CR 82-187

The State of Wisconsin

Office of Commissioner of Savings and Loan

STATE OF WISCONSIN)
) SS
OFFICE OF COMMISSIONER OF SAVINGS AND LOAN)

ORDER NO. 124

I, R. J. McMahon, Commissioner of Savings and Loan and custodian of the official records of the Office of Commissioner of Savings and Loan, do hereby certify that the annexed Order No. 124 relating to granting state chartered savings and loan associations parity with federally chartered savings and loan associations with respect to trust powers was duly approved and adopted by this office on January 4, 1983.

I further certify that the copy of the Order annexed hereto has been compared by me with the original on file in this office and that the same is a true copy thereof, and the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of this office in the City of Madison this 5th day of January, 1983.

R. J. McMahon, Commissioner

3-1-83

ORDER OF THE

OFFICE OF THE COMMISSIONER OF SAVINGS AND LOAN

ADOPTING A RULE

ORDER NO. 124

WHEREAS, the rules embodied by this order were submitted to the Legislative Council staff as required under section 227.029 of the Wisconsin Statutes; and

WHEREAS, in accordance with section 227.021 of the Wisconsin Statutes official notice of a hearing on the rules embodied by this order was published in the Wisconsin Administrative Register of September 30, 1982; and

WHEREAS, pursuant to that notice a public hearing was held on October 21, 1982, at which a draft of the attached rule was the topic of discussion; and

WHEREAS, following that hearing a final draft of the rule was approved by the Commissioner of Savings and Loan and the Savings and Loan Review Board; and

WHEREAS, on October 27, 1982, the final draft of the rule was submitted to the presiding officers of the Senate and Assembly and was referred by those officers to the appropriate standing committee on November 3, 1982 and October 27, 1982, respectively, all in accordance with section 227.018 of the Wisconsin Statutes; and

WHEREAS, neither legislative standing committee has objected to any portion of the proposed rule and the time for so doing has expired;

Now, Therefore, pursuant to the authority vested in the Commissioner of Savings and Loan and the Savings and Loan Review Board by sections 215.02(7)(a), 215.02(18), 215.13(26)(f) and 227.014(2)(a), Stats., as amended by chapter 45, laws of 1981, the Office of Commissioner of Savings and Loan hereby adopts a rule as follows:

ORDER OF THE OFFICE OF THE

COMMISSIONER OF SAVINGS AND LOAN CREATING A RULE

AN ORDER amending s. S-L 30.01(1) and (2) and creating chapter S-L 31 of the administrative code relating to granting state chartered savings and loan associations parity with federally chartered savings and loan associations with respect to trust powers.

Analysis of the Office of the Commissioner of Savings and Loan

Under section 215.02(18) of the statutes as enacted by chapter 45, laws of 1981, effective November 1, 1981 the Commissioner of Savings and Loan with the approval of the Savings and Loan Review Board may authorize state chartered savings and loan associations to exercise any right, power or privilege federal savings and loan associations are permitted under federal law, regulation or interpretation.

This rule grants the commissioner the power, under section 215.02(18) and 215.13(26)(f) of the statutes, to authorize state chartered associations or their affiliates to exercise trust powers if they comply with requirements imposed by this rule. The rule requires that:

1) The commissioner must first grant a special permit.

2) Applications must include information on financial condition, probable business volume, and management resources.

3) The board of directors must ensure the proper exercise and administration of trust powers.

4) The association must:

   (a) maintain separate records for its trust business including one of pending litigation,

   (b) conduct an annual audit of its trust department,

   (c) segregate trust assets,

   (d) invest trust funds so as to reasonably ensure productivity, safety, avoidance of self-dealing, and compliance with the creating instrument or court order as well as local law,

   (e) comply with common trust fund restrictions paralleling 12 C.F.R. 9.18 which are applicable to a national bank,

   (f) submit to revocation of trust powers if the commissioner finds, after a hearing, that the association did not properly exercise such powers.

The rule permits the Commissioner of Savings and Loan to refuse to permit an association to exercise authority granted by the rule. All associations are also subject to the Federal Savings and Loan Insurance Corporation regulations which apply when an association engages in an activity authorized under the rule.

Pursuant to authority vested in the commissioner of savings and loan and the savings and loan review board by sections 215.02(7)(a) and (18), 215.13(26)(f) and 227.014(2)(a), Stats., the office of the commissioner of savings and loan hereby amends s. S-L 30.01 (1) and (2) and creates chapter S-L 31 interpreting sections 215.02(7)(a) and (18) and 215.13(26)(f), Stats., as follows:

SECTION 1. S-L 30.01(1) and (2) are amended to read:

30.01 (1) FINDINGS. The purpose of this chapter and ch. S-L 31 is to enable state chartered associations to exercise the rights, powers and privileges available to federal savings and loan associations and not otherwise available under state law. This will permit state chartered associations to more effectively compete with federal savings and loan associations and other financial depository institutions and financial intermediaries. The public and consumers will benefit as additional financial services and sources for those services are made available to communities at competitive rates.

(2) INTERPRETATION. The interpretation of rules in this chapter and ch. S-L 31 should be coordinated with and parallel to the interpretation of the federal laws, regulations and interpretations from which the rules are derived.

SECTION 2. Chapter S-L 31 is adopted to read:

CHAPTER 31

TRUST POWERS

S-L 31.01 DEFINITIONS. In this chapter:

(1) "Account" means the trust, estate or other fiduciary relationship which has been established with an association.

(2) "Association" means an association as defined by s. 215.01(1) or foreign association as defined by s. 215.01(9), Stats.

(3) "Commissioner" means the commissioner of savings and loan.

(4) "Custodian under a uniform gifts to minors act" means an account established under ss. 880.61 to 880.71, Stats., or a substantially similar law of another state, and with respect to which the association operating the account has established to the satisfaction of the commissioner that it has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

(5) "Fiduciary" means an association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, personal representative, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, paying agent, trustee of employee pension, welfare and profit-sharing trusts, or any other similar capacity.

(6) "Fiduciary records" means all matters which are written, transcribed, recorded, received or otherwise come into the possession of an association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of an association.

(7) "Guardian" means the guardian, conservator, or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws. "Guardian" includes, but is not limited to, a guardian or conservator appointed by a court under ch. 880, Stats.

(8) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others.

(9) "Local law" means the law of the state or other jurisdiction governing the fiduciary relationship.

(10) "Managing agent" means the fiduciary relationship assumed by an association upon the creation of an account which names the association as agent and confers investment discretion upon the association.

(11) "Plan" means a plan adopted under s. S-L 30.65.

(12) "State chartered corporate fiduciary" means any state bank, trust company, or other corporation which comes into competition with associations and is permitted to act in a fiduciary capacity under the laws of this state.

(13) "Trust department" means that group of officers and employees of an association or of an affiliate of an association to whom are assigned the performance of fiduciary services by the association.

(14) "Trust powers" means the power to act in any fiduciary capacity. "Trust powers" includes, but is not limited to, the power to act as trustee, executor, administrator, personal representative, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, paying agent, trustee of employee pension, welfare and profit-sharing trusts, or in any other fiduciary capacity which state chartered corporate fiduciaries exercise under local law.

NOTE: This section parallels 12 C.F.R. 550.1.

S-L 31.05 SPECIAL PERMIT. The commissioner may, on application, grant a special permit to an association or affiliate of an association to exercise trust powers.

NOTE: This section parallels 12 U.S.C. 1464(n)(1).

S-L 31.10 FILING APPLICATIONS. (1) APPLICATION. An application filed under s. S-L 31.05 shall indicate the trust services the association wishes to offer and provide the information necessary to make the determinations under sub. (2).

(2) FACTORS CONSIDERED. Factors the commissioner will consider in passing upon an application to exercise trust powers include, but are not limited to, the following:

(a) The financial condition of the association, except trust powers may not be granted to an association if its financial condition is such that the association does not meet the financial standards required of state chartered corporate fiduciaries;

(b) The needs of the community for fiduciary services and the probable volume of fiduciary business available to the association;

(c) The general character and ability of the management of the association;

(d) The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officers of the trust department; and

(e) Whether the association has available legal counsel to advise and pass upon fiduciary matters.

NOTE: This section parallels 12 C.F.R. 550.2.

S-L 31.15 ADMINISTRATION OF TRUST POWERS. (1) (a) Responsibility of the Board of Directors. The board of directors of an association is responsible for the proper exercise of fiduciary powers by the association. All matters pertinent to the exercise of fiduciary powers, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the association in the exercise of its fiduciary powers, are the responsibility of the board. The board of directors may assign, by action entered in the minutes, the administration of any of the association's trust powers to a director, officer, employee, or committee.

(b) Administration of Accounts. No fiduciary account may be accepted without the prior approval of the board of directors, or of the director, officer, employee or committee to whom the board may have assigned the performance of that responsibility. A written record shall be made of acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the association has investment responsibilities, the association shall make

a prompt review of the assets. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of the assets. The board shall act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(2) USE OF OTHER ASSOCIATION PERSONNEL. The trust department may utilize personnel and facilities of other departments of the association, and other departments of the association may utilize personnel and facilities of the trust department unless prohibited by law.

(3) COMPLIANCE WITH FEDERAL SECURITIES LAWS. Every association exercising trust powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. The policies and procedures shall ensure that the association's trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(4) LEGAL COUNSEL. Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the association and its trust department.

(5) BONDING. Directors, officers, and employees of an association engaged in the operation of a trust department shall acquire bond coverage as the commissioner may require.

(6) OATH OR AFFIDAVIT. If the laws of a state require that a corporation acting as trustee, executor, administrator, personal representative, or in any capacity specified in this chapter, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of the association may take the necessary oath or execute the necessary affidavit.

NOTE: This section parallels 12 C.F.R. 550.5 and 12 U.S.C. 1464(n)(7).

S-L 31.20 BOOKS AND ACCOUNTS. (1) GENERAL. Every association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the association. All fiduciary records shall be kept and retained for such time as to enable the association to furnish any information or reports with respect to the records as may be required by the commissioner. The fiduciary records shall contain full information on each account.

(2) RECORD OF PENDING LITIGATION. Every association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

NOTE: This section parallels 12 C.F.R. 550.6.

S-L 31.25 AUDIT OF TRUST DEPARTMENT. At least once during each calendar year, the association's trust department shall be audited by auditors in a manner consistent with s. 215.25, Stats. A copy of the report of the audit shall be promptly filed with the commissioner. Trust department audits may be made as part of the audits required by s. 215.25, Stats.

NOTE: This section parallels 12 C.F.R. 550.7.

S-L 31.30 SEGREGATION OF ASSETS; PROHIBITED DEPOSITS. Associations exercising any of the powers enumerated in this chapter shall segregate all assets held in any fiduciary capacity from the general assets of the association. No association may receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes.

NOTE: This section parallels 12 U.S.C. 1464(n)(3) and (4) and is intended to prohibit operating a check clearing exchange through a trust account.

S-L 31.35 FUNDS AWAITING INVESTMENT OR DISTRIBUTION. (1) GENERAL. Funds held in a fiduciary capacity by an association awaiting investment or distribution may not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(2) USE BY ASSOCIATION IN REGULAR BUSINESS. Funds held in trust by an association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the association, except the association shall first set aside under control of the trust department as collateral security:

(a) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(b) Readily marketable securities of the classes in which state chartered corporate fiduciaries may invest trust funds; or

(c) Other readily marketable securities as the commissioner may determine.

(3) CONTINGENT LIEN. Associations shall ensure that in the event of the failure of an association, the owners of the funds held in trust for investment under this chapter shall have a lien on the bonds or other securities set apart under sub. (2) in addition to their claim against the estate of the association.

(4) AMOUNT OF COLLATERAL. Collateral securities or securities substituted for collateral securities as collateral shall at all times be at least equal in face value to the amount of trust funds deposited under sub. (2), but the security is not required to the extent that the funds so deposited are insured by the Federal Savings and Loan Insurance Corporation.

(5) PRODUCTIVITY. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in other departments of the association shall be made productive.

NOTE: This section parallels 12 C.F.R. 550.8 and 12 U.S.C. 1464(n)(5).

S-L 31.40 INVESTMENT OF FUNDS HELD AS FIDUCIARY. (1) PRIVATE TRUSTS. Funds held by an association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. If the instrument does not specify the character or class of investments to be made and

does not give the association, its directors, or its officers investment discretion in the matter, funds held under the instrument may be invested in any investment in which state chartered corporate fiduciaries may invest under local law.

(2) COURT TRUSTS. If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if an association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of the court, funds of the accounts may be invested in any investments which are permitted by local law. Otherwise, an association acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. The orders in either case shall be preserved with the fiduciary records of the association.

(3) COLLECTIVE INVESTMENT OF TRUST FUNDS. The collective investment of funds received or held by an association as fiduciary is governed by ss. S-L 31.60 and 31.65.

S-L 31.45 SELF-DEALING. (1) PURCHASES. Unless authorized by the instrument creating the relationship, or by court order or local law, funds held by an association as fiduciary shall not be invested in:

(a) Stock or obligations of, or property acquired from, the association or its directors, officers, or employees, or individuals with whom there exists a connection, or organizations in which there exists an interest, which may affect the exercise of the best judgment of the association in acquiring the property; or

(b) Stock or obligations of, or property acquired from, affiliates of the association or their directors, officers or employees.

(2) LOANS. No association may lend any officer, director, or employee any funds held in trust under the powers conferred by this chapter.

(3) SALE OR TRANSFER. Property held by an association as fiduciary shall not be sold or transferred, by loan or otherwise, to the association or its directors,

officers, or employees, or to individuals with whom there exists a connection, or organizations in which there exists such an interest, which may affect the exercise of the best judgment of the association in selling or transferring the property, or to affiliates of the association or their directors, officers or employees, except:

(a) When lawfully authorized by the instrument creating the relationship or by court order or by local law;

(b) The association may, if it has been advised by its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from the liability, so sell or transfer property with the approval of the board of directors and the commissioner. The association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

(c) As provided in the laws and rules governing collective investments; or

(d) When required by the commissioner.

(4) INVESTMENT IN STOCK OF ASSOCIATION. Except as provided in s. S-L 31.35, funds held by an association as fiduciary shall not be invested by the purchase of stock or obligations of the association or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law. However, if the retention of stock or obligations of the association or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, an association's share held by the association as sole trustee, whether in its own name as trustee or in the

name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which the shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.

(5) TRANSACTIONS BETWEEN ACCOUNTS. (a) An association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.

(b) An association may make a loan to an account from the funds belonging to another account, when the making of loans to a designated account is authorized by the instrument creating the account from which the loans are made, and is not prohibited by local law, and the terms of the transaction are fair to all accounts.

(c) An association may make a loan to an account and may take as security assets of the account, provided the transaction is fair to the account and is not prohibited by local law.

NOTE: This section parallels 12 C.F.R. 550.10 and 12 U.S.C. 1464(n)(8).

S-L 31.50 CUSTODY OF INVESTMENTS. (1) SEGREGATION OF TRUST ASSETS AND JOINT CUSTODY. The investments of each account shall be kept separate from the assets of the association, and shall be placed in the joint custody or control of not fewer than 2 of the officers or employees of the association designated for that purpose either by the board of directors of the association or by one or more officers designated by the board of directors of the association, and all such officers and employees shall be adequately bonded. To the extent permitted by law, an association may permit the investments of a fiduciary account to be deposited elsewhere.

(2) SEGREGATION OF ACCOUNTS. The investments of each account shall be either:

(a) Kept separate from those of all other accounts, except as provided in s. S-L 31.60; or

(b) Adequately identified as the property of the relevant account.

NOTE: This section parallels 12 C.F.R. 550.11.

S-L 31.55 COMPENSATION OF ASSOCIATION. (1) GENERAL. If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, an association acting in such capacity may charge or deduct a reasonable compensation for its services. When the association is acting in a fiduciary capacity under appointment by a court, it shall receive the compensation allowed or approved by that court or by local law.

(2) OFFICER OR EMPLOYEE OF ASSOCIATION AS CO-FIDUCIARY. No association may except with the specific approval of its board of directors, permit any of its officers or employees, while serving as co-fiduciary, to retain any compensation for acting as a co-fiduciary with the association in the administration of any account undertaken by it.

(3) BEQUESTS OR GIFTS TO TRUST OFFICERS AND EMPLOYEES. No association may permit an officer or employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the association.

NOTE: This section parallels 12 C.F.R. 550.12.

S-L 31.60 COLLECTIVE INVESTMENT. (1) When not prohibited by local law, funds held by an association as fiduciary may be held in:

(a) A common trust fund maintained by the association exclusively for the collective investment and reinvestment of moneys contributed to the common trust fund by the association in its capacity as trustee, executor, administrator, personal representative, guardian, or custodian under a uniform gifts to minor act;

(b) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from federal income taxation under the Internal Revenue Code.

(2) Collective investments of funds or other property by an association under sub. (1) shall be administered in accordance with s. S-L 31.65. Any documents required to be filed with the comptroller of the currency under 12 C.F.R. 9.18 shall also be filed with the commissioner who may review the documents for compliance with all relevant laws and rules.

(3) As used in this section and s. S-L 31.65, the term association includes 2 or more associations which are members of the same affiliated group with respect to any fund established under this section of which any of the affiliated associations is trustee, or of which 2 or more of the affiliated associations are co-trustees.

NOTE: This section parallels 12 C.F.R. 550.13.

S-L 31.65 COMMON TRUST FUNDS. Investment of funds or other property under s. S-L 31.60 shall be administered as follows:

(1) Each collective investment fund shall be established and maintained in accordance with a written plan which shall be approved by a resolution of the association's board of directors and filed with the Commissioner. A copy of the plan shall be available at the principal office of the association for inspection during all business hours, and upon request a copy of the plan shall be furnished to any person. The plan shall contain appropriate provisions not inconsistent with this chapter as to the manner in which the fund is to be operated. The plan shall include provisions relating to:

(a) The investment powers and a general statement of the investment policy of the association with respect to the fund;

(b) The allocation of income, profits and losses;

(c) The terms and conditions governing the admission or withdrawal of participations in the fund;

(d) The auditing of accounts of the association with respect to the fund;

(e) The basis and method of valuing assets in the fund, setting forth specific criteria for each type of asset;

(f) The minimum frequency for valuation of assets of the fund;

(g) The period following each valuation date during which the valuation may be made (which period in usual circumstances shall not exceed 10 business days);

(h) The basis upon which the fund may be terminated; and

(i) Other matters as may be necessary to define clearly the rights of participants in the fund.

(2) Property held by an association in its capacity as trustee of retirement, pension, profit-sharing, stock bonus or other trusts which are exempt from federal income taxation under any provisions of the Internal Revenue Code may be invested in collective investment funds established under s. S-L 30.60(1)(a) or (b) subject to restrictions under this section. Assets of retirement, pension, profit-sharing, stock bonus, or other trusts which are exempt from federal income taxation under section 401 of the Internal Revenue Code may be invested in collective investment funds established under s. S-L 30.60(1)(b) if the fund qualifies for tax examption under Revenue Ruling 56.267 and following rulings.

(3) All participants in a collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by an association as fiduciary in a participation in a collective investment fund is proper, the association may consider the collective investment fund as a whole and shall not, for example, be prohibited from making the investment because any particular asset is nonincome producing.

(4) Not less frequently than once during each period of 3 months an association administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets. No participation shall be admitted to or withdrawn from the fund except:

(a) On the basis of the valuation;

(b) As of the valuation date; and

(c) On written request for or notice of intention of taking that action which is entered on or before the valuation date in the fiduciary records of the association and approved in the manner the board of directors prescribes. No requests or notice may be canceled or countermanded after the valuation date.

(5)(a) An association administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the association. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(b) An association administering a collective investment fund shall at least once during each period of 12 months prepare a financial report of the fund. This report, based upon the audit required under par. (a), shall contain a list of investments in the fund showing the cost and current market value of each investment; a statement for the period since the previous report showing purchases, with cost; sales, with profit or loss and any other investment changes; income and disbursements; and an appropriate notation as to any investments in default.

(c) The financial report under par. (b) may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. No predictions or representations as to future results may be made. In addition, as to funds described in s. S-L 30.60(1)(a) neither the report

nor any other publication of the association may make reference to the performance of funds other than those administered by the association.

(d) A copy of the financial report required under par. (b) shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. A copy of the financial report may be furnished to prospective customers. The cost of printing and distribution of these reports shall be be borne by the association. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in s. S-L 30.60(1)(a) may be given publicity solely in connection with the promotion of the fiduciary services of the association.

(e) Except as provided in this section an association may not advertise or publicize its collective investment fund described in s. S-L 30.60(1)(a).

(5) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind except that all distributions as of any one valuation date shall be made on the same basis.

(6) If for any reason an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(7)(a) No association may have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided under this section, it may not lend money to a fund, sell property to, or purchase property from a fund. No assets of a collective

investment fund may be invested in stock or obligations, including time or savings deposits, of the association or any of its affiliates except that deposits may be made of funds awaiting investment or distribution. Subject to this chapter, funds held by an association as fiduciary for its own employees may be invested in a collective investment fund. An association may not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which withdrawal can be effected. However, an unsecured advance until the time of the next valuation date to an account holding a participation is not deemed to constitute the acquisition of an interest by the association.

(b) Any association administering a collective investment fund may purchase for its own account from the fund any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the association elects to so purchase the investment, it must do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) Except in the case of collective investment funds described in s. 31.60 (1)(b):

(a) No funds or other property may be invested in a participation in a collective investment fund if as a result of the investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund except in applying this limitation if two or more accounts are created by the same persons and as much as one-half of the income or principal of each account is payable or applicable to the use of the same persons the accounts shall be considered as one.

(b) No investment for a collective investment fund shall be made in stocks, bonds, or other obligations of any one person, firm, or corporation if as a result of the investment the total amount invested in stocks, bonds or other obligations issued or guaranteed by the person, firm or corporation would aggregate in excess of 10 percent of the then market value of the fund except this limitation does not apply to investments in direct obligations of the United States or other obligations fully guaranteed by the United States as a principal and interest.

(c) Any association administering a collective investment fund shall maintain in cash and readily marketable investments a portion of the assets of the fund sufficient to provide adequately for the needs of participants and to prevent inequities between the participants. If prior to any admissions to or withdrawals from a fund the association determines that after effecting the admissions and withdrawals which are to be made less than 40 percent of the value of the remaining assets of the collective investment fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund may be permitted as of the valuation date upon which the determination is made except a ratable distribution upon all participations may be made.

(10) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the association administering the fund.

(11)(a) An association may transfer up to 5 percent of the net income derived by a collective investment fund from mortgages held by the fund during any regular accounting period to a reserve account. No transfers shall be made which would cause the amount in the account to exceed 1 percent of the outstanding principal amount of all mortgages held in the fund. The amount of the reserve account, if established, shall be deducted from the assets of the fund in determining the fair market value of the fund for the purposes of admissions and withdrawals.

(b) At the end of each accounting period all interest payments which are due but unpaid with respect to mortgages in the fund shall be charged against the reserve account to the extent available and credited to income distributed to participants. If interest payments are subsequently recovered by the fund, the reserve account shall be credited with the amount recovered.

(12) An association administering a collective investment fund shall exclusively manage the fund. The association may charge a fee for the management of the collective investment fund. The fractional part of the fee proportionate to the interest of each participant shall not, when added to any other compensations charged by an association to a participant, exceed the total amount of compensations which would have been charged to the participant if no assets of the participant had been invested in participations in the fund. The association shall absorb the costs of establishing or reorganizing a collective investment fund.

(13) No association administering a collective investment fund may issue any certificate or other document evidencing a direct or indirect interest in the fund in any form.

(14) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund violates this chapter if promptly after the discovery of the mistake the association takes whatever action may be practicable in the circumstances to remedy the mistake.

S-L 31.67 INDEMNITY FUND. An association applying for trust powers under this chapter shall comply with s. 220.04(7)(b) 3, Stats., and s. Bkg. 15.04.

S-L 31.70 SURRENDER OF TRUST POWERS. (1) Any association may surrender its rights to exercise trust powers by filing with the commissioner a certified copy of a resolution of its board of directors.

(2) Upon receipt of the resolution under sub. (1) the commissioner shall make an investigation and if satisfied that the association has been discharged from all fiduciary duties which it has undertaken, the commissioner shall issue a certificate to the association certifying that it is no longer authorized to exercise fiduciary powers.

(3) On issuance of a certificate by the commissioner, an association:

(a) Is no longer subject to this chapter;

(b) Is entitled to have returned to it the indemnity fund required by s. Bkg. 15.04; and

(c) Shall not exercise any of the powers granted by this chapter without first applying for and obtaining new authorization to exercise trust powers.

NOTE: This section parallels 12 C.F.R. 550.14.

S-L 31.80 EFFECT OF TRUST ACCOUNTS OF APPOINTMENT OF CONSERVATOR OR RECEIVER OR VOLUNTARY DISSOLUTION OF ASSOCIATION. (1) APPOINTMENT OF LIQUIDATOR, CONSERVATOR OR RECEIVER. Whenever a liquidator, conservator or receiver is appointed for an association, the liquidator, receiver or conservator shall, pursuant to the instructions of the commissioner and the orders of the court having jurisdiction, close such of the association's trust accounts as can be closed promptly and transfer all other trust accounts to substitute fiduciaries.

(2) VOLUNTARY DISSOLUTION. Whenever an association exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with local law, proceed at once to liquidate the affairs of the trust department as follows:

(a) All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order or instructions of the court; and

(b) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made for the closed accounts and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

NOTE: This section parallels 12 C.F.R. 550.15.

S-L 31.90 REVOCATION OF TRUST POWERS. (1) NOTICE OF INTENT. In addition to the other sanctions available, if, in the opinion of the commissioner, an association is unlawfully or unsoundly exercising, or has failed for a period of 5 consecutive years to exercise, the powers granted by this chapter or otherwise fails to comply with the requirements of this chapter, the commissioner may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this chapter. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise trust powers should issue against the association.

(2) HEARING. A hearing under sub. (1) shall be conducted as a contested class 2 hearing under ch. 227, Stats.

(3) REVOCATION ORDER. Unless the association served under sub. (1) appears at the hearing by a duly authorized representative, it is deemed to have consented to the issuance of the revocation order. In the event of consent or if, upon the record made at the hearing, the commissioner finds that any allegation specified in the notice of charges has been established, the commissioner may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise powers granted by this chapter except that the order shall permit the association to continue to service all previously accepted trust accounts pending their expenditious divestiture or termination.

(4) EFFECTIVE PERIOD. A revocation order is effective not earlier than the expiration of 30 days after service of the order upon the association, except a

consent revocation order which is effective at the time specified in the order, and shall remain effective and enforceable, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

NOTE: This section parallels 12 C.F.R. 550.16.

SECTION 2. EFFECTIVE DATE. This order takes effect on the first day of the month following its publication in the Wisconsin administrative register, as provided by s. 227.026(1)(intro.), Stats.

R. J. McMahon, Commissioner

Dated: January 4, 1983