received by unaffiliated geologists rendering similar services for comparable prospects in arm's-length transactions with unaffiliated parties in the same geographic area; and

2. the program's interest in the prospect that has overriding royalties paid to a geologist employed by or affiliated with the sponsor is subject to no other overriding royalties other than those payable to landowners or sublessors.

ANALYSIS: The amendments in SECTIONS 11 and 12 create in sub. (2) four alternative sponsor compensation provisions in addition to those in the current Guidelines for the Registration of Oil and Gas Programs adopted by the North American Securities Administrators Association, Inc., of which Wisconsin is a member. These amendments that create alternative compensation provisions are necessary to modernize the Guidelines by including several new types of sponsor compensation arrangements that have developed in the industry subsequent to 1979 when the Guidelines were last amended. The new provisions listed

dealing with compensation based on either modified functional allocation of costs, carried interest, net profits interest or overriding royalties, have been developed and applied by the Office of the Commissioner of Securities over the last two years to registration applications submitted by oil and gas programs. The amendments to sub. (1) provide a cross-reference to the alternative provisions created in sub. (2) and make a minor language change.

SECTION 13. SEC 3.18 is created to read:

SEC 3.18 Commodity pool programs. The offer or sale of interests in a limited partnership which will engage in the buying and selling of and trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the Central Securities Administrators Council Statement of Policy on Commodity Pool Programs, adopted January 24, 1978. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: This rule adopts the Commodity Pool Program Registration Policy adopted on January 24, 1978 by the Central Securities Administrators Council, of which Wisconsin is a member. The Policy is being adopted consistent with the statutory directive in sec. 551.63(2), Wis. Stats., which provides that in prescribing rules, the Commissioner may cooperate with the securities administrators of other states with a view to achieving

uniformity in the form and content of registration statements. The Policy provides for uniform treatment in the examination of registration applications for the offer and sale of interests in a limited partnership to engage in the buying and selling of, or trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, by establishing standards and requirements relating to: investor suitability standards; sponsor experience requirements; limits on compensation paid to sponsors and restrictions on reimbursement of expenses; identification of specific conflict of interest prohibitions on transactions between the sponsor, affiliates and the Program; and establishment of minimum disclosure requirements.

SECTION 14. SEC 3.21(2) and (3) are renumbered SEC 3.21(1)(b) and (2), respectively, and current SEC 3.21(1) is renumbered and amended to read:

(1)(a) Copies of the articles of incorporation and by-laws or ~~their substantial~~ equivalents currently in effect, any agreements with or among underwriters, any ~~indenture or~~ ~~other~~ instrument governing the issuance of the security to be registered, ~~and~~ a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture meeting the requirements of s. SEC 3.24, unless the security is a face amount certificate registered under the investment company act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the commissioner for good cause shown; and

ANALYSIS: The principal amendment to sub. 1 of the current rule provides that a trust indenture must be included among the information

and documents required by section SEC 3.21, Wis. Adm. Code, to be submitted with an application for registration by coordination of an offering of debt securities. A trust indenture accords an important investor protection to purchasers of debt securities by providing that if the issuer of the debt securities defaults on the payment of interest or principal on the securities, a bank, trust company or similar financial institution acting as trustee under the indenture that is experienced in financial matters can act on the purchasers' behalf to protect the purchaser's rights and interests. The requirement to furnish a trust indenture is based on the statutory authority of the Commissioner of Securities in sec. 551.27(8), Wis. Stats., to require by rule that securities of designated classes shall be issued under a trust indenture. In a revision to this SECTION made as a result of public comments received to the rule as originally proposed, an exclusion from the trust indenture requirement was inserted relating to face amount certificates registered under the Investment Company Act of 1940. The reason for the exclusion is because a face amount certificate company must comply with specific requirements under the 1940 Act that provide substantially equivalent investor protections to a trust indenture. Those protections include a requirement that sets forth the amount and type of property which is required to be maintained as reserves, and also requires that the property be maintained by a custodian pursuant to a custodianship agreement meeting statutory requirements.

The other amendments to these rules: (1) add a cross-reference to the existing rule provision in section SEC 3.24, Wis. Adm. Code, that imposes minimum requirements on the terms and content of a trust indenture; (2) provide that the requirement to furnish a trust indenture for a particular debt securities offering may be waived by the Commissioner if good cause can be shown by the applicant; and (3) make a non-substantive renumbering of the subsections of SEC 3.21, Wis. Adm. Code.

In a revision to this SECTION as a result of comments by the Rules Clearinghouse of the Wisconsin Legislative Council, the language "note, bond, debenture or other" was added in line 6 of the rule to clarify that the term "evidence of indebtedness" was not the only kind of debt security subject to the trust indenture requirement of the rule. A similar revision was made in SECTION 16.

SECTION 15. SEC 3.22(1)(c) is amended to read:

(c) With respect to persons covered by par. (b), the remuneration paid directly or indirectly during the past 12 months, and estimated to be paid during the next 12 months if materially different, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate; and the name of each such person receiving remuneration in excess of ~~$40,000~~ $50,000, and the amount of remuneration for each;

ANALYSIS: The amendment to this rule is parallel to a recent change by the U.S. Securities and Exchange Commission in its prospectus disclosure requirements. The amendment reflects the effect of inflation on officer and director salaries since the $40,000 remuneration standard was established in 1978 by the Securities and Exchange Commission.

SECTION 16. SEC 3.22(1)(m) is amended to read:

(m) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and ~~by-laws~~ bylaws, or ~~their substantial~~ equivalents, as currently in effect; and ~~a copy of any indenture or other instrument covering the security to be registered~~ if the security to be registered is a note, bond, debenture or other evidence of

indebtedness, a trust indenture meeting the requirements of s. SEC 3.24, unless the security is a face amount certificate registered under the investment company act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the commissioner for good cause shown:

ANALYSIS: This amendment to the informational requirements for applications for registration by qualification parallels the amendment in SECTION 14. The amendment is for the same reasons discussed in the ANALYSIS to that SECTION. An identical revision was made to this SECTION as was made to SECTION 14 and discussed in the ANALYSIS therein following public comments received suggesting an exclusion for face amount certificates.

SECTION 17. SEC 4.01(3) is amended to read:

(3) ~~Each~~ Unless waived under sub. (4), each applicant for an initial license as a broker-dealer or agent is required to pass ~~a written examination prescribed by the commissioner, unless the requirement is waived under sub. (4). The examination shall relate to ch. 551, Stats., the rules of the commissioner thereunder, the applicable federal securities laws and the rules of the U.S. securities and exchange commission thereunder, general matters concerning the securities business, and such other matters as the commissioner may determine~~ the Uniform Securities Agent State Law Examination of the North American Securities Administrators Association, Inc. and, in addition, pass either the Representative Qualification Examination of the National Association of Securities Dealers, Inc., that relates to the applicant's securities activities or the

Securities Exchange Commission Organization/National Association of Securities Dealers, Inc. Non-Member General Securities Examination. The commissioner may ~~prescribe different examinations for different classes of applicants, and may~~ require an applicant to retake and successfully pass ~~the~~ any examination, in whole or in part, if:

(a) the applicant has not passed the written examination prescribed by the commissioner within two years prior to the date the application for license is filed; or

(b) the applicant has not passed the written examination prescribed by the commissioner and, within 2 years prior to the date the application is filed, has not been licensed or registered as an agent or broker-dealer under the securities law of another state.

ANALYSIS: These amendments clarify the current examination requirement of this rule by specifying which examinations must be taken by broker-dealer or agent license applicants. The Commissioner will repeal the designation of any examination that is altered in the future where the examination will no longer provide substantially equivalent evidenace of knowledge of the securities business as would be accorded by passing the standard Wisconsin securities agent examination.

SECTION 18. SEC 4.01(4)(a) is repealed and SEC 4.01(4)(b), (c) and (d) are renumbered SEC 4.01(4)(a), (b) and (c), respectively.

ANALYSIS: This amendment repeals par. (a) of SEC 4.01(4), Wis. Adm. Code. That paragraph is redundant because of the amendments in SECTION 17 designating the examinations that are required.

SECTION 19. SEC 4.01(5) is amended to read:

(5) Prior to issuance of a license as a broker-dealer, at least one employe ~~of~~ located at the principal office of the broker-dealer ~~must~~ shall be designated in the license application to act in a supervisory capacity and be licensed as an agent for the broker-dealer, and ~~must~~ shall pass ~~a written supervisory examination prescribed by the commissioner or a comparable supervisory examination~~ the Uniform Securities Agent State Law Examination of the North American Securities Administrators Association, Inc. and, in addition, shall pass either the Principal Qualification Examination of the National Association of Securities Dealers, Inc. ~~or a national securities exchange~~ that relates to the broker-dealer's securities activities or pass, with a grade of at least 80%, the Securities Exchange Commission Organization/ National Association of Securities Dealers, Inc. Non-Member General Securities Examination, unless the examination requirement is waived pursuant to s. SEC 4.01(4).

ANALYSIS: These amendments accomplish the following: (1) clarify the current examination requirement of this rule by specifying which examinations must be taken by the employe of the broker-dealer that will be supervising the firm's Wisconsin activities; and (2) establish a requirement that the person designated by a broker-dealer to supervise its Wisconsin activities must be located at the firm's principal office because that office contains the firm's primary records relating to customers and transactions. Additionally, the person who has supervisory capacity will be able to more easily communicate with members of the firm's management.

SECTION 20. SEC 4.01(6) is amended to read:

(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially

received may be deemed materially incomplete, and the commissioner may issue an order denying the license. ~~For purposes of s. 551.34(1)(a), Stats., and this subsection, "application" means any request for a license.~~

ANALYSIS: This amendment removes unnecessary and possibly misleading language. The deletion repeals language that created an inaccurate inference that there can be an oral application for a broker-dealer or agent license. Sections SEC 4.01(1) and (2), Wis. Adm. Code, relating to submitting an application for a securities broker-dealer or agent license in Wisconsin require that the applications be on the written forms prescribed in section SEC 9.01(1), Wis. Adm. Code.

SECTION 21. SEC 4.02(1) is amended to read:

SEC 4.02 Net capital requirements and aggregate indebtedness limitations. (1) Every broker-dealer shall maintain net capital in such minimum amounts as are prescribed for its activities under 240.15c3-1, Title 17 CFR, rule 15c3-1 of the securities exchange act of 1934, ~~or in the amount of $10,000, whichever is greater~~.

ANALYSIS: Consistent with the provisions of secs. 551.63(2) and 551.67, Wis. Stats., to achieve maximum uniformity with the U.S. Securities and Exchange Commission and to coordinate the interpretation and administration of Chapter 551, Wis. Stats., with related federal regulation, the minimum $10,000 Wisconsin alternative to the net capital test in this rule is deleted. This amendment makes the Wisconsin net capital requirement consistent with the net capital requirement under federal regulations.

SECTION 22. SEC 4.03(1)(s) is repealed.

ANALYSIS: This rule established certain recordkeeping requirements and is repealed

because the experience of the Office of the Commissioner of Securities in conducting broker-dealer field examinations demonstrates that these records are not necessary to protect public investors.

SECTION 23. SEC 4.03(2) is amended to read:

(2) Every licensed broker-dealer shall preserve for ~~a period of not less than~~ at least 6 years, the first 2 years in an easily accessible place, all records required under sub. (1), except that records required under sub. (1)(k), (l) and (m) shall be preserved by the broker-dealer for ~~a period of not less than~~ at least 6 years after the closing of the account; and records required under sub. (1)(o) shall be preserved by the broker-dealer for ~~a period of not less than~~ at least 6 years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for 1 year as required under this subsection, a microfilm copy thereof may be substituted for the remainder of the required period. Compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records is deemed compliance with this subsection.

ANALYSIS: This amendment incorporates one of several comments submitted by the Securities Industry Association in response to the invitation in the March, 1982 Wisconsin Securities Bulletin requesting suggestions for revisions to Rules of the Commissioner of Securities from the industry, practitioners and the public. The amendment clarifies that compliance with the requirements of the U.S. Securities and Exchange Commission regarding microfilming (including Securities and Exchange Act Rule 17a-4(f) allowing immediate

microfilming of certain records) will constitute compliance with the requirement in the current rule.

SECTION 24. SEC 4.03(3)(a) is amended to read:

(a) Copies of the records described in sub. (1)(f), (h), (i), (j), (k), and (p) ~~and (r)~~;

ANALYSIS: This amendment repeals the private placement offeree register (as cross-referenced from sub. (1)(r)) from the list of records required to be retained by branch offices. The repeal is warranted because the experience of the Office of the Commissioner of Securities in conducting broker-dealer field examinations demonstrates that these records are not necessary to protect public investors because broker-dealers control the distribution of offering circulars used in private placement transactions from their principal place of business and keep an offeree register in their home office.

SECTION 25. SEC 4.03(3)(e) is amended to read:

(e) Branch offices of broker-dealers engaged solely in the offer and sale of ~~redeemable securities of investment companies~~ either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or the securities of direct participation program issuers, or both, shall ~~be deemed in compliance with this subsection, if they~~ prepare and keep current copies of those records described in subs. (1)(f), ~~(h)~~, (i), (j), (k), ~~(p)~~ and (3)(c).

ANALYSIS: The amendments to this rule accomplish the following: (1) Add language to extend the limited-branch-office-records provisions to branch offices of broker-dealers that engage solely in the offer and

sale of the securities of direct participation program issuers. The experience of the Office of the Commissioner of Securities in conducting its broker-dealer field examination program disclosed that based on the manner in which direct participation program broker-dealers conduct their business, no useful investor protection purpose is served by subjecting direct participation broker-dealers to the same record-keeping provisions that are applicable to branch offices of full-service broker-dealers. (2) Add language to clarify that the rule can be used by branch offices of broker-dealers that engage in either mutual fund sales exclusively, direct participation programs exclusively, or a combination of both. (3) Delete two records cross-referenced from SEC 4.03(1), Wis. Adm. Code, from the list of records required to be kept under the rule. Retention of these records, relating to transaction confirmations and advertising, is unnecessary based on the experience of the Office of the Commissioner of Securities in conducting its broker-dealer field examination program.

In a revision to the SECTION as a result of comments received to the initial rule revision draft, new language is added to extend the exclusionary language of the rule to broker-dealers engaged in the offer or sale of securities registered under the Investment Company Act of 1940 by any of the designated entities. Because face amount certificates and unit investment trust securities (although not technically "redeemable securities") are regulated and distributed in much the same way as mutual fund shares, it does not appear necessary for the protection of the investing public to subject face-amount certificate and unit investment trust broker-dealers or branch offices or agents to greater record-keeping requirements than those applicable to branch offices or agents of broker-dealers engaged solely in mutual fund distribution.

SECTION 26. SEC 4.05(6)(b) is repealed.

ANALYSIS: As a result of a Rules Clearinghouse comment, the repeal of this rule is done in a separate SECTION from the action taken with respect to the corresponding rule in SECTION 27. See the ANALYSIS to SECTION 27 for an explanation of the substantive changes to this rule and its counterpart.

SECTION 27. SEC 4.05(6) (Intro.) and (a) are renumbered SEC 4.035(1) and (2) and amended to read:

SEC 4.035 Securities agent records. (1) Every licensed ~~broker-dealer~~ agent, except an agent who accepts only unsolicited orders for a discount brokerage firm, or an agent for a broker-dealer engaged solely in the offer and sale of ~~redeemable-securities-of-investment-companies~~ either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or interests in direct participation programs, shall ~~require-each-of-its-licensed agents-to-have-and-keep-current,-and-each-agent-shall~~ have and keep current, the records in ~~pars.-(a)-and-(b)~~ sub. (2) of this ~~subsection~~ section relating to customer securities transactions~~,-which~~ . The record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the commissioner. Although the originals of ~~such~~ the records are considered records of the broker-dealer, a broker-dealer shall within 15 days following receipt of a written request provide photocopies of the agent's customer records as may be requested by an agent

within 30 days from the date of termination of his or her employment with the broker-dealer.

~~(a)~~ (2) A securities holding record for each customer including the customer's name, address, telephone number, age, occupation, investment objectives and a chronological listing of the names and amount of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price;

ANALYSIS: The amendments in SECTIONS 26 and 27 implement authority granted to the Commissioner of Securities in sec. 551.33(1), Wis. Stats., to prescribe record-keeping rules applicable to securities agents. The amendments accomplish the following: (1) Transfer the current record-keeping requirement for agents from a subsection of the broker-dealer Rules of Conduct section of SEC 4.05, Wis. Adm. Code, to a new, separate section SEC 4.035 entitled Securities Agents Records; (2) Add to the exclusionary language in the current rule agents for "discount" broker-dealers and agents for broker-dealers who solely market interests in direct participation programs. Excluding agents of such broker-dealers from the record-keeping requirements is appropriate because of the restricted nature of their employer's securities activities, following the same example established in the current rule which excludes agents for broker-dealers engaged solely in the marketing of investment company securities; (3) Delete security cross-index records from the records required under the current rule to be kept by agents. The experience of the Office of the Commissioner of Securities in conducting its field examination program demonstrates that these records are not necessary in order to regulate broker-dealers and agents.

As a result of public comments received, an identical revision (adding face-amount certificate companies and unit investment trusts in lines 6 and 7 of the rule) is made

to sub. (1) in SECTION 27 as was made in SECTION 25 to SEC 4.03(3)(e), Wis. Adm. Code, and for the same reasons specified in the ANALYSIS to that SECTION.

SECTION 28. SEC 4.04(1) is amended to read:

SEC 4.04 Reporting requirements. (1) ~~Each~~ (a) Except as provided in par. (b), each broker-dealer shall file annually with the commissioner a copy of its annual financial statement filed with the U.S. securities and exchange commission as required under and at the times specified in rule 17a-5 under the securities exchange act of 1934. Broker-dealers required to furnish their customers with an audited financial statement in accordance with rule 17a-5 under the securities exchange act of 1934 may satisfy the reporting requirement of this subsection by filing with the commissioner a copy of that audited financial statement. If, in the annual audit report, the independent accountant commented on any material inadequacies in accordance with rules 17a-5 and 17a-11 under the securities exchange act of 1934, a copy of the comments shall accompany the financial statement filed with the commissioner.

ANALYSIS: As a result of a Rules Clearinghouse comment, the renumbering and amending of this rule is done in a separate SECTION from the action taken with respect to the corresponding rule in SECTION 29. See the ANALYSIS to SECTION 29 for an explanation of the substantive changes to this rule and its counterpart.

SECTION 29. SEC 4.04(1)(b) is created to read:

(b) The deadline established under par. (a) for a broker-dealer to file its annual financial statement shall

be extended for an additional 30 days upon the broker-dealer filing with the commissioner before the deadline date, a written request for an additional 30 days to file its annual financial statement.

ANALYSIS: The revisions in SECTIONS 28 and 29 provide for a 30 day extension of the filing deadline for annual financial statements of a broker-dealer if the request for extension is filed with the commissioner prior to the deadline date. This extension provision is adopted because a number of broker-dealer firms every year are unable to meet the deadline established under current par. (1). However, because the experience of the staff of the Office of the Commissioner of Securities is that virtually all of those broker-dealers are able to file within a 30 day extension period, the amendments would eliminate a substantial amount of following-up by the staff of this office regarding this reporting deadline.

SECTION 30. SEC 4.04(7) is amended to read:

(7) Each broker-dealer shall give immediate ~~telegraphic or~~ written notice to the commissioner of the theft or ~~mysterious~~ disappearance of any ~~significant amount of~~ Wisconsin customers' securities or funds ~~from any office in this state~~ that are in the custody or control of any of its offices, whether within or outside this state, stating all material facts known to it concerning the theft or disappearance.

ANALYSIS: This rule expands the reporting requirement for theft or disappearance of customer funds and securities by requiring broker-dealer to report to the Commissioner of Securities thefts or disappearances of Wisconsin customers' funds or securities which were within the custody or control of the broker-dealer. The amendment is necessary in order to provide that prompt information be submitted to enable the staff to take appropriate action whenever a Wisconsin

customer of a broker-dealer suffers the theft/disappearance of funds or securities from their account. The word "telegraphic" in the first line is deleted as redundant. The language "significant amount of" in line 3 is deleted because it is meaningless unless the term "significant" is defined.

In a revision to this SECTION as a result of a comment by the Rules Clearinghouse of the Wisconsin Legislative Council, language was added to clarify that the reference to "its" in the rule extends to cover offices outside of Wisconsin as well as in Wisconsin.

SECTION 31. SEC 4.05(7) and (8) are renumbered SEC 4.05(6) and (7), respectively, and as renumbered, SEC 4.05(6) is amended to read:

(6) Every licensed broker-dealer must employ at its principal office at least one person designated to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01(5), ~~Wis. Adm. Code,~~ provided that if a licensed broker-dealer is not in compliance with the requirements of this paragraph, it has 90 days from the first date of noncompliance to meet the requirements of this paragraph.

ANALYSIS: This amendment parallels an amendment in SECTION 19 and requires that the person designated by a broker-dealer to supervise its Wisconsin activities must be located at the firm's principal office because that office contains the firm's primary records relating to customers and transactions. Additionally, the person who has supervisory capacity will be able to more easily communicate with members of the firm's management.

SECTION 32. SEC 4.06(1)(h) is amended to read:

(h) Executing any transaction in a margin account without obtaining from its customer a written margin agreement ~~prior-to-settlement-date-for~~ not later than 15 calendar days after the initial transaction in the account;

ANALYSIS: This amendment incorporates a suggestion submitted by the Securities Industry Association. However, as a result of public comments received, the time period within which the margin agreement must be obtained is changed to 15 days from the 30-day period that the comment draft of the rule initially proposed. The amendment changes the time period for a broker-dealer to obtain a customer's written margin agreement from the settlement date for the initial transaction (as provided in the current rule) to 15 calendar days after the initial transaction. The 15-day period was determined to be more appropriate because it corresponds to the National Association of Securities Dealers, Inc. Rule of Fair Practice, Appendix E, sec. 16(d), which requires a broker-dealer who establishes an options trading account (another type of high-risk investment account) to obtain a written options agreement from the customer within 15 days after the account has been approved for options trading, whether or not an options transaction has yet been effected. As was pointed out in several examples contained in correspondence from the Securities Industry Association, the additional time is necessary because the current rule may adversely affect customers by forcing broker-dealers to protect themselves by refusing margin transactions with a customer while awaiting receipt of a written margin agreement from the customer.

SECTION 33. SEC 4.06(2)(h) is renumbered SEC 4.06(2)(i), and a new SEC 4.06(2)(h) is created to read:

(h) Misrepresenting the services of a licensed investment adviser on whose behalf the agent is soliciting business or accounts.

ANALYSIS: This rule creates a prohibited business practice for a licensed agent to misrepresent the services of a licensed investment adviser on whose behalf the agent is soliciting business. The amendment is necessary to provide the commissioner with a specific basis to initiate an action against any licensed securities agent who misleads a customer concerning the services of an investment adviser. The rule is appropriate because: (1) under current Securities and Exchange Commission rules, agents of broker-dealers may solicit accounts on behalf of investment advisers and receive a "finders fee" for such solicitations; (2) the experience of the Office of the Commissioner of Securities in conducting its field examination program demonstrates that a substantial number of agents are currently soliciting accounts for investment advisers and receiving a fee; and (3) a substantial number of licensed agents for securities broker-dealers have applied to become qualified as investment adviser representatives under the Wisconsin Uniform Securities Law to engage in such activities.

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

SEC 4.07 License period. (1) The license of any broker-dealer whose name commences with any of the letters A through D expires March 31 following the date of issuance of the license; the license of any broker-dealer whose name commences with any of the letters E through I expires June 30 following the date of issuance of the license; the license of any broker-dealer whose name commences with any of the letters J

through O expires September 30 following the date of issuance of the license; and the license of any broker-dealer whose name commences with any of the letters P through Z expires December 31 following the date of issuance of the license. The license of an agent expires on the same day as that of the broker-dealer which the agent represents, except that the expiration date of any agent's license that is issued within 30 days of the expiration date of the license for the agent's employer is automatically extended to the next expiration date of the employer's license. The license of an agent representing an issuer expires on July 31 following the date of the issuance of the license, or upon the termination of the offering for which the agent was licensed, whichever first occurs. The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

ANALYSIS: This amendment corrects a problem identified by the Office of the Commissioner of Securities and will make the broker-dealer license renewal process less complicated and more efficient. The problem occurs when a broker-dealer that has a pending application for renewal of its license hires a new securities agent and the agent's license becomes effective during the 30 day renewal period. The current rule requires the broker-dealer to submit supplementary information relating to its new employee. However, submission of this material is often overlooked in broker-dealer renewal applications, and it makes the renewal process unduly complicated and time-consuming.

SECTION 35. SEC 4.08(2) is amended to read:

(2) An application for withdrawal from the status of a

licensed agent shall be filed by the broker-dealer or issuer which the agent represents within ~~10~~ 15 days of the termination of the agent's employment on Form U-5 prescribed by the commissioner.

ANALYSIS: This amendment adds an additional 5 days to the current 10 day period within which a broker-dealer must submit an agent's withdrawal application. The additional 5 day period is necessary because materials submitted through the U.S. Postal Service often do not reach of Office of the Commissioner of Securities within the current 10 day deadline.

SECTION 36. SEC 5.01(3) is amended to read:

(3) ~~Each~~ Unless waived under sub. (4), each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative is required to pass ~~a-written-examination-prescribed-by-the commissioner,-unless-the-requirement-is-waived-under-sub. (4).--The-examination-shall-relate-to-ch.-551,-Stats.,-the rules-of-the-commissioner-thereunder,-the-applicable-federal securities-laws-and-the-rules-of-the-U.S.-securities-and exchange-commission-thereunder,-general-matters-concerning the-securities-business,-and-such-other-matters-as-the commissioner-may-determine~~ the Wisconsin Investment Adviser Representative Examination. The commissioner may ~~prescribe different-examinations-for-different-classes-of-applicants~~ require an applicant to retake and successfully pass the examination, in whole or in part, if:

(a) the applicant has not passed the written examination prescribed by the commissioner within two years prior to the

date the application for license is filed; or

(b) the applicant has not passed the written examination prescribed by the commissioner and, within 2 years prior to the date the application is filed, has not been licensed or registered as an investment adviser or investment adviser representative under the securities law of another state.

ANALYSIS: The amendments to this rule accomplish the following: (1) clarify the examination requirement (in the same manner as was done in SECTION 17) by specifying which examination must be taken by investment adviser and investment adviser representative applicants; (2) add a provision paralleling language in current section SEC 4.01(3), Wis. Adm. Code, that allows the Commissioner of Securities to require an applicant to retake and pass the examination if more than two years has elapsed since the applicant has passed the required examination. The requirement to retake and successfully pass the examination does not apply if the applicant qualified under any of the waiver-of-examination provisions of section SEC 5.01(4), Wis. Adm. Code.

SECTION 37. SEC 5.01(4) is amended to read:

(4) The commissioner may waive, in whole or in part, the examination requirement for:

(a) Any applicant ~~insofar as the examination relates to general matters concerning the securities business, upon receipt of evidence of satisfactory completion of a comparable examination;~~ who has successfully completed one or more of the following:

1. One or more parts of the Chartered Financial Analysts' Examination;

2. the Chartered Investment Counselor Examination;

3. the National Association of Securities Dealers, Inc. Series 1, 6 or 7 Examinations;

4. the Securities Exchange Commission Organization/ National Association of Securities Dealers, Inc. Non-Member General Securities Examination; or

5. the New York Stock Exchange Test Series 5;

(b) Any applicant for qualification as an investment adviser representative, if an undertaking satisfactory to the commissioner is submitted setting forth how the ~~agent~~ investment adviser representative will be adequately supervised, and the qualification of the representative is appropriately limited;

(c) Any applicant who, within 2 years prior to the date the application is filed, has been licensed as an investment adviser or qualified as an investment adviser representative under ch. 551, Stats.; ~~or~~

(d) Any applicant who has been employed as a portfolio manager or securities analyst in the banking, insurance or securities industry for three years preceding the filing of the application for license or qualification; or

(e) Any person by order of the commissioner under such conditions as the commissioner may prescribe.

ANALYSIS: These amendments accomplish the following: (1) designate in par. (a) the examinations that will provide a waiver; (2) amend par. (c) to provide that the two year provision applies only where the applicant was licensed as an investment adviser or investment adviser representative; (3) create a new waiver provision in par. (d) for any person employed as a portfolio manager or

securities analyst in the banking, insurance or securities industries for the three years preceding the filing of the license application. This new waiver provision is adopted because three years of employment experience in the designated positions and fields are deemed an appropriate substitute for an examination for investment adviser licensing purposes. The Commissioner will repeal the designation of any examination that is altered in the future where the examination will no longer provide substantially equivalent evidence of knowledge of the securities business as would be accorded by passing the standard Wisconsin securities agents examination.

SECTION 38. SEC 5.01(5) is amended to read:

(5) Prior to issuance of a license as an investment adviser, at least one employe ~~of~~ located at the principal office of the investment adviser must be designated in the license application to act in a supervisory capacity and be qualified as an investment adviser representative for the investment adviser, and must pass ~~a written supervisory examination prescribed by the commissioner~~ the Wisconsin Investment Adviser Representative Examination unless the examination is waived under sub. (4).

ANALYSIS: These amendments parallel changes made to the companion broker-dealer rule in SECTION 19 and accomplish the following: (1) clarify the current examination requirement of this rule by specifying which examination must be taken by the employe of the investment adviser who will be supervising the firm's Wisconsin activities; and (2) establish a requirement that the person designated by an investment adviser to supervise its Wisconsin activities must be located at the firm's principal office because that office contains the firm's primary records relating to customers and transactions. Additionally, the person who has supervisory responsibility will be able to more easily communicate with members of the firm's management.

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

SEC 5.04 Reporting requirements. (1) ~~Each~~ (a) Except

as provided in par. (b), each investment adviser shall file annually with the commissioner, within 60 days after the end of its fiscal year, a copy of its ~~annual financial statements~~ balance sheet with accompanying notes in the form prescribed in s. SEC 7.06, including supporting schedules.

ANALYSIS: As a result of a Rules Clearinghouse comment, the renumbering and amending of this rule is done in a separate SECTION from the action taken with respect to the corresponding rule in SECTION 40. See the ANALYSIS to SECTION 40 for an explanation of the substantive changes to this rule and its counterpart.

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

(b) The deadline established under par. (a) for an investment adviser to file its annual balance sheet with the commissioner shall be extended for an additional 30 days upon the investment adviser filing with the commissioner before the deadline date a written request for an additional 30 days within which to file its annual balance sheet.

ANALYSIS: The amendments to the annual financial statement reporting requirement for investment advisers in SECTIONS 39 and 40 parallel the amendments to the companion broker-dealer rule in SECTION 29. The amendments are necessary and appropriate for the same reasons discussed in the ANALYSIS to that SECTION. In an amendment made as a result of public comments received, sub. (a) and (b) were changed to require that only balance sheet information need be filed with the Commissioner, rather than an entire set of financial statements for the investment adviser. The reason for the change is because the Wisconsin minimum net capital requirement can be verified by balance sheet information and does not require income statement data or other financial statement information.

SECTION 41. SEC 5.05(7) is amended to read:

(7) Every licensed investment adviser must employ at its principal office at least one person designated to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. SEC 5.01(5)~~, Wis. Adm. Code~~; provided that if a licensed investment adviser is not in compliance with the requirements of this paragraph, it has 90 days from the first date of noncompliance to meet the requirements of this paragraph.

ANALYSIS: This amendment to the Rule of Conduct provision applicable to investment advisers parallels the amendment to the companion broker-dealer rule in SECTION 31. The amendment is necessary and appropriate for the same reasons discussed in the ANALYSIS to that SECTION.

SECTION 42. SEC 5.08(2) is amended to read:

(2) An application for withdrawal from the status of a qualified investment adviser representative shall be filed by the investment adviser which the person represents within ~~10~~ 15 days of the termination of the representative's employment on Form IARepW prescribed by the commissioner.

ANALYSIS: This amendment to the license withdrawal provision applicable to investment advisers parallels the amendment to the companion broker-dealer rule in SECTION 35. The amendment is necessary and appropriate for the same reasons discussed in the ANALYSIS to that SECTION.

SECTION 43. SEC 7.01(7) is repealed and SEC 7.01(8) is renumbered SEC 7.01(7).

ANALYSIS: This SECTION that repeals SEC 7.01(7) is promulgated in lieu of the amendment to SEC 7.01(7) proposed in the original Comment Draft of the Rule Revision (which amendment proposed to increase the fee for retrieval of a file from State Records Center). The repeal is necessary because of the recent enactment of Chapter 335 of the Laws of 1981 that prohibits state agencies from charging a fee for retrieval of public records from storage.

SECTION 44. SEC 7.01(1)(c), (2)(a) and (e), (3)(b) and (5)(b) are amended to read:

(1)(c) Field examination pursuant to s. 551.27(5), Stats. of an application for registration under s. 551.26, Stats.....~~$50~~ $75 per day per examiner.

(2)(a) Application for exemption from registration by order under ss. 551.22(17), 551.23(11) or (18), Stats.....~~$100~~ $200.

(2)(e) Notice filed under s. 551.22(8), Stats., or under s. 551.23(3), (10), (11) or (15), Stats., or under s. SEC 6.05~~, Wis. Adm. Code~~ .....~~$100~~ $150.

(3)(b) Application for order waiving a licensing provision.....~~$100~~ $150.

(5)(b) Issuance of an interpretive opinion under s. 551.64(5), Stats.....~~$100~~ $200.

ANALYSIS: The amendments in this Section increasing certain fees are necessary to: (1) give recognition to the fact that the fees being increased relate to the examinations for those matters which require more extensive staff time and effort than the fees not being revised; and to (2) reflect the effects of inflation as well as increased office costs and expenses in conducting examinations of those specified registration, exemption and licensing matters in the several years since those fees were last revised. The amendment to section SEC 7.01(1)(c), Wis. Adm. Code, that increases from $50 to $75 the per diem fee for field examination by a staff member in connection with review of an application for registration by qualification makes the fee under this paragraph consistent with the per diem fee established in rule section SEC 7.01(3)(d), Wis. Adm. Code, for field examinations by the Office of the Commissioner of Securities in connection with licensing matters.

SECTION 45. SEC 32.02 is amended to read:

SEC 32.02 Periodic reports for exempt franchisors. Franchisors, or their agents, or representatives offering to sell or selling franchises in this state under s. 553.22, Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years a copy of their ~~annual report and audited certified financial statements or unaudited financial statements prepared by a certified public accountant if the requirement for submission of audited financial statements has been waived by the commissioner under s. SEC 35.05(1)(b)2., Wis. Adm. Code.~~ current offering circular prepared in the form required by s. SEC 32.06, Wis. Adm. Code, or disclosure document prepared in the form required by 16 CFR Part 436, the Federal Trade

Commission's disclosure requirements and prohibitions concerning franchising and business opportunity ventures. All periodic reports shall be signed by an officer or general partner of the franchisor in the manner prescribed by s. SEC 32.11.

ANALYSIS: The amendments to this rule do the following: (1) delete for clarification purposes the undefined term "annual report" as the "periodic report" required to be filed under the rule and replace it with specific language which provides that either the franchisor's current offering circular or Federal Trade Commission disclosure document can be utilized as the periodic report; (2) delete as unnecessary the specific references to "financial statements" because financial statements of the franchisor are automatically included in the franchisor's current offering circular or FTC disclosure document; and (3) adds in the last sentence a requirement that the periodic report submitted under the rule must be signed by an officer or general partner of the franchisor, paralleling an identical requirement under s. 32.11, Wis. Adm. Code, for registration applications, amendments and renewals submitted to the Office of the Commissioner of Securities.

SECTION 46. SEC 35.01(3) and (4) are created to read:

(3) Certification of any document or entry under s. 553.75(4), Stats.,.....$20 plus $1 per page.

(4) Photocopying fee.....$.25 per page for the first 10 pages and $.10 per page for any additional pages.

ANALYSIS: These new rules establish fees for certain services relating to matters under the Wisconsin Franchise Investment Law. The fees correspond to identical fees for similar services established in SEC 7.01, Wis. Adm.

Code, relating to matters under the Wisconsin Uniform Securities Law. Due to the recent enactment of Chapter 335 of the Laws of 1981 that acts to preclude state agencies from charging a fee for retrieval of files from the State Records Center, a subsection which provided for such a fee that had been in the original Comment Draft of the Rule Revision has been deleted. Also see the ANALYSIS to SECTION 45 where a similar deletion was made of the file retrieval fee.

SECTION 47. SEC 36.01 is amended to read:

SEC 36.01 Administrative procedure. ~~All~~ Chapter SEC 8 shall be applicable to all hearings, proceedings, applications and filings under ch. 553, Stats.~~, shall follow the procedures prescribed in ch. SEC 8, Wis. Adm. Code.~~

ANALYSIS: The amendment, which incorporates by reference Chapter SEC 8, Wis. Adm. Code, will ensure that the administrative procedures used in all proceedings and filings under the Wisconsin Franchise Investment Law will parallel and be consistent with the administrative procedures already established in Chapter SEC 8, Wis. Adm. Code, for all matters and proceedings under the Wisconsin Uniform Securities Law.

* * * * *

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

Dated this 22nd day of November, 1982.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities

WISCONSIN LEGISLATIVE COUNCIL

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BONNIE REESE
EXECUTIVE SECRETARY

September 3, 1982

CLEARINGHOUSE RULE 82-157

COMMENTS

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council, dated April 1982.]

1. Statutory Authority

Section 553.22, Stats., is cited as authority for rule-making. However, there is no reference in that section to rule-making by the commissioner.

2. Form, Style and Placement in Administrative Code

a. An introductory clause should be included with the rule that enumerates the sections treated by the proposed rule and the nature of the treatment. [See s. 1.02 (1), Manual.]

b. In several instances, the proposed rule utilizes extensive subdivisions, as in proposed s. SEC 2.02 (10) (e). The agency may wish to review the entire rule to avoid the use of unnecessary subdivisions. [See s. 1.03, Manual.]

c. Acronyms such as "SECO" and "NASO" should either be avoided or clearly identified in the text of the rule. [See s. 1.01 (8), Manual.]

d. It is not clear from the proposed rule or the material submitted by the agency whether the material included in the "Comment" sections will be part of the final rule when it is published in the Wisconsin Administrative Code. This should be clarified. If it is to be included, "Note" should be used. If it is not to be included, "Analysis" should be used.

Report on
Clearinghouse Rule No. 82-157
Date 9/3/82

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Pursuant to s. 227.029, Stats.)

1. REVIEW OF STATUTORY AUTHORITY [s. 227.029 (2) (a)]

   a. Rules appear to be within the agency's statutory authority ☒

   b. Rules appear to be unsupported by statutory authority, either in whole or in part ☐

   c. Comment attached ☒ yes ☐ no

2. REVIEW OF RULES FOR FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.029 (2) (c)]

   a. Rules satisfactory ☐

   b. Rules unsatisfactory ☒

   c. Comment attached ☒ yes ☐ no

3. REVIEW OF RULES FOR CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.029 (2) (d)]

   a. Conflict or duplication not noted ☒

   b. Conflict or duplication noted ☐

   c. Comment attached ☐ yes ☒ no

4. REVIEW OF RULES FOR ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.029 (2) (e)]

   a. References appear to be adequate ☒

   b. References appear to be inadequate ☐

   c. Comment attached ☒ yes ☐ no

5. REVIEW OF LANGUAGE OF RULES FOR CLARITY, GRAMMAR, PUNCTUATION AND PLAINNESS [s. 227.029 (2) (f)]

   a. Rules satisfactory ☐

   b. Rules unsatisfactory ☒

   c. Comment attached ☒ yes ☐ no

6. REVIEW OF RULES FOR POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.029 (2) (g)]

   a. No problems noted ☒

   b. Problems noted ☐

   c. Comment attached ☐ yes ☒ no

WLCS
BR:ws;mek
1/4/82

WISCONSIN LEGISLATIVE COUNCIL

LCRC FORM 2

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CLEARINGHOUSE REPORT
TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.029, STATS., AS CREATED BY CH. 34, LAWS OF 1979. 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 82-157

AN ORDER to amend and revise chs. SEC 3, 4, 5, 7, 32, 35 and 36 and to make diverse other changes in the rules of the office of the commissioner of securities, relating to the operation of ch. 551, Stats., the Wisconsin uniform securities law, and ch. 553, Stats., the Wisconsin franchise investment law, with respect to registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fees and administrative procedure.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

8- 9-82. Received by Legislative Council.
9- 3-82. Report sent to Agency.

RNS:RW:las;kjh

e. There are several instances in the proposed and existing rules where, for example, sections and subsections do not "track" properly. For instance, s. SEC 4.03 (3) (e) is not a listing of records, but appears to be an exception to the section created for branch offices of certain broker-dealers. Any paragraph in s. SEC 4.03 (3) should logically follow from the introduction in that subsection. [See, also s. SEC 2.02 (10) (e) 2. f. and (i) 3.]

f. "By-laws" in s. SEC 2.02 (3) (a) should be shown as one word.

g. Several drafting errors occur in current language which is being amended by this rule. It is suggested that the agency use this rule to correct those errors. Examples of errors include:

(1) The use of parentheses in s. SEC 2.01 (7) (d). [See s. 1.01 (6), Manual.]

(2) The use of "Wis. Adm. Code" after a citation to a rule section. [See the NOTE on page 12 of the Manual.]

Additionally, "Wis. Adm. Code" and parentheses should not be used in those provisions which are created by this rule.

h. The rule improperly cites federal statutes and regulations. [See ss. SEC 2.02 (10) (e) (intro.) and 4.02 (1) for examples.] References to statutes should be to the U.S. code. References to regulations should be to the code of federal regulations. [See s. 1.07 (3), Manual.]

i. In several places, the rule is unnecessarily wordy. On page 5, line 9, "further" should be deleted. On page 5, lines 17 and 18, "of subpar. a. through e." should be deleted. On page 33, in three places, "at least" should be substituted for "a period of not less than."

j. It is inappropriate drafting style to create an entire paragraph by amending and underscoring. It is also inappropriate to repeal an entire paragraph by amending and striking-through. For example, SECTION 11 of the rule should be two SECTIONS which begin as follows:

SECTION 11. SEC 3.03 (4) is renumbered SEC 3.03 (4) (a) and amended to read:

SECTION 12. SEC 3.03 (4) (b) is created to read:

k. In several places in the rule, two actions are inappropriately taken in the same SECTION. For example, SECTION 12 should be divided into

two SECTIONS - one which renumbers and amends s. SEC 3.12 and one which creates s. SEC 3.12 (2).

l. On page 38, line 14, "(1)" should be deleted. [See s. 1.07 (2), Manual.]

m. The words "Section" and "of the Wis. Adm. Code" should be deleted from the clause which begins each SECTION.

n. The action taken in SECTION 27 is out of order in the rule. It should be placed between SECTIONS 29 and 30. [See s. 1.04 (1), Manual.]

o. In s. SEC 3.12 (2) (c), "1." and "2." should be substituted for "(i)" and "(ii)."

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

If any provisions of the rule will require a new or revised form, a reference to that form should be included in a NOTE to the provision of the rule. [See s. 1.09 (2), Manual and s. 227.024 (1) (f), Stats.]

5. Clarity, Grammar, Punctuation and Plainness

a. For purposes of clarity, the agency may wish to place the provision relating to calculation of floating rate interest in a separate section. Also, it is not clear what the phrase "giving effect to interest rates in the marketplace..." is intended to mean.

b. The intended scope of the exemption created in proposed s. SEC 2.02 (10) (e) is not clear. In particular, the reference to the federal rules "as discussed" in a securities and exchange commission release lacks clarity.

c. Are the "conditions and limitations" included in proposed s. SEC 2.02 (10) (e) meant to be an exclusive listing, or merely examples?

d. Section SEC 2.02 (10) (e) 3. gives the commissioner of securities the authority to "withdraw, deny or revoke the exemption within 10 days." Does this provision mean that the action must be taken within 10 days of the granting of an exemption or within 10 days of receiving notice from the issuer? This should be clarified.

e. The frequent use of double negative statements in the proposed rule makes it difficult to understand the provisions. For example, s. SEC 2.02 (10) (i) allows the commissioner to find the issuance of an order inappropriate for the protection of investors unless certain conditions are met. This provision could be stated in the positive (i.e., "...may

find the issuance of an order appropriate if:"). [See, also s. SEC 3.02 (1) (a).]

f. Section SEC 3.02 (1) (a) purports to specify minimum prices for stocks but requires that the price does not exceed, for example, the "composite price-earnings ratio of the Standard and Poor's Corporation 500 Stock Index." The standards should be stated either as prices or as "price-earnings ratios," not both as in the proposed rule.

g. The references to "Guidelines" throughout s. SEC 3.12 should be more specific.

h. It appears that the insertion of a comma after "compensation" in s. SEC 3.12 (2) (a) (page 21, line 20 of the proposed rule) could clarify the meaning of a provision. Alternatively, the provision could be drafted more clearly in separate sentences.

i. A definition of "overriding royalty interests" would aid in understanding s. SEC 3.12 (2) (c) and other related provisions.

j. The reason for prohibiting any limitation in s. SEC 3.01 (1) is not clear. As the rule is currently drafted, there is a "presumption of reasonableness" provision that would appear to be a more flexible and appropriate regulatory approach than an absolute bar to the commissioner's actions. Perhaps, if the amendment is to be retained, the "Comment" section could be revised to clarify the need for the restriction on the commissioner's authority.

k. Is the phrase "an evidence of indebtedness," as used in s. SEC 3.21 (1) (a), correct? Is that a category under which certain securities are registered?

l. Although the amendment to s. SEC 4.04 (7) takes some of the mystery out of the section, it is unclear now whether the reference to "its" is intended to cover offices outside of Wisconsin. This should be clarified.

m. Is the amendment to s. SEC 4.05 (7) intended to require the presence of a licensed broker or only the employment of a licensed broker? This should be clarified, as should other similar requirements proposed in the rule. [See proposed ss. SEC 4.01 (5), 5.01 (5) and 5.05 (7).]

n. Use of the term "either" in s. SEC 5.01 (4) (a) is not technically correct. The term could be deleted or the phrase "one or more of the following" or "at least one of the following" could be substituted.

o. The intended scope of the term "matters" used in s. SEC 36.01 is not clear. Is it, for example, intended to cover all inquiries whether formal or not?

p. Throughout the rule, regulatory distinctions are made for Wisconsin-based operations. The agency may wish to consider augmenting its "Comments" to clearly justify the difference in treatment given to state operations.

q. It is not clear why the current rules relating to examinations are being modified. The modifications of ss. SEC 4.01 (3) and 5.01 (4) create some uncertainties:

(1) What authority will the commissioner have to accept other examinations which are not specified, especially in light of the repeal of s. SEC 4.01 (4) (a)?

(2) What will occur if the examinations specified are altered substantially in the future?

(3) Who will determine the "passing grade" on the examination; and if it is determined by a national body, is this a proper delegation of authority? [See 68 OAG 48.]

Report 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 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.

(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, 1982 (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, soliciting written comments on the proposed revisions or testimony at the public hearing that was held on September 10, 1982 in Room 318 Southwest of the State Capitol in Madison, Wisconsin.

(3) During the comment period, eleven letters were received setting forth specific comments on the proposed revisions. At the public hearing, testimony was presented by three persons (other than staff) who set forth additional comments.

(4) Several of the comments made in the comment letters and in hearing testimony resulted in changes and modifications to the Proposed Rules as identified in sub. (c) of this Analysis.

(5) Pursuant to the provisions of sec. 227.05, Wis. Stats., authorization was requested and received from the Wisconsin Attorney General and the Revisor of Statutes to permit the incorporation by reference of a specific securities registration guideline adopted by a multi-state association of securities administrators of which Wisconsin is a member, and of a franchise disclosure form of the Federal Trade Commission.

(6) It is appropriate in the public interest and for the protection of investors for the Wisconsin Commissioner of Securities to exercise his authority under sec. 551.63(2), Wis. Stats., for the purpose of cooperating with the securities administrators of other states in prescribing rules with a view to achieve uniformity in the form and content of registration statements, to propose to adopt and incorporate by reference the securities registration policy adopted by a multi-state securities administrators association of which Wisconsin is a member as set forth in Section 13 of the Proposed Rules.

(7) 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, Wis. Stats., for the purpose of cooperating 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, to propose to incorporate by reference in Section 45 of the Proposed Rules as the document to be used as the periodic report required by rule in Wisconsin to be filed by exempt franchisors, 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.

(8) 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. 551.22(17), 551.23(18), 551.27(8), 551.28(1)(e), 551.32(4) and (7), 551.33(1), (2) and (6), 551.52(3), 551.63(1) and (2), 553.58(1) and 553.72(3), 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 and the Wisconsin Franchise Investment Law.

(b) Statement Explaining Need for Proposed Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the Rules of the Commissioner of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, and under Chapter 553, Wis. Stats., the Wisconsin Franchise Investment Law.

Many of the Chapters of the Rules of the Commissioner of Securities under those two Laws contain revisions, and each Section in the proposed rules that adopts, repeals or amends a rule is followed by a separate ANALYSIS which discusses the nature of the revision as well as the rationale behind and/or the necessity for it.

The principal areas of the revisions to the Rules under the Wisconsin Uniform Securities Law include: (1) adopting an amendment to the "blue chip" exemption rule to cover a new securities instrument, "floating rate" dividend preferred stock (Section 1); (2) eliminating a notice-filing requirement to qualify for use of a private placement registration exemption (Section 3); (3) adopting a new registration Exemption Order procedure specifically directed toward offers and sales of debt securities by employers to employees (Section 4); (4) adopting several amendments to the "presumed reasonable" securities registration requirements for corporate common stock offerings relating to commissions and expenses, offering price, and options and warrants (Sections 6 through 10); (5) amending an existing securities registration policy as adopted by national securities administrators association of which Wisconsin is a member, and adopting a securities registration policy previously adopted by a multi-state securities administrators association of which Wisconsin is a member, (Sections 12 and 11, respectively); (6) amending numerous sections of the securities broker-dealer, agent, investment adviser and investment adviser representative licensing provisions dealing with recordkeeping and reporting requirements, as well as rules of conduct and prohibited business practices, to implement recommendations by the Licensing & Regulation Division staff as a result of its experience in conducting scores of field examinations of the offices of broker-dealers.

The principal revision to the Rules under the Wisconsin Franchise Investment Law provides that the periodic report required to be submitted by an exempt franchisor can be either the Franchisor's current offering circular required under Ch. 553, Wis. Stats., or the Federal Trade Commission's Disclosure Document Form (Section 45).

Copies of a Comment Draft of the Proposed Rule Revisions containing an ANALYSIS to each amended section were distributed during July, 1982, (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, 1982, in Room 318 Southwest of the State Capitol in Madison, Wisconsin. During the comment period, eleven letters were received setting forth specific comments. At the public hearing, testimony was presented by three 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

--The proposal in SECTION 4 of the public comment draft relating to the Uniform Limited Offering Exemption ("ULOE") is being withdrawn from consideration at this time. The majority of the public comments and testimony received on the rules revisions was directed toward the ULOE and related to the following aspects: the scope of the application of the rule to kinds of offerings; the scope of definitions as to parties covered by the rule; and the scope of certain disqualification from use of the exemption provisions. Because of the substantive nature of the comments and their potential impact on a ULOE, the ULOE is being reconsidered in its entirety.

--The proposal in SECTION 9 of the public comment draft relating to adding the composite price-earnings ratio of the Standard & Poor's 500 Stock Index as a presumed-reasonable registration test for the offering price of a security is being withdrawn because, on a historical basis, its application on a "lesser of" standard as set forth in the proposal would preclude registration applicants from using current twenty-five-times-earnings tests that are utilized by most first-time applicants.

--The proposal in SECTION 13 of the public comment draft relating to a securities registration policy for equipment programs is being withdrawn. That proposed rule was based upon a Statement of Policy for the Registration of Equipment Programs that was being considered for adoption by the North American Securities Administrators Association ("NASAA", a national securities administrators association of which Wisconsin is a member). The ANALYSIS for the proposed rule in the initial comment draft stated that the rule would be promulgated in final form in Wisconsin only if the Statement of Policy were adopted by vote of the NASAA membership (including the favorable of Wisconsin as a member) at the NASAA fall meeting in October of 1982. Because NASAA determined to resubmit the Statement of Policy for more public comment, the Statement of Policy was not adopted by the NASAA membership at its fall meeting and, consequently, the proposal is being withdrawn from this rule package. It is anticipated that the Statement of Policy on Equipment Programs will again be proposed for adoption by the Office of the Commissioner of Securities next year as part of its annual rule revision.

--Page 21, lines 8 through 10 dealing with SEC 3.21(1) in SECTION 14. In a revision to that SECTION made as a result of public comments received to the rule as originally proposed, an exclusion from the trust indenture requirement

was inserted relating to face amount certificates registered under the Investment Company Act of 1940. The reason for the exclusion is because a face amount certificate company must comply with specific requirements under the 1940 Act that provide substantially equivalent investor protections to a trust indenture. Those protections include a requirement that sets forth the amount and type of property which is required to be maintained as reserves, and also requires that the property be maintained by a custodian pursuant to a custodian agreement meeting statutory requirements.

--Page 24, lines 2 through 4 dealing with SEC 3.22(1)(m) in SECTION 16. An identical revision was made to this SECTION as was made to SECTION 14 and discussed in the ANALYSIS therein (and the preceding paragraph above), following public comments received suggesting that face amount certificates be excluded from the trust indenture requirement of the rule.

--Page 29 lines 3 through 5 dealing with SEC 4.03(3)(e) in SECTION 25. In a revision to the SECTION as a result of comments received to the initial rule revision draft, new language was added to extend the exclusionary language of the rule to broker-dealers engaged in the offer or sale of securities registered under the Investment Company Act of 1940 by any of the designated entities. Because face amount certificates and unit investment trust securities (although not technically "redeemable securities") are regulated and distributed in much the same way as mutual fund shares, it does not appear necessary for the protection of the investing public to subject the branch offices of broker-dealers (and agents of those offices) selling face-amount certificate and unit investment trust securities to greater record-keeping requirements than those applicable to branch offices of broker-dealers engaged solely in mutual fund securities sales distribution.

--Page 31, lines 6 and 7 relating to SEC 4.035 in SECTION 27. An identical revision was made to that SECTION as was made to SECTION 25 for the same reasons set forth in the ANALYSIS to that SECTION (and discussed in the preceding paragraph above).

--Page 36, line 4 relating to SEC 4.06(1)(h). In a revision to the SECTION made as a result of comments received to the initial rule revision draft, the time period referred to in the rule within which a margin agreement must be obtained from the customer was changed to 15 days from the 30-day period that the comment draft of the rule initially proposed. The 15-day period was determined to be more appropriate than the 30-day period because the 15-day period corresponds to the National Association of Securities Dealers Rule of Fair Practice, Appendix E, Sec. 16(d), which

requires a broker-dealer who establishes an options trading account (another type of high-risk investment account), to obtain a written options trading agreement from the customer within 15 days after the account has been approved for options trading, whether or not an options transaction has yet been effected.

--Page 34, lines 3 through 5 dealing with SEC 5.04(1) in SECTION 39. In a revision to the SECTION made as a result of comments received in the initial rule revision draft, subs. (a) and (b) were changed to require that only balance sheet information need be filed with the Commissioner, rather than an entire set of financial statements for the investment adviser. The reason for the change is because the Wisconsin minimum net capital requirement can be verified by balance sheet information and does not require income statement data or other financial statement information.

--Page 44 relating to SEC 7.01(7) in SECTION 43. That SECTION, which repeals SEC 7.01(7), is being promulgated in lieu of the amendment to SEC 7.01(7) proposed in the original Comment Draft of the Rule Revision (which amendment proposed to increase the fee for retrieval of a file from State Records Center). The repeal is necessary because of the recent enactment of Chapter 335 of the Laws of 1981 that precludes state agencies from charging a fee for retrieval of public records from storage.

--Page 47 relating to SEC 35.01 in SECTION 46. In a revision made for the same reason as discussed above relating to SECTION 44, the provision that had been in the original Comment Draft of the Rule Revision which proposed to establish a fee for retrieval of files from State Records Center has been deleted due to the recent enactment of Chapter 335 of the Laws of 1981 that precludes state agencies from charging a fee for retrieval of public records from storage.

(d) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities Richard R. Malmgren as Hearing Officer.

--Attorney Conrad G. Goodkind, 780 North Water Street, Milwaukee, Wisconsin, representing the Wisconsin Association of Securities Dealers, Inc. and the Investment Company Institute.

--Attorney Joseph P. Hildebrandt, One South Pinckney Street, Madison, Wisconsin 53703.

--Mr. Paul E. Magnuson, 111 North Pinckney Street, Madison, Wisconsin 53703, of DiVall Real Estate Investment Corporation representing the Wisconsin Realtors Association.

--Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff and submitted documents and information for the record.

--Ronald J. Burtch, Administrator of the Licensing and Regulation Division, and James R. Conohan, Administrator of the Franchise Investment Division, made appearances on behalf of the agency's staff relating to Rule revisions affecting their Divisions.

--Comment letters received:

letter dated August 25, 1982, received August 26, 1982 from Attorney Terry F. Peppard of the law firm Wendel, Pappas, Center, Lipman & Peppard, Suite 317, 222 West Washington Avenue, P.O. Box 2034, Madison, Wisconsin 53701.

letter dated August 30, 1982, received September 2, 1982 from Brian Shelly, Senior Legal Assistant on behalf of the National Corporation for Housing Partnerships, 1133 Fifteenth Street, N.W., Washington, D.C. 20005.

memorandum dated August 31, 1982, from Janet K. Murphy of the Administration Division of the Office of the Commissioner of Securities, 111 West Wilson Street, Box 1768, Madison, Wisconsin 53701.

letter dated September 3, 1982, received September 9, 1982 from Kevin P. Howe, Vice President on behalf of Investors Diversified Services, Inc. IDS Tower, Minneapolis, Minnesota 55402.

letter dated September 7, 1982, received September 8, 1982 from Attorney Fred Bunker Davis of the law firm Kutak Rock & Huie, 1650 Farnham Street, Omaha, Nebraska 68102.

letter dated and received September 10, 1982 from Attorney Joseph P. Hildebrandt of the law firm of Foley & Lardner, 1 South Pinckney Street, Madison, Wisconsin, 53701.

letter dated and received September 10, 1982 under the letterhead of the American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637, signed by Attorney Joseph P. Hildebrandt, liaison from the State Regulation of Securities Committee to the Wisconsin Commissioner of Securities, c/o Foley & Lardner, P.O. Box 1497, Madison, Wisconsin.

letter dated September 9, 1982, received September 10, 1982 from Attorney Conrad G. Goodkind of the law firm Quarles & Brady, 780 North Water Street, Milwaukee, Wisconsin 53202.

letter dated September 9, 1982, received September 10, 1982 from Jack Bloomfield, President, Wisconsin Association of Securities Dealers, Inc., 770 North Jefferson Street, Milwaukee, Wisconsin 53202.

letter dated September 10, 1982, received September 15, 1982 from Attorney Jerry Ogle on behalf of The Balcor Company, 10024 Skokie Blvd., Skokie, Illinois 60077.

letter dated September 22, 1982, received September 24, 1982 from Brian Shelly, Senior Legal Assistant for the National Corporation for Housing Partnerships, 1133 Fifteenth Street, Washington, D.C. 20005.

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

(1) Acceptance of recommendations in whole:

Under 1. Statutory Authority

--Consistent with the Rules Clearinghouse comment, the reference to Section 553.22, Stats., that was inadvertently included in the listing of statutory authority at the top of Page 1 was deleted. No rules were or are being sought to be promulgated in the rule revision package pursuant to section 553.22, Stats.

Under 2. Form, Style and Placement in Administrative Code

--Consistent with the Rules Clearinghouse comment in para. a., an introductory clause is included with the rule package that enumerates the sections treated by the proposed revisions and the nature of the treatment.

--Consistent with the Rules Clearinghouse comment in para. b., the entire rule revision package was reviewed to avoid the use of unnecessary subdivisions.

--Consistent with the Rules Clearinghouse comment in para. c., the acronyms "SECO" and "NASD" were written out in their entirety to clearly identify them in rule sections SEC 4.01(3), 4.01(5) and 5.01(4).

--Consistent with the Rules Clearinghouse comment in para. d., the term "ANALYSIS" is substituted for the term "COMMENT" throughout the rule revision because the explanatory material included in the "COMMENT" portions of each SECTION when the rule revision package was sent out for comment is not intended to be part of the final rule when it is published.

--Consistent with the Rules Clearinghouse comment in para. f., the word "by-laws" in SEC 2.02(3)(a) was changed to read as one word.

--Consistent with the Rules Clearinghouse comment in para. g., the use of parentheses in SEC 2.01(7)(d) was eliminated. In addition, the use of "Wis. Adm. Code" after a citation to a rule section was deleted in all SECTIONS in which it had been present--namely, ss. SEC 2.02(3)(a), 2.02(10)(i), 2.03(1), 3.21(1)(a), 3.22(1)(m), 4.05(7), 5.04(1)(a), 5.05(7), 32.02 and 36.01.

--Consistent with the Rules Clearinghouse comment in para. h., the citation to federal regulations was added in SEC 4.02(1).

--Consistent with the Rules Clearinghouse comment in para. i., the language "at least" was substituted for the language

"a period of not less than" in lines 2, 6 and 9 of page 28, SECTION 23.

--Consistent with the Rules Clearinghouse comment in para. j., the action taken in former SECTION 11 of the rules that both renumbered and amended SEC 3.03(4) and created SEC 3.03(4)(b), was separated into two SECTIONS (SECTIONS 9 and 10).

--Consistent with the Rules Clearinghouse comment in para. k., SECTION 12 of the comment draft of the rule was divided into two SECTIONS--one which renumbers and amends SEC 3.12 and one which creates SEC 3.12(2).

--Consistent with the Rules Clearinghouse comment in para. l., the reference to "(1)" in SEC 4.04(1)(b) was deleted on page 33, line 1 of the rule in SECTION 29.

--Consistent with the Rules Clearinghouse comment in para. m., the words "Section" and "of the Wis. Adm. Code." were deleted from the clause that begins each SECTION of the rule revision.

--Consistent with the Rules Clearinghouse comment in para. n., the action taken in SECTION 27 of the Comment Draft of the rule revision is placed between SECTIONS 25 and 28.

--Consistent with the Rules Clearinghouse comment in para. o., "1." and "2." were substituted for "(i)" and "(ii)" in SEC 3.12(2)(c).

Under 3. Review of Rules for Conflict With or Duplication of Existing Rules

--No comments were made by the Rules Clearinghouse.

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

--No provisions of the rule package being promulgated will require new or revised forms; consequently, no reference to any such form is included in the rule package.

Under 5. Clarity, Grammar, Punctuation and Plainness

--Consistent with the Rules Clearinghouse comment in para. a., the provision relating to calculation of floating rate dividend in SEC 2.01(7)(d) was placed in a separate sentence. In addition, the phrase "giving effect to interest rates in the marketplace . . ." was clarified by substituting the

language "with reference to."

--The Rules Clearinghouse comments in paras. b., c. and d. relating to SEC 2.02(10)(e) would have been implemented had the rule been adopted; however, the issue is rendered moot because the rule is being withdrawn as discussed in Item (c) of this Report.

--The Rules Clearinghouse comment in para. f., relating to SEC 3.02(1)(a) would have been implemented had the rule been adopted; however, the issue is rendered moot because the rule is being withdrawn as discussed in Item (c) of this Report.

--Consistent with the Rules Clearinghouse comment in para. g., the references to "Guidelines" throughout SEC 3.12 was made more specific.

--Consistent with the Rules Clearinghouse comment in para. h., a comma was inserted after the word "compensation" in SEC 3.12(2)(a) (page 17, line 5 of the rule) to clarify the meaning of the provision.

--Consistent with the Rules Clearinghouse comment in para. j., the "ANALYSIS" following SEC 3.01(1) was revised to clarify the need for the new amendatory language.

--Consistent with the Rules Clearinghouse comment in para. k., language was added to clarify that the phrase "an evidence of indebtedness" was properly included in SEC 3.21(1)(a), as one of several kinds of debt securities that would be subject to the trust indenture requirements of the rule.

--Consistent with the Rules Clearinghouse comment in para. l., language was added to SEC 4.04(7) to clarify that the scope of the rule covers broker-dealer offices located outside of Wisconsin as well as within Wisconsin.

--Consistent with the Rules Clearinghouse comment in para. m., language was added in SEC 4.01(5) and in a related provision SEC 5.01(5), to clarify that each rule provision is intended to require the presence, not merely the employment, of a supervisory employee at the principal office of a licensed broker-dealer or investment adviser.

--Consistent with the Rules Clearinghouse comment in para. n., the phrase "one or more of the following" was substituted for the term "either" in SEC 5.01(4)(a).

--Consistent with the Rules Clearinghouse comment in para. o., the scope of the term "matters" used in SEC 36.01 is clarified by adding the language "applications or filings" to indicate that the scope of the rule is intended to cover items that are a matter of record, not informal matters.

--Consistent with the Rules Clearinghouse comment in para. p., the "ANALYSIS" section was augmented to justify the different regulatory distinctions that are made for Wisconsin-based operations.

--Consistent with the Rules Clearinghouse comment in para. q., the ANALYSIS to the examination requirement for broker-dealers and investment advisers in SEC 4.01(3) and 5.01(4) are elaborated upon to indicate that: the Commissioner will repeal the designation of any examinations that are altered substantially in the future where the examinations will no longer provide substantial equivalent evidence of knowledge of the securities business as would be accorded by passing the standard Wisconsin securities agents examination.

(2) Acceptance of Recommendations in Part: -- not applicable

(3) Rejection of Recommendations

--The Rules Clearinghouse comment in para. e., under Item 2. Form, Style and Placement In Administrative Code.

--The Rules Clearinghouse comment in para. e., under Item 5. Clarity, Grammar, Punctuation and Plainness.

--The Rules Clearinghouse comment in para. i., under Item 5. Clarity, Grammar, Punctuation and Plainness.

(4) Reasons For Not Accepting Recommendations

--With respect to the Rules Clearinghouse comment in para. e. of Item 2., no change is made to SEC 4.03(3)(e) because para. (e) contains a specific listing of records required to be maintained by the broker-dealer offices designated and because the preamble language in SEC 4.03(3) establishes the necessary exclusionary language where it provides "Except as provided in para. (e). . . ."

--With respect to the Rules Clearinghouse comment in para. e. of Item 5., the provision is not changed to read in the positive for two reasons: (1) that type of language as is present in the proposed rule (using terminology such as "the Commissioner may find issuance of the order inappropriate unless" or "the offer or sale of securities may be deemed unfair to purchasers if") is used consistently throughout the Rules of the Commissioner of Securities--see SEC 2.01(5), SEC 2.02(10)(f), SEC 3.05(Intro.), SEC 3.06(Intro.), and SEC 3.10-3.18; (2) if the preamble language were put in the positive, it would unlawfully imply that the Commissioner was "permitting" or "approving" the securities or the securities transactions involved. See SEC 3.23(1)(g) which requires language to be included on the front cover of the prospectus for every registered offering that makes it a criminal offense for anyone to represent that a registration

of a securities offering signifies that the Commissioner has approved or recommended the securities.

--With respect to the Rules Clearinghouse comment in para. i of item 5., a definition of "overriding royalty interest" is not separately needed in SEC 3.12(2)(c) because that term is already defined and included in I.B.14. of the Guidelines for the Registration of Oil and Gas Programs adopted by the North American Securities Administrators Association, Inc. as incorporated by reference in SEC 3.12(1). Consequently, any person referring to or utilizing the provisions of SEC 3.12(2) would be doing so in conjunction with the Statement of Policy that contains in its Definitions section, the definition of "overriding royalty interest."

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

Lee Sherman Dreyfus
Governor

Richard R. Malmgren
Commissioner of Securities

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Deputy Commissioner

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November 22, 1982

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

Revisor of Statutes Bureau
411 West Capitol
Madison, Wisconsin 53702

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Revisor of Statutes Bureau

Mesdames and Gentlemen:

Re: Filing of Certified Copies of Order Adopting Rules/Clearinghouse Rule 82-157

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 November 22, 1982.

Very truly yours,

Randall E. Schumann
General Counsel

RES:nj

Enclosure