CR 83-145

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, with respect to licensing definitions, registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, and examination fees, were duly approved and adopted by this agency on November 28, 1983.

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 28th day of November, 1983.

(SEAL)

Richard R. Malmgren
RICHARD R. MALMGREN
Commissioner of Securities
State of Wisconsin

RECEIVED
NOV 29 1983
1:30
Revisor of Statutes
Bureau

ORDER OF THE

OFFICE OF THE COMMISSIONER OF SECURITIES

STATE OF WISCONSIN

ADOPTING, AMENDING AND REPEALING RULES

To repeal SEC 3.07(2), SEC 3.11(2), SEC 3.28(1) and SEC 9.01(1)(a)3.; to renumber SEC 3.07(3), SEC 3.28(2), (3) and (4) and SEC 9.01 (1)(a)4. and 5.; to renumber and amend SEC 3.11(1) and SEC 4.01(2); to amend SEC 1.02(7), SEC 2.01(1) (a)3., SEC 2.02(1)(a), (5)(d)1. and (10)(b), SEC 3.02(Intro.), (1)(Intro.), (1)(a) and (1)(b), SEC 3.06(1) and (2), SEC 3.07(1), SEC 3.12(1) and (2)(b)1., SEC 4.01(1)(a), SEC 4.02(1), SEC 4.03 (1)(b) and (2), SEC 4.035(1), SEC 4.04(1)(a), SEC 4.06(2)(e), SEC 4.07(1), SEC 5.01(1) and (2), SEC 6.05(2)(Intro.), SEC 7.01(3)(e), SEC 7.02(1)(d), SEC 7.03(2); to repeal and recreate SEC 3.04, SEC 3.05, SEC 3.16, SEC 4.01(3), (4) and (5) and SEC 5.01(3) and (4); and to create SEC 3.19 and SEC 4.01(2)(b) and (7), relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, with respect to licensing definitions, registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, and examination fees.

Pursuant to authority vested in the Office of the Commissioner of Securities by secs. 551.22(1), 551.27(10), 551.31(2) and (4), 551.32(1)(a), (1)(b), (1)(c)4., 551.53, 551.59(6)(b) and 551.63(1) and (2), Wis. Stats., the Wisconsin Commissioner of Securities repeals, amends and adopts rules interpreting those sections as follows:

SECTION 1. SEC 1.02(7) is amended to read:

SEC 1.02(7) "Branch office" means any branch office, sales office or office of supervisory jurisdiction registered under the rules of any national securities exchange or national securities association of which the broker-dealer is a member, or any place of business in this state of 3 or more licensed agents~~,--in-this-state~~ other than agents licensed for a broker-dealer as a result of the application of s. SEC 4.05(8).

ANALYSIS: The amendments to this section: (1) Move the phrase "in this state" to its proper grammatical place in the subsection; and (2) Provide that agents licensed for broker-dealers as a result of the application of s. SEC 4.05(8) do not have to be counted in the determination of whether a place of business constitutes a branch office. Such agents perform securities transactional-related functions limited to promotional or account-opening services.

SECTION 2. SEC 2.01(1)(a)3. is amended to read:

SEC 2.01(1)(a)3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for

the enterprise meeting the requirements of s. SEC 3.22(1)(p) and subject to the standards in s. SEC 3.06(2), and ~~such~~ additional information as the commissioner may require, and the commissioner does not by order deny the exemption within 20 days of the date the notice is filed. The financial statement requirement in this subdivision is not applicable if the revenue obligations being offered are the subject of an irrevocable letter of credit from a bank in favor of holders of the revenue obligations providing for payment of principal and interest on the revenue obligations, and the letter of credit is accompanied by an opinion of counsel stating that: a.i. payment of debt service will not constitute a preference under the U.S. bankruptcy code in the event of a filing of a petition in bankruptcy with respect to the enterprise, or ii. the letter of credit will provide for reimbursement to holders of the revenue obligations in the event they are required by order of a U.S. bankruptcy court to disgorge as a preference any payment of a debt service, or a combination of i. and ii.; and stating that b. the enforceability of the letter of credit would not be materially affected by the filing of a petition under the U.S. bankruptcy code with respect to the enterprise or any person obligated to reimburse the bank for payments made pursuant to the letter of credit.

ANALYSIS: The amendment in this section provides that in exemption filings under the rule for revenue bond offerings that have a non-governmental industrial or commercial enterprise as the obligor, the net earnings of the obligor are subject to the earnings requirement of s. SEC 3.06(2). The amendment

is adopted under the authority granted the Commissioner of Securities in s. 551.22(1), Stats., to provide a registration exemption for such offerings subject to such rules as the Commissioner may adopt.

The amendment to this section is changed from its form in the public comment draft in the following respects: (1) In response to public comments received, the amendment in lines 7 to 9 of the public comment draft was modified to clarify that the reference to the earnings requirement in s. SEC 3.06(2) was not meant to be a mandatory requirement without regard to whether or not it would be necessary to impose the requirement for the protection of investors. The language "subject to the standards in" was substituted to give industrial revenue bond issuers notification that in filings under the exemption, the staff will review the filing with reference to the earnings requirement of s. SEC 3.06(2) so that the earnings requirement would only be applied where it would be necessary for the protection of investors. (2) The proposed deletion of the rule language in lines 11 to the end of the SECTION in the public comment draft was removed because the legislation in 1983 Senate Bill 121 upon which the deletions were contingent was not enacted by the filing deadline required for making that change to this rule.

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

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

ANALYSIS: This amendment clarifies that the determination of the number of transactions for purposes of the presumption of "isolated" in the rule shall be based solely on securities transactions taking place in Wisconsin. The amendment provides that the rule will not depend on extra-territorial factors to determine its applicability.

SECTION 4. SEC 2.02(5)(d)1. is amended to read:

SEC 2.02(5)(d)1. 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 either the issuer or sponsor of the issuer by means of direct or indirect common control;

ANALYSIS: The amendment in the last sentence of this rule clarifies the intent of the rule to allow use of the exclusion from the filing requirement only for offerings where the selling broker-dealer is unaffiliated in all instances. The current language of the rule can be read to allow use of the filing exclusion if the selling broker-dealer is affiliated with the sponsor of the issuer, but not with the issuer itself (or vice-versa). The other amendments are non-substantive language changes recommended by the Rules Clearinghouse of the Wisconsin Legislative Council.

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

SEC 2.02(10)(b) Any issuance of securities by a corporation in a transaction meeting the requirements of section 368(a) (1) (B) of the internal revenue code, if the issuer files with the commissioner prior to the offering the reorganization agreement and plan pursuant to which ~~such~~ the securities are proposed to be issued and ~~such~~ additional information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days from the date of filing.

ANALYSIS: These amendments clarify that the filing required under the rule must be made before any offering under the exemption can take place. The added language "prior to the offering" is identical to the language currently in provisions establishing 10 day review periods for use of an exemption (such

as ss. SEC 2.01(3)(a), SEC 2.01(11)(a), SEC 2.02(3)(a), and SEC 2.02(5) (d)1.). The amendment is necessary to ensure that any problems identified by the staff in its examination of the filing during the 10-day review period are resolved before the offering materials are distributed to offerees. In a revision to the rule as a result of comments made by the Rules Clearinghouse of the Wisconsin Legislative Council, the language "from the date of filing" was added at the end of the rule to clarify when the Commissioner must take action under the rule to disallow use of the exemption.

SECTION 6. 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~~ that is not affiliated with the issuer by means of direct or indirect common control and 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: These amendments: (1) Extend applicability of the exclusionary language in this rule to enable its use in offerings of common stock by non-Wisconsin issuers as well as Wisconsin issuers; and (2) Require the selling broker-dealer to be unaffiliated with the issuer. The exclusionary language was first added in an amendment effective

January 1, 1983 which provided that the offering price requirement in the rule was not applicable where the offering was of the common stock of a Wisconsin corporation whose principal office was in Wisconsin and involved 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). Applicability of the exclusion is extended to enable its use by all corporate issuers.

The exclusion 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.

The requirement that the selling broker-dealer be unaffiliated with the issuer provides that the underwriting decision and involvement by the broker-dealer is a result of independent arm's-length negotiations with no potential conflicts-of-interest that could compromise the broker-dealer's due diligence obligations to its customers.

SECTION 7. SEC 3.02(1)(intro.), (1)(a) and (1)(b) are amended to read:

SEC 3.02(1) With respect to common stock of issuers not in the promotional or developmental stage, the offering price may be deemed unfair or inequitable to purchasers

unless~~:~~ it meets the requirements of par. (a), (b) or (c) of this subsection.

(a) The price for the stock does not exceed 25 times the issuer's net earnings per share for the last ~~12 months~~ fiscal year, or does not exceed 25 times its average annual net earnings per share for the last 3 years prior to the proposed offering date, or does not exceed such other multiple of net earnings as the commissioner may prescribe~~; or~~.

(b) Information is filed with the commissioner showing there exists an adequate public market for the stock, provided that a public market will be presumed adequate if: ~~there~~

1. The stock is traded on a national or regional stock exchange registered under the securities exchange act of 1934;

2. The stock is quoted on the national association of securities dealers automated quotation system; or

3. Each of the criteria in this subdivision are met, consisting of there having been ~~were~~ at least 500 holders of the stock at the beginning and the end of the 6-month period preceding the date of the filing~~;~~, at least 200,000 shares of the stock are publicly outstanding (exclusive of shares held by officers, directors, or 5% shareholders)~~;~~, at least 2 broker-dealers regularly make a market in the stock~~;~~, at least one financial publication regularly quotes the market

price ~~if the stock is not listed on a national securities exchange~~, and trading of the issuer's stock in the 6-month period preceding the date of the filing averaged at least 100 transactions or at least 5% of the outstanding shares (not including shares held by officers, directors or 5% shareholders) per month~~, or~~.

ANALYSIS: These amendments: (1) Amend sub.(1)(Intro.) to make a non-substantive language change to facilitate the restructuring of the requirements in the rule paragraphs amended in the rest of the SECTION; (2) Amend par. (1)(a) to enable the price-earnings calculation in the paragraph to be based in every offering totally on audited financial statements. The current "last 12 month" language results in the computation being based on a combination of both audited and unaudited "stub period" financial statements for offerings taking place in any quarter after the audited statements have been prepared; (3) Amend par. (b) to create presumptions that an "adequate trading market" exists for a stock if the stock is traded on a national or regional stock exchange or if the stock is quoted on the National Association of Securities Dealers Automated Quotation System (NASDAQ).

In amendments to subd. (1)(b)3. suggested by the Rules Clearinghouse of the Wisconsin Legislative Council, language was added to this subdivision in its proposed final form to clarify that all of the conditions in (1)(b)3. must be met at a minimum in order to qualify for the exemption thereunder. Also, the language in subd. (1)(b)3. relating to "stock not listed on a national securities exchange" is stricken as unnecessary because of the adoption of subd. (1)(b)1.

SECTION 8. SEC 3.04 is repealed and recreated to read:

SEC 3.04 PROMOTIONAL OR CHEAP STOCK. The offer or sale of equity securities or securities convertible into equity securities may be deemed unfair and inequitable to purchasers and to involve unreasonable amounts of promoters' profits or participations if the issuer has issued promotional or cheap stock that fails to comply with the provisions of the North American Securities Administrators Association Statement of Policy on Cheap Stock, adopted April 23, 1983. 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 section repeals the current Wisconsin registration rule on promotional or cheap stock and adopts the registration Statement of Policy on Cheap Stock adopted on April 23, 1983 by the North American Securities Administrators Association, of which Wisconsin is a member. The Policy is being adopted consistent with the statutory directive in s. 551.63(2), Stats., which provides that in prescribing rules, the Commissioner of Securities 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 equity securities by establishing standards and requirements relating to: uniform definitions of key terms; permitted levels of promotional stock; manner of computation of the amounts of promotional stock; and the terms and conditions of stock escrow agreements, including release and cancellation provisions.

SECTION 9. SEC 3.05 is repealed and recreated to read:

SEC 3.05 PROMOTERS' INVESTMENT. The offer or sale of securities of an issuer in the promotional or developmental stage may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Existing Capitalization, adopted April 23, 1983. 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 section repeals the current Wisconsin registration rule on promoters' investment and adopts the registration statement of Policy on Existing Capitalization adopted on April 23, 1983 by the North American Securities Administrators Association, of which Wisconsin is a member. The Policy is being adopted consistent with the statutory directive in s. 551.63(2), 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 equity securities by establishing standards and requirements relating to minimum equity investment levels by the promoters/officers of the issuer and uniform definitions of key terms such as "fair value of equity investment" and "total equity investment."

SECTION 10. SEC 3.06(1) and (2) are amended to read:

SEC 3.06 PREFERRED STOCK AND DEBT SECURITIES. (1) The offer or sale of preferred stock of an issuer may be deemed unfair and inequitable to purchasers unless the net earnings of the issuer, for its last fiscal year prior to the offering and for the average of its last 3 fiscal years prior to the offering, are sufficient to cover the dividends on the preferred stock proposed to be offered. Net earnings shall be determined exclusive of non-recurring items and shall be adjusted for any preferred stock to be redeemed with the proceeds of the offering, less applicable income tax effects. The commissioner may waive the requirement under this subsection upon evidence ~~of~~ showing a sufficient future net earnings capability including, but not limited to, evidence set forth in a financial forecast reviewed by an independent certified public accountant in accordance with the Guide for a Review of a Financial Forecast as promulgated by the american institute of certified public accountants.

(2) The offer or sale of debt securities of an issuer may be deemed unfair and inequitable to purchasers unless the net earnings of the issuer, for its last fiscal year prior to the offering and for the average of its last 3 fiscal years prior to the offering, are sufficient to cover the interest requirements on all debt securities issued

subsequent to its last fiscal year-(, including the securities proposed to be offered)-. Net earnings shall be determined before income taxes, depreciation and extraordinary items, and shall be adjusted for any debt securities to be redeemed with the proceeds of the offering. The commissioner may waive the ~~foregoing~~ requirement under this subsection upon evidence ~~of~~ showing a sufficient future net earnings capability including, but not limited to, evidence set forth in a financial forecast reviewed by an independent certified public accountant in accordance with the Guide for a Review of a Financial Forecast as promulgated by the american institute of certified public accountants.

ANALYSIS: These amendments to subs. (1) and (2) provide a standard for an issuer of preferred stock or debentures to obtain a waiver of the net earnings requirement of the rule when the issuer's previous earnings do not meet minimum standards and the issuer must provide justification data regarding a sufficient future net earnings capability.

As a result of public comments received relating to SECTION 2 of the public comment draft as well as comments by the Rules Clearinghouse of the Wisconsin Legislative Council in Item 5f. of its Report, the language "including, but not limited to, evidence" was added to the beginning of the underscored language in both subs. (1) and (2). The revision clarifies that preparation of a financial forecast is not the sole and exclusive way of evidencing an issuer's future net earnings sufficiency. Rather, the revision makes it clear that while a financial forecast meeting the requirements in the rule constitutes a standard for obtaining a waiver of the net earnings requirement, under

appropriate facts and circumstances an issuer may be able to provide evidence of a sufficient future net earnings capability through use of other kinds or types of justification data. The basic amendments provide that when a financial forecast is used as the justification data, it must be reviewed by an independent certified public accountant using nationally-accepted review standards promulgaged by the American Institute of Certified Public Accountants (AICPA).

SECTION 11. SEC 3.07(1) is amended to read:

SEC 3.07 VOTING RIGHTS. (1) If the issuer is a corporation or business trust having more than one class of equity securities authorized or outstanding, the offer or sale may be deemed unfair and inequitable to purchasers if the class of equity securities offered or sold to the purchasers:

(a) Has no voting rights; or

(b) Has less than equal voting rights, in proportion to the number of shares of each class outstanding, adjusted for any prior reclassification of securities, on any matter, including election to the board of directors or board of trustees of the issuer; unless preferential treatment as to dividends and liquidation is provided with respect to the class of equity securities offered or sold or the inequality in voting rights is otherwise justified.

ANALYSIS: These amendments make the voting rights registration requirement of s. SEC 3.07(1) applicable to offerings of equity securities by business trusts when they have more than one class of equity securities

(shares of beneficial interest) authorized or outstanding.

The amendments correct an inadvertent omission of business trusts from the rule in its current form. The equity securities of business trusts are subject to the same registration requirement of s. 551.21(1), Stats., as are securities of a corporation. Because the equity securities of business trusts have voting rights similar to the equity securities of corporations, there is no reason why the restrictions on voting rights that are prohibited currently under this rule with respect to corporate equity securities should not be applied equally to the voting securities of business trusts.

SECTION 12. SEC 3.07(2) is repealed and SEC 3.07(3) is renumbered SEC 3.07(2).

ANALYSIS: This SECTION repeals the registration rule which provides that an offering of equity securities by a corporation is presumed to be unfair and inequitable to purchasers if the issuer's Articles of Incorporation or By-laws contain so-called "supermajority" shareholder vote requirements for election/removal of Board of Director members or for certain mergers/reorganizations. In response to the growing number of hostile take-overs, many corporations over the last several years have adopted "supermajority" voting requirements together with other types of "defensive" charter provisions to protect against hostile take-over offers for their shares. However, the presence of supermajority voting requirements creates registration difficulties when those issuers make public offerings of their equity securities requiring registration in Wisconsin and compliance with the voting rights rule provision.

The repeal of this registration rule is warranted because: (1) The enactment by corporations of "supermajority" voting provisions can be expected to continue in light

of the continuing high level of hostile takeover activity; (2) The June, 1982 U.S. Supreme Court decision in Edgar v. MITE Corp. that invalidated most state corporate takeover laws; and (3) A corporation's charter provisions relating to required percentages of shareholder vote approvals for specified transactions is subject to ratification by shareholders and is a matter of corporate governance between the corporation's shareholders and management.

SECTION 13. SEC 3.11(1) is renumbered SEC 3.11 and is amended to read:

SEC 3.11 REAL ESTATE PROGRAMS. ~~(1) Except as provided in sub. (2), the~~ The offer or sale of interests in a limited partnership which will engage in real estate syndications may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy regarding real estate programs, adopted April 15, 1980, as amended effective March 30, 1982 and April 23, 1983, including comments ~~therein~~. 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: These amendments: (1) remove the reference to sub. (2) of s. SEC 3.11 because sub. (2) is repealed in SECTION 14; and (2) incorporate by reference the modifications to the North American Securities Administrators

Association ("NASAA") Statement of Policy regarding real estate programs, as adopted on April 23, 1983, by vote of its members, including Wisconsin, at the NASAA 1983 Spring Conference.

SECTION 14. SEC 3.11(2) is repealed.

ANALYSIS: This subsection is repealed because the "sunset" language in the rule provided for its automatic expiration on June 30, 1983.

SECTION 15. SEC 3.12(1) is amended to read:

SEC 3.12 OIL AND GAS PROGRAMS. (1) Except as provided in sub. (2), the offer or sale of interests in a limited partnership which will engage in oil or gas 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 and April 23, 1983. 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: This amendment incorporates by reference the modifications to the North American Securities Administrators Association ("NASAA") Guidelines for the

Registration of Oil and Gas Programs, as adopted April 23, 1983, by vote of its members, including Wisconsin, at the NASAA 1983 Spring Conference.

SECTION 16. SEC 3.12(2)(b)1. is amended to read:

SEC 3.12(2)(b)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 subd. 3., the sponsor receives as compensation not more than ~~25%~~ 15% of program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs;

ANALYSIS: This amendment corrects an error made in the rule when it was initially adopted effective January 1, 1983. The allowed percentage of promotional interest in the section should have read 15% of program revenues rather than 25%. The correction establishing the promotional interest at the 15% level makes the rule consistent with the 15% promotional interest established in sections SEC 3.12(2)(a) and (2)(b)2., Wis. Adm. Code, for sponsors of oil and gas programs whose compensation is determined on a modified functional allocation basis or on a net profits interest basis.

SECTION 17. SEC 3.16 is repealed and recreated to read:

SEC 3.16 TRANSACTIONS WITH AFFILIATES. (1) The offer or sale of securities by an issuer that has engaged or has a policy to engage in transactions with officials of the issuer, its controlling persons or affiliates, may be deemed by the commissioner to be unfair and inequitable to purchasers unless the terms of the transactions comply with one or more of the requirements in pars. (a) to (c) of this subsection

that are applicable to the facts and circumstances of the transactions, where the transactions are required to be disclosed under sub. (2):

(a) Each transaction, other than a loan transaction, involving officials of the issuer, its controlling persons or affiliates, shall have been authorized at the time of the transaction or shall be subsequently ratified by a majority of the issuer's disinterested directors and shall contain terms no less favorable to the issuer than could have been realized by the issuer in an arm's-length transaction with unaffiliated persons.

(b) 1. For an issuer that is primarily engaged in the business of making loans, each loan transaction involving officials of the issuer, its controlling persons or affiliates shall either:

a. Have been authorized at the time of the transaction or subsequently ratified by vote of a majority of the issuer's disinterested independent outside directors; or

b. Have been made in the ordinary course of the issuer's business, be on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unaffiliated persons, and in the opinion of management not involve more than the normal risk of collectibility.

2. For any issuer not included under subd. 1., each loan transaction other than primarily for short-term advances

for travel, business expense, relocation, and similar ordinary operating expenditures, involving an official of the issuer, its controlling persons or affiliates shall either:

a. Have been authorized at the time of the transaction or subsequently ratified by vote of a majority of the disinterested independent outside directors of the issuer; or

b. Provide in the loan or loan guarantee agreement that it may not be extended or renewed and shall be repaid or retired not later than one year from the date of effectiveness of the registration statement for the offering.

(c) If any of the securities that are the subject of the offering are owned directly or beneficially by a person who has a loan or loan guarantee subject to this section, the disclosure document for the offering shall disclose that the proceeds from the offering inuring to that person shall be used to repay the loan.

(2)(a) If the issuer has engaged in transactions with officials of the issuer, its controlling persons or affiliates, the disclosure document for the offering shall disclose all material transactions.

(b) If the issuer has had in effect prior to the offering a written policy regarding making loans, the disclosure document for the offering shall disclose the terms and conditions of that policy and any changes contemplated in that policy, unless otherwise permitted by the commissioner.

(3) Definitions. For purposes of this section:

(a) "Affiliate" means any person who is a partner, officer or director of the issuer, or a person occupying a similar status or performing similar functions, or directly or indirectly in control of, controlled by, or under common control with, the issuer. Control may be presumed by ownership of, or the power to vote, more than 10% of the outstanding voting securities of the issuer, either alone or pursuant to an agreement, arrangement or understanding with one or more other persons.

(b) "Controlling person" means any person who directly or indirectly has the power to direct or cause the direction of the management and policies of an issuer, whether through the ownership of voting securities, by contract or by other similar means, or any affiliate of such persons.

(c) "Disinterested director" means a member of the issuer's board of directors who will not receive a direct financial benefit in the outcome of a vote by the board regarding a specific transaction.

(d) "Disinterested independent outside director" means a person who is not employed by the issuer other than in the capacity as director and who will not receive a direct financial benefit in the outcome of a vote by the board regarding a specific transaction.

(e) "Official of the issuer" means an officer, director, or any person performing similar functions, either of the issuer or an affiliate of the issuer.

(f) "Transaction" means an act, including but not limited to, loans, leases, or contractual arrangements which has transpired or may transpire between an issuer and an official of the issuer, its controlling persons, or affiliates.

ANALYSIS: This SECTION replaces the existing registration policy relating to loans to officers with a new rule that accomplishes the following: (1) Broadens applicability of the rule to any transaction involving an issuer and its controlling persons or affiliates, not just loan transactions; (2) Provides less restrictive standards than are present in the current policy. The current policy requires shareholder approval for loans and sets specific fairness standards regarding the terms of the loans. This rule provides "safe harbors" in pars. (1)(a), and (1)(b) for those transactions that were authorized at the time or were subsequently ratified by a majority of the issuer's disinterested directors (as in par. (1)(a) relating to transactions other than loans) or were authorized at the time or were subsequently ratified by vote of a majority of the issuer's disinterested independent outside directors (as in par. (1)(b) relating to loans and loan guarantees); and (3) Incorporates several definitions used in the current rule.

This rule is repealed and recreated to adopt a modern and effective registration policy governing transactions with affiliates. The new rule replaces an outdated policy.

Several modifications were made from the public comment draft of the rule as a result both of public comments received and comments in the Report of the Rules Clearinghouse of the Wisconsin Legislative Council (see section 5.h. of the Report making comments concerning the clarity of the section). The Rules Clearinghouse comments led to a meeting of staff members of this agency with the Rules Clearinghouse staff at which the suggestions in the Report of the Rules Clearinghouse were incorporated in this proposed final draft. The significant modifications are as

follows: (a) Adding definitions of the terms "disinterested independent outside director" and "transaction"; (b) Adding in sub. (1)(intro.) a reference to the disclosure requirement in sub. (2) that establishes a materiality standard. The standard provides that compliance with the requirements of the section is triggered only for transactions between an issuer and the enumerated persons that would have to be disclosed in the disclosure document for the offering; (c) Deleting the definition of the term "relative" from the public comment draft as being too broad and indefinite; (d) Revising the definition of "disinterested director" from its form in the public comment draft to make its applicability less broad by providing that the definition is triggered only if the board member "will not receive a direct financial benefit" from the transaction subject to the vote of the board; (e) Adding the language "one or more of" in sub. (1)(intro.) of the rule to clarify which subsections of the rule apply to a specific transaction; and (f) Adding the clarification language "For any issuer not included under subd. 1" at the beginning of subd. (1)(b)2.

SECTION 18. SEC 3.19 is created to read:

SEC 3.19 EQUIPMENT PROGRAMS. The offer or sale of interests in a limited partnership which will engage in the acquisition and ownership of equipment for lease or operation may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy for Equipment Programs, adopted April 23, 1983. 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 Re-

porter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: This rule adopts the North American Securities Administrators Association, Inc. (NASAA) Statement of Policy for Equipment Programs, as adopted April 23, 1983 by vote of its members, including Wisconsin. The Policy is being adopted consistent with the statutory directive in s. 551.63(2), 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 limited partnerships that engage in the acquisition and ownership of equipment for lease or operation in any enterprise, including oil and gas well drilling rigs, certain types of cable television operations, and service and supply programs. The Policy establishes standards and requirements relating to: investor suitability standards; limits on compensation paid to sponsors; conflict of interest limitations on transactions between the program and its sponsor or affiliates.

SECTION 19. SEC 3.28(1) is repealed, and ss. SEC 3.28(2), (3) and (4) are renumbered ss. SEC 3.28(1), (2) and (3), respectively.

ANALYSIS: This amendment repeals the rule requiring quarterly sales reports for registrants (other than certain investment companies) paying less than the maximum filing fee. The amendment is necessary because recent legislation in 1983 Wisconsin Act 27 relating to securities registration fees (effective January 1, 1984, which corresponds with the proposed effective date of this rule), requires all such registrants to pay the same registration fee irrespective of the dollar amount of sales in Wisconsin.

SECTION 20. SEC 4.01(1)(a) is amended to read:

SEC 4.01(1)(a) The commissioner on forms prescribed by the commissioner in s. SEC 9.01 (1)~~.--An-application-shall include-all-information-required-by-the-forms-and-any-other information-the-commissioner-may-require~~; or

ANALYSIS: This amendment removes duplicative language inasmuch as current rule SEC 4.01(2) defines what an "application" consists of for licensing purposes.

SECTION 21. SEC 4.01(2) is renumbered SEC 4.01(2)(a) and is amended to read:

SEC 4.01(2)(a) ~~An~~ Except as provided in par. (b), an "application" for purposes of s. 551.32(1)(b), Stats., means all information required by the form prescribed under sub. (1) ~~and~~ together with any additional information required by the commissioner.

ANALYSIS: This amendment adds a cross-reference to par. (b) (newly created in SECTION 22) where additional provisions relating to license applications are discussed.

SECTION 22. SEC 4.01(2)(b) is created to read:

SEC 4.01(2)(b) An "application" for renewal of a license as a securities agent for a broker-dealer registered with the national association of securities dealers, inc. consists of the payment of Wisconsin agent license renewal fees to the central registration depository of the national association of securities dealers as developed under contract with the north american securities administrators association.

The application shall be deemed "filed" under s. 551.32(1)(a), Stats., when the fee on deposit with the central registration depository has been allocated to the commissioner.

ANALYSIS: This SECTION is one of several that makes revisions necessary to implement the transfer of the securities agent licensing procedure in Wisconsin from a manual system to a central, automated system known as the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. ("NASD"), as developed under contract with the North American Securities Administrators Association, Inc. ("NASAA"). The Commissioner was given the authority to adopt the CRD in Chapter 53, Laws of 1981, effective January 1, 1982. Implementation of the CRD in Wisconsin began during August, 1983, and will be completed by January 1, 1984.

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

The new rule provision relating to the definition of the term "application" is needed because under the CRD agent renewal procedure, no formal application forms or other materials will be submitted to the individual states where an agent is licensed.

In a modification to the language of the rule as a result of comments by the Rules Clearinghouse of the Wisconsin Legislative Council, the word "may" in line 4 of the public comment draft of the rule was deleted as unnecessary and confusing. The deletion of "may" makes clear that the license application is presumed complete by the Commissioner if the Wisconsin agent license renewal fees are paid to the CRD. The last sentence of the rule defining what constitutes "filing" for purposes of the agent license renewal procedure is necessary because s. 551.32(1)(a) requires that the application" be "filed" with the CRD.

SECTION 23. SEC 4.01(3), (4) and (5) are repealed and recreated to read:

SEC 4.01(3) Unless waived under sub. (4), each applicant for an initial license as a broker-dealer or agent is required to pass the Uniform Securities Agent State Law Examination with a grade of at least 70% and pass with a grade of at least 70% one of the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to pass each examination in pars. (b) to (d) of this subsection that relates to the applicant's proposed securities activities:

(a) The Securities Exchange Commission Only/National Association of Securities Dealers Non-Member General Securities Examination or, in the case of applicants registered with the national association of securities dealers, inc., the General Securities Registered Representative Examination.

(b) The Investment Company Products/Variable Contracts Representative Examination.

(c) The Direct Participation Programs Representative Examination.

(d) The Municipal Securities Representative Examination.

(4) The examination requirement in sub. (3) is waived for any applicant who meets the criteria set forth in any one of the paragraphs in this subsection:

(a) The applicant has passed with a grade of at least 70% the examinations required to be passed by the applicant under sub. (3) within two years prior to the date the application for license is filed in this state.

(b) The applicant has been licensed, within two years prior to the date the application for license is filed in this state, as an agent or as a broker-dealer under the securities law of any other state that requires passing the uniform securities agent state law examination and, in the case of examinations required by pars. (a) to (d) in sub. (3), has been registered with the national association of securities dealers, inc., within two years prior to the date the application for license is filed to engage in the type of business for which the applicant is applying for license.

(c) The applicant has submitted an undertaking satisfactory to the commissioner setting forth how the applicant's

activities will be limited in this state and, in the case of an agent seeking a limited license, how the agent will be adequately supervised.

(d) The applicant has been licensed under ch. 551, Stats., within two years prior to the date the application is filed as an agent or broker-dealer to engage in the type of business for which the applicant is applying for license.

(e) The applicant has received an order of the commissioner , issued under conditions as the commissioner may prescribe, waiving the requirement to take and pass one or more of the examinations in sub. (3).

(5) Prior to issuance of an initial license as a broker-dealer, at least one employee located at the principal office of the broker-dealer shall be designated in the license application to act in a supervisory capacity and be licensed as an agent for the broker-dealer. Each designated supervisor shall meet the examination requirement in sub. (3) and shall pass with a grade of at least 70% the examination in par. (a) of this subsection, unless the broker-dealer's proposed securities activities will be restricted, in which case the designated supervisor is required to pass each examination in pars. (b) to (d) of this subsection that relates to the broker-dealer's securities activities, unless the examination is waived under sub. (4):

(a) The General Securities Principal Examination.

(b) The Investment Company Products/Variable Contracts Principal Examination.

(c) The Direct Participation Programs Principal Examination.

(d) The Municipal Securities Principal Examination.

ANALYSIS: This SECTION reorganizes the format of the broker-dealer and agent licensing examination requirement and the examination waiver provisions in ss. SEC 4.01(3), (4) and (5) for purposes of clarity by: (1) Listing the various kinds of examinations that are required to be passed, depending upon the type of business engaged in by the applicant, together with the prescribed passing grades for the respective examinations. The basis for using 70% as the "passing" grade on the USASLE examination referred to in s. SEC 4.01(3) is because the 70% level has been the established passing grade since the inception of the USASLE examination in 1978. The 70% grade corresponds with a knowledge level sufficient to demonstrate adequate understanding of state securities law requirements; (2) Listing in a single subsection the criteria for obtaining a waiver of the requirement to pass the prescribed examination(s); and (3) Listing the additional examinations and the minimum passing grades required for those persons who will act in a supervisory capacity for the broker-dealer.

The only substantive change in the examination requirements made by these modifications is in the examination requirement for supervisors in sub. (5). Under current sub. (5), a supervisor can meet the examination requirement by passing either the Principal Qualification Examination of the NASD or the SECO/NASD Non-Member General Securities

Examination. New sub. (5) removes the SECO/NASD examination as an alternative because it is not an examination specifically intended for supervisors, unlike the NASD Principal Qualification Examination.

Several modifications were made to this SECTION as a result of comments by the Rules Clearinghouse of the Wisconsin Legislative Council in item 5m. of its Report. Language was added in s. SEC 4.01(3)(intro.) to clarify how a person determines which examination to take by specifying that if a person passes one of the general securities examinations in par. (a), the person can sell any type of security, including the specialized products named in pars. (b) to (d). If a person does not pass any of the general securities examinations in par. (a), the person must pass the specialized examination listed in pars. (b) to (d) that corresponds to each special type of securities product the person wishes to sell. In addition, the language "is waived under sub. (4)" was added to s. SEC 4.01(5)(intro.) to clarify that the examinations required under s. SEC 4.01(5) are waived automatically if the requirements of any of the specific waiver subsections are met. Consequently, formal approval or action by the Commissioner is not required in all instances.

SECTION 24. SEC 4.01(7) is created to read:

SEC 4.01(7). A license is effective under s. 551.32(1)(c)4., Stats., at the following times prior to the expiration of 30 days from the filing of the application:

(a) The date that the commissioner issues a license to an agent or broker-dealer;

(b) The date that approval of licensed status as an agent or broker-dealer is transmitted by the commissioner to the applicant through the central registration depository

of the national association of securities dealers, inc.; or

(c) On January 1 for any renewal application filed during December of the preceding year with the central registration depository, unless the commissioner makes a written request for additional information relevant to the application prior to January 1.

ANALYSIS: This new SECTION contains another amendment to implement the Central Registration Depository referred to in the ANALYSIS to Section 22. This amendment is adopted under the specific rule-making authority granted the Commissioner of Securities in s. 551.32(1)(c)4., Stats., to designate by rule an effective date for securities broker-dealer or agent licensing that is earlier than the standard 30 day period after filing an application prescribed in s. 551.32(1)(c)(intro.). These provisions are needed to provide flexibility in the licensing process to allow a license to become effective before the expiration of the 30 day period if the Commissioner acts to issue the license either manually or through the CRD.

SECTION 25. SEC 4.02(1) is amended to read:

SEC 4.02 NET CAPITAL REQUIREMENTS AND AGGREGATE INDEBTEDNESS LIMITATIONS. (1) Every broker-dealer, whether or not subject to rule 15c3-1 of the securities exchange act of 1934, shall maintain net capital in such minimum amounts as are ~~prescribed for its activities under rule 15c3-1 of the securities exchange act of 1934~~ designated in that rule for the activities to be engaged in by the broker-dealer in this state.

ANALYSIS: This amendment clarifies that all licensed broker-dealers in Wisconsin (even though not directly subject to the Securities Exchange Act of 1934 licensing requirements, i.e., banks) must maintain minimum net capital equivalent to what would be required under rule 15c3-1 of that Act. The language of the amendment contains non-substantive modifications from its form in the public comment draft as a result of comments by the Rules Clearinghouse of the Wisconsin Legislative Council.

SECTION 26. SEC 4.03(1)(b) is amended to read:

SEC 4.03(1)(b) Ledgers reflecting all ~~assets and liabilities~~ asset, liability, income, ~~and~~ expense and capital accounts.

ANALYSIS: This amendment makes non-substantive language and grammatical changes to clarify the types of accounts that must be included in a general ledger.

SECTION 27. SEC 4.03(2) is amended to read:

SEC 4.03(2) Every licensed broker-dealer shall preserve for at least 6 years, the first 2 years in an easily accessible place, all records required under sub. (1) and under s. SEC 4.035(2), except that records required under sub. (1) (k), (1) and (m) shall be preserved by the broker-dealer for at least 5 years after the closing of the account; and records required under sub. (1) (o) shall be preserved by the brokerdealer for 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 provides that the books-and-record retention requirement for broker-dealers includes the records required in s. SEC 4.035(2) to be prepared by agents relating to customer securities transactions. It is appropriate and necessary to require the broker-dealer employer to be responsible for the retention of the records because the records are designated in s. SEC 4.035 as records of the broker-dealer for proprietary purposes.

SECTION 28. SEC 4.035(1) is amended to read:

SEC 4.035 SECURITIES AGENT RECORDS. (1) Every licensed 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 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 have and keep current~~,~~ the records in sub. (2) of this section relating to customer securities transactions, unless the commissioner by order exempts an agent from all or part of the requirements of this section. The record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the commissioner. ~~Although~~

~~the~~ The originals of the records are considered records of the broker-dealer~~,-a~~. Every 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.

ANALYSIS: These amendments: (1) Add equivalent language to that in s. SEC 4.03(6) allowing the Commissioner of Securities to issue an order exempting a person from all or part of the record-keeping requirements of the section; and (2) Clarify that the records required to be prepared by an agent are considered property of the broker-dealer.

SECTION 29. SEC 4.04(1)(a) is amended to read:

SEC 4.04 REPORTING REQUIREMENTS. (1)(a) Except as provided in par. (b), each broker-dealer, whether or not subject to rule 17a-5 of the securities exchange act of 1934, 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~~ in the form and at the times for filing 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: These amendments make the annual financial statement reporting requirement in the rule specifically applicable to those broker-dealers licensed in Wisconsin that are not subject to the federal broker-dealer licensing provisions under the Securities Exchange Act of 1934. As a result of recent federal regulatory interpretive rulings, certain financial institutions are permitted to, and in some instances have become, engaged in the business of being a securities broker-dealer. However, because those broker-dealer entities are not subject to federal securities law financial statement filing provisions that form the basis for the rule in its current form, the amendments are necessary to establish a separate and distinct annual financial statement reporting requirement for those non-federally regulated entities.

SECTION 30. SEC 4.06(2)(e) is amended to read:

SEC 4.06(2)(e) Sharing directly or indirectly in profits or losses in the account of any customer without ~~the~~ first obtaining written authorization of the customer and the broker-dealer which the agent represents;

ANALYSIS: This amendment clarifies that the written authorization required under the rule in order for an agent to share in the profits or losses in a customer's account must be obtained prior to any profit-sharing activity, not after the fact. The language used parallels that in ss. SEC 4.06(1)(e) and (f) relating to obtaining written third party trading authorizations and obtaining written discretionary trading authority.

SECTION 31. SEC 4.07(1) is amended to read:

SEC 4.07 LICENSE PERIOD. (1)(a) 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.

(b) The license of an agent for a broker-dealer that is registered with the national association of securities dealers, inc. expires at midnight on December 31 following the date of issuance of the license.

(c) The license of an agent for a broker-dealer that is not registered with the national association of securities dealers, inc. 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 of the license for the agent's employer is automatically extended to the next expiration date of the employer's license.

(d) 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.

(e) The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

ANALYSIS: This amendment is necessary to implement the Central Registration Depository ("CRD") referred to in the ANALYSIS following SECTION 22. The amendments: (1) Create separate paragraphs to clarify the different license periods based on the various categories of broker-dealer and agent licenses; and (2) Add new language in pars. (b) and (c) to provide for a December 31 expiration date (which is the uniform expiration date established under the CRD for all licenses of agents of broker-dealers that are registered with the National Association of Securities Dealers, Inc.).

Under the license renewal process established under s. 551.31(4), Stats., the license automatically expires by operation of law if the required fee is not paid. Further, any such "automatic" license expiration constitutes a request for withdrawal of the license under that statutory section.

SECTION 32. SEC 5.01(1) is amended to read:

SEC 5.01 LICENSING PROCEDURE. (1) Applications for initial and renewal licenses and qualifications of investment advisers and their representatives shall be filed on forms prescribed by the commissioner in s. SEC 9.01(1)~~, and shall include all information required by the forms and any other information the commissioner may require~~.

ANALYSIS: This amendment parallels the amendment to s. SEC 4.01(1)(a) in SECTION 20 and deletes redundant language because the term "application" is defined for investment adviser licensing purposes in s. SEC 5.01(2) as amended in SECTION 33. The language referring to "any other information the Commissioner may require" is deleted from this subsection and put more appropriately in sub. (2) by means of the amendment in SECTION 33.

SECTION 33. SEC 5.01(2) is amended to read:

SEC 5.01(2) A licensing "application" for purposes of s. 551.32(1)(b), Stats., means ~~an application that includes~~ all information required by the form prescribed under sub. (1) and any additional information required by the commissioner.

ANALYSIS: This amendment makes the language of the rule defining what constitutes a licensing "application" for investment adviser purposes identical with the language in s. SEC 4.01(2) defining what constitutes a licensing "application" for broker-dealer purposes. As mentioned in the ANALYSIS of the amendment to s. SEC 5.01(1) in SECTION 32, the clause referring to "additional information required by the Commissioner" is already in current rule s. SEC 5.01(1).

SECTION 34. SEC 5.01(3) and (4) are repealed and recreated to read:

SEC 5.01(3) Unless waived under sub. (4), each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative after the effective date of this rule and each applicant whose application has not become effective by the effective date

of this rule, is required to pass with a grade of at least 75% the Wisconsin Investment Adviser Representative Examination.

(4) The examination requirement in sub. (3) is waived for any applicant who meets the criteria set forth in any one of the paragraphs in this subsection:

(a) The applicant has taken any of the following examinations within two years prior to the date an application for qualification is filed and has scored a grade that equals or exceeds the minimum passing grade established by the administrator of the respective examination:

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 2 or 7 Examinations.

(b) The applicant has met the examination requirement in sub. (3) within 2 years prior to the date the application for license or qualification is filed.

(c) The applicant has been licensed or registered within 2 years prior to the date the application is filed as an investment adviser representative under the securities law of another state requiring an examination equivalent to the examination designated in sub. (3) of this section.

(d) The applicant has submitted a written statement manually signed by a person duly authorized by the applicant satisfactory to the commissioner setting forth how the applicant's activities will be limited in this state and, in the case of an investment adviser representative seeking the limited qualification, how the representative will be adequately supervised.

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

(f) The applicant has been employed continuously as a portfolio manager or securities analyst in the banking, insurance or securities industry during the 3 years immediately preceding the filing of the application for license or qualification.

(g) The applicant has received an order of the commissioner, issued under conditions as the commissioner may prescribe, waiving the requirement to take and pass the examination in sub. (3).

ANALYSIS: This SECTION reorganizes the format of the investment adviser and investment adviser representative examination requirement and the examination waiver provisions in ss. SEC 5.01(3) and (4) to accomplish the following: (1) Specify the passing grade for the prescribed examination that corresponds to the grade which has been accepted under the current rule over the last

several years; and (2) List in a single subsection the criteria for obtaining a waiver of the requirement to pass the prescribed examination.

A number of amendments were made to this SECTION from its form in the public comment draft. An applicability clause was added to (e)(intro.) as a result of comments from the Rules Clearinghouse of the Wisconsin Legislative Council to clarify that the new examination standards in the SECTION apply both to new applicants after the effective date of the rule and to each applicant that has a pending application which had not become effective by the effective date of this rule. In subds. (4)(a)3. and 4., the following modifications were made: (1) The reference to the Series 1 Examination in subd. 3 was deleted because that examination is no longer used by the NASD; (2) The reference to the Series 6 Examination in subd. 3. was deleted because that examination is too limited in scope of knowledge tested to be an appropriate basis for a waiver of the general Wisconsin Investment Adviser Representative Examination; and (3) In subd. 3. a reference to the NASD Series 2 Examination was substituted for the entirety of subd. 4. because the examination named in subd. 4. is the Series 2 Examination. In addition, in par. (4)(d), the language "a written statement manually signed by a person duly authorized by the applicant" was substituted for the term "undertaking."

SECTION 35. SEC 6.05(2)(Intro.) is amended to read:

(2) The provisions of sub. (1) apply to a transaction or series of transactions which has, or may have ~~either of~~ the ~~following~~ effects: in par. (a) or (b) of this subsection, unless the transaction meets the requirement of rule 13e-3(g)(2) under the securities exchange act of 1934.

ANALYSIS: This amendment creates an exception to the Wisconsin "going-private" rule by making a cross-reference to a federal regulation that provides an exception from the federal "going-private" rule.

The exception applies to transactions in which security holders are offered an opportunity to receive equity securities that: (1) Have substantially the same voting, dividend and liquidation rights as the securities they hold; (2) Will be subject to federal periodic reporting requirements as a public company; and (3) Have an equivalent trading market.

For transactions meeting those criteria, no actual "going private" effect is present and no filing under the rule is warranted because a publicly-held reporting company has been replaced by another publicly-held reporting company, under circumstances wherein equity security holders of the issuer under the rule can continue as holders of similar equity securities having an equivalent trading market.

SECTION 36. SEC 7.01(3)(e) is amended to read:

(e) Periodic examination of a broker-dealer or investment adviser under s. 551.33(4), Stats. $75 per day per examiner plus, if the examination is conducted outside of Wisconsin, reasonable transportation costs that may not exceed coach class air fare.

ANALYSIS: This amendment is adopted pursuant to the authority of the Commissioner of Securities under s. 551.52(3), Stats., to charge the expenses reasonably attributable to the examination of any matter arising under Chapter 551, Stats., to the applicant, registrant or licensee involved. This amendment adding to the rule reasonable transportation costs not exceeding coach class air fare to the expenses chargeable for an out-of-state examination of a licensee is adopted because the statute requires the Commissioner to prescribe by rule the maximum amount of any examination expenses to be charged.

Transportation cost is a major expense in conducting an out-of-state examination of records of a licensed broker-dealer or investment adviser. This amendment is necessary because the $75 per day examination charge prescribed under the rule in its current form is not adequate to defray all of the costs--including transportation cost--of conducting most out-of-state records examinations of licensees. The $75 per day fee that remains in the rule for non-transportation costs will be adequate to defray the other costs associated with out-of-state examinations of licensees.

SECTION 37. SEC 7.02(1)(d) is amended to read:

(d) Advertising published or circulated by a broker-dealer or investment adviser licensed in this state relating to the licensee's own services, business or operations, or by a broker-dealer licensed in this state relating to securities that have been registered under ch. 551, Stats. or relating to securities transactions exempt under ss. 551.23(3)(a), (3)(c) or (3)(d), Stats., or by an investment company registered under ch. 551, Stats., unless the commissioner otherwise provides by order.

ANALYSIS: These amendments: (1) Clarify that the filing exclusions in the rule relating to broker-dealers requires that the broker-dealer must be licensed in Wisconsin in each instance; and (2) Extend the advertising filing exclusion in the rule to advertising published or circulated by a broker-dealer licensed in Wisconsin relating to securities qualifying under the secondary trading registration exemption in s. 551.23 (3)(a), (3)(c) and (3)(d), Wis. Stats., that allows broker-dealers to solicit purchases and sales and to act as market makers in the secondary market for securities qualifying thereunder.

This SECTION is modified from its form in the public comment draft as a result of this office's analysis of a comment in a letter from a member of the public. The modification consists of adding "(a), (3)(c) and (3)(d)", after the underscoring of s. 551.23(3), Stats. The modification allows use of the advertising filing exclusion thereunder by broker-dealers for all secondary transactions under s. 551.23(3), Stats., except transactions under sub. (3)(b). Precluding use of the advertising filing exclusion for secondary transactions under sub. (b) of s. 551.23(3), Stats., is necessary because of a recent amendment to s. 551.28(7), Stats., in 1983 Wisconsin Act 27, effective July 2, 1983. As a result of that statutory amendment, an investor in Wisconsin could be solicited to purchase the securities of a particular issuer in the secondary market without regard to the investor's financial suitability. This could occur even though the basis for the secondary trading was a registration of those securities in Wisconsin under the condition that the securities could only be purchased by an investor meeting minimum financial suitability standards.

SECTION 38. SEC 7.03(2) is amended to read:

SEC 7.03(2) An offer to repurchase securities under s. 551.59(6)(a), Stats., by a licensed broker-dealer and not

~~involving an act or omission specified in s. 551.59(1)(b)~~ relating to a violation of s. 551.41, Stats., may provide that the period within which the offer may be accepted by the offeree is not less than 15 days after the date of receipt thereof.

ANALYSIS: These amendments: (1) Correct the cross-reference to the statute cited in the rule to reflect the change made to that statute in Chapter 53, Laws of 1981 (effective January 1, 1982). The statutory change substituted a reference to s. 551.41 (2), Stats., for the narrative language in the statute specifying certain kinds of disclosure-related acts or omissions; and (2) Provide that a broker-dealer making a repurchase offer may not utilize the 15 day acceptance period under the rule if the repurchase offer relates to a violation of any of the anti-fraud provisions of s. 551.41(1), (2) and (3), Stats.

The original purpose and intent of this rule was to allow a shortened acceptance period for repurchase offers made by licensed broker-dealers relating to securities transactions that may have involved technical or non-substantive violations of the Wisconsin Uniform Securities Law. Its use is not appropriate for those repurchase offers involving any violation of the anti-fraud provisions of s. 551.41, Stats.

SECTION 39. SEC 9.01(1)(a)3. is repealed, and SEC 9.01(1)(a)4. and 5. are renumbered SEC 9.01(1)(a)3. and 4, respectively.

ANALYSIS: This amendment to the Forms chapter of the Rules of the Commissioner of Securities deletes reference to the Issuer Report of Sales Form in subd. 3 because 1983 Wisconsin Act 27 relating to securities registration fees (effective January 1, 1984)

requires all registrants (other than certain investment companies) to pay the same registration fee irrespective of the level of sales in Wisconsin.

* * * * *

NOTE: Incident to the preparation of this rule-making order it was determined that a new broker-dealer license renewal form was necessary. Accordingly, a new form has been prepared entitled "Application for Renewal, Broker-Dealer and Agent License--Non-NASD Member Firm", and a copy of the form is attached to this rule-making order. In addition, it was determined that amendments to the existing broker-dealer renewal form (BDR(WJ)) was necessary, including changing the title of the form. Accordingly, the form was appropriately amended, the title of the form was changed to read "Application For Renewal of Wisconsin Broker-Dealer License," and a copy of the form is attached to this rule-making order. Consistent with the recommendation of the Rules Clearinghouse of the Wisconsin Legislative Council in Item 4a. of its Report, reference to both the new form and the amended form is included as a NOTE to this rule-making order. Appropriate amendments will be made in 1984 to the relevant subsections of Chapter SEC 9 Forms of the Rules of the Commissioner of Securities.

* * * * *

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 28th day of November, 1983.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities

WISCONSIN LEGISLATIVE COUNCIL

LCRC FORM 2

RULES CLEARINGHOUSE

RONALD SKLANSKY
DIRECTOR
(Phone 266-1946)

RICHARD SWEET
ASSISTANT DIRECTOR
(Phone 266-2982)

ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
PHONE 608-266-1304

BONNIE REESE
EXECUTIVE SECRETARY

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 83-145
AN ORDER to repeal SEC 3.07 (2), 3.11 (2), 3.28 (1) and 9.01 (1) (a) 3; to renumber SEC 3.07 (3), 3.28 (2), (3) and (4) and 9.01 (1) (a) 4 and 5; to renumber and amend SEC 3.11 (1) and 4.01 (2); to amend SEC 1.02 (7), 2.01 (1) (a) 3, 2.02 (1) (a), (5) (d) 1 and (10) (b), 3.02 (intro.) and (1) (intro.), (a) and (b), 3.06 (1) and (2), 3.07 (1), 3.12 (1) and (2) (b) 1, 4.01 (1) (a), 4.02 (1), 4.03 (1) (b) and (2), 4.035, 4.04 (1) (a), 4.06 (2) (e), 4.07 (1), 5.01 (1) and (2), 6.05 (2), 7.01 (3) (e), 7.02 (1) (d) and 7.03 (2); to repeal and recreate SEC 3.04, 3.05, 3.16, 4.01 (3), (4) adn (5) and 5.01 (3) and (4); and to create SEC 2.02 (5) (e), 3.19 and 4.01 (2) (b) and (7), relating to the operation of ch. 551, Stats., the Wisconsin uniform securities law, with respect to licensing definitions, registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures and examination fees.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

8-11-83. Received by Legislative Council.
9- 8-83. Report sent to Agency.

RS:RS:las;nam

Report on
Clearinghouse Rule No. 83-145
Date 9/8/83

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

RULES CLEARINGHOUSE

RONALD SKLANSKY
DIRECTOR
(Phone 266-1946)

RICHARD SWEET
ASSISTANT DIRECTOR
(Phone 266-2982)

ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
PHONE 608-266-1304

BONNIE REESE
EXECUTIVE SECRETARY

September 8, 1983

CLEARINGHOUSE RULE 83-145

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.]

2. Form, Style and Placement in Administrative Code

a. The use of the words "such" and "therein" should be avoided.

b. On page 2, line 2, the notation "SEC 2.01 (1) (a)" should precede "3." [See s. 1.04 (2), Manual.]

c. On page 4, lines 8 and 9, the reference "the last sentence of" is unnecessary.

d. Throughout the proposed rule, it is suggested that when citing a federal law for which a U.S. code reference is known, the code reference should be used. A similar comment applies to the code of federal regulations. [See s. 1.07 (3), Manual.]

e. On page 6, line 3, the phrase "is reminded of its obligation" should be replaced by the word "shall."

f. Throughout the proposed rule, the format for presentation of section titles in s. 1.05, Manual should be followed.

g. On page 10, line 2, the notation "**there**" should be placed at the end of line 16, on page 9. Then, on page 10, line 3, the notation "3." should be underscored. [See s. 1.06, Manual.]

h. In SECTIONS 9 and 10 of the rule, ss. SEC 3.04 and 3.05 are repealed and recreated. If this is the intent of the commissioner's office, then the notation "(1)" on page 11, line 3, and page 12, line 3, should be removed. If only subsection (1) of each section is being repealed and recreated, then the notation "(1)" should follow the section number on page 11, line 1, and page 12, line 1.

i. On page 14, line 8, this line should be deleted and replaced with "commissioner may waive the requirement under this subsection upon evi-".

j. On page 20, line 16, the word "shall" should be replaced by the word "may."

k. On page 35, lines 1, 9 and 13, the notation "(1)" should be deleted.

l. The definitions used in proposed s. SEC 3.16 should be put at the beginning of the section and put in alphabetical order. [See ss. 1.01 (7) and 1.02 (4), Manual.]

m. In proposed s. SEC 4.07 (1) (b), the term "12:00 P.M." is used. It is not clear whether this would be midnight or noon. Horologists prefer the designation of "midnight" or "noon."

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

a. If the proposed rule will require a new or revised form, reference to that form should be included in a note to the rule by the agency. See s. 227.024 (1) (f) and (4) (a), Stats.

b. The proposed rule contains references to both the "securities act of 1933" and the "securities exchange act of 1934." The agency should take care that the two references are accurate.

5. Clarity, Grammar, Punctuation and Plainness

a. It is not clear why the agency is proposing to amend s. SEC 2.02 (1) (a) to include only transactions taking place in Wisconsin.

b. The proposed amendment to s. SEC 2.02 (5) (d) 1 and the analysis accompanying the change are very confusing. The agency may wish to redraft the last sentence to read as follows:

> 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 either

the issuer or sponsor of the issuer by means of direct or indirect common control.

c. Current law, in s. 551.23 (10) (c), Stats., requires the commissioner to adopt rules regulating disclosures required under that paragraph which are similar to, but no more burdensome to the issuer than, 17 C.F.R. 230.502 (b). The Clearinghouse has reviewed the applicable provisions and can indicate that the proposed rule is "similar to" that contained in 17 C.F.R. 230.502 (b), but is not able to conclude (without more information or documentation) that the proposed rule is "no more burdensome to the issuer."

d. In the analysis for proposed s. SEC 2.02 (10) (b), the agency claims that added language is "identical" to other existing rules. This statement could be misleading since the added language may be identical, but the resulting provisions are not, in fact, identical. For example, s. SEC 2.01 (11) (a) provides for filing prior to the offering but gives the Commissioner of Securities 10 days from the date of filing to disallow the exemption. As drafted, proposed s. SEC 2.02 (10) (b) does not specify when the action must be taken.

e. SECTION 8 [proposed s. SEC 3.02 (1)] of the proposed rule is not clearly drafted. For example, must all of the conditions included in s. SEC 3.02 (1) (b) 3 be met to qualify for the exemption? Also, given the proposed addition of s. SEC 3.02 (1) (b) 1 and 2, is the language in s. SEC 3.02 (1) (b) 3 relating to stock not listed on a national securities exchange still necessary?

f. It is not clear why the agency is proposing that evidence of future earnings capacity may be provided only through a forecast prepared by an independent certified public accountant in accordance with a guide prepared by the American Institute of Certified Public Accountants under s. SEC 3.06 (1) and (2). Further, the Offices of the Attorney General and Revisor of Statutes should be consulted to determine whether the requirements of s. 227.025, Stats, need to be met with respect to the guide.

g. Citation of the statutory authority supporting the amendment to s. SEC 3.07 (1) and an indication of the reason for the change would be helpful.

h. The proposed repeal and recreation of s. SEC 3.16 raises a number of clarity questions, specifically:

(1) The rationale for repealing a uniform standard and the substitution of a unique Wisconsin standard relating to loans to company officials is not clearly stated. This lack of rationale is particularly

evident in light of the other changes proposed in the rule that are justified under s. 551.63 (2), Stats., relating to uniform treatment.

(2) As drafted, it is not clear which subsections [e.g., s. SEC 3.16 (1) to (5)] will apply to a specific transaction or who will determine which subsections are "applicable."

(3) The scope of the term "transactions" could be more clearly delineated by including appropriate language in the definition subsection.

(4) The distinction between "disinterested directors" [s. SEC. 3.16 (2)] and "independent outside directors" [s. SEC 3.16 (2) and (3)] is not clear. If the terms are meant to refer to a single class of directors, a single term should be used in the rule. If they are meant to refer to different classes, a separate definition of "independent outside directors" should be considered.

(5) The basis for the provision in proposed s. SEC 3.16 (3) regarding approval of a loan by a majority of the "independent outside directors" is not clear. Further, it is not clear how the provision relating to approval by "two independent outside directors" in the last sentence of the subsection is intended to operate or how the approval will protect against abuses, especially in instances of large boards of directors.

(6) Section SEC 3.16 (5) would be somewhat clearer if the "unless" clause were placed at the end of the subsection.

(7) The definition of "relative" in proposed s. SEC 3.16 (6) (d) should be redrafted to clearly indicate the intended scope of the term. To base applicability or the use of the "same home" seems not only illogical, but also extremely difficult to administer. Further, how far does the term "by blood" extend? Should adoption be a factor?

(8) The analysis prepared by the agency indicates that the definition of "affiliated" from s. SEC 6.05 (3) has been incorporated into proposed s. SEC 3.16 (6) (c). However, s. SEC 6.05 (3) presumes "control" if more than 5% of the outstanding voting securities are owned, while proposed s. SEC 3.16 (6) (c) permits "control" to be presumed by ownership of more than 10% of the outstanding voting securities of the issuer. This difference should be clarified in the final rule. Further, should the 10% figure be used in the definition in par. (c)?

i. The intended effective date of the proposed rule is not clear. In several sections the analysis refers to a January 1, 1984 effective date, but the effective date provision of the rule states that it will take effect on the first day of the month following publication.

j. The intended meaning of "may" on page 24, line 17 [in s. SEC 4.01 (2) (b)] is unclear. Who determines whether any application is complete under this paragraph?

k. What is the basis for requiring a grade of "70%" on the Uniform Securities Agent State Law Examination under s. SEC 4.01 (3)? The agency may wish to review OAG 17-79 (February 21, 1979) with regard to the delegation of authority in the area of national exams.

l. An applicability clause for s. SEC 4.01 would aid in determining the examinations that persons must pass. For example, will the new examination standards apply to all persons after the effective date of the rule, or only to those persons who have not previously applied for a license under existing requirements?

m. Under s. SEC 4.01 (3), it is not clear how a person determines which additional examination listed in pars. (a) to (d) must be taken. How is this to be determined if, for example, a person is involved in more than one of the areas listed?

n. It is not clear whether the examinations required under s. SEC 4.01 (5) can be waived without approval of the commissioner. This should be clarified in the final rule.

o. Under s. SEC 4.01 (7) (c), it appears that a license can be renewed without any review by the commissioner by filing an application with the central registration depository as provided for under proposed s. SEC 4.01 (2) (b). If this is not the intended effect, the rule should be modified to permit appropriate review of the applications.

p. Proposed s. SEC 4.02 (1), as amended, is drafted in awkward language even for a securities rule. Deletion of the words "it is" on page 30, line 4, of the proposed rule, and substitution of "under the rule applicable to the activities of the broker-dealer in this state" for "under that rule for the activities to be engaged in by the broker-dealer in this state" would appear to improve the clarity without changing the substantive aspects of the proposal.

q. The words "it is" could be deleted from s. SEC 4.04 (1) (a) on page 32, lines 18 to 19, to improve the readability of the provision.

r. It is not clear from the text of the rule or the analysis prepared by the agency how the license renewal process will operate. In particular, it is not clear how ss. SEC 4.01 and 4.07 will be coordinated and applied to licenses. The following clarifications would be helpful:

(1) Clearly stated transition provisions.

(2) A clear indication of how expirations of broker-dealers', agents' and supervisors' licenses will be handled, both on state and national level.

(3) A clearer explanation of how issuance and expiration decisions will be coordinated.

s. The requirements proposed in s. SEC 5.01 (4) could be clearer. For example, is there a minimum "percentage" necessary to "pass" the listed exams. [Note that "75%" is specified as the required grade for the Wisconsin Investment Advisor Representative Examination in proposed s. SEC 5.01 (3) and "70%" is specified for the examinations listed in proposed s. SEC 4.01.]

t. In s. SEC 5.01 (4) (d), the meaning of the requirement that an applicant has "submitted an undertaking" is not readily discernable from the text of the rule or the analysis.

u. It is not apparent why the fees for examination of out-of-state broker-dealers or investment advisors under s. SEC 7.01 (3) (e) are being increased only to cover reasonable transportation costs but in no case more than coach air fare. Is it anticipated that the flat $75 per day fee will be adequate to cover all of the costs associated with the examinations in other states?

Report Prepared by the
Office of the Commissioner of Securities
Relating to Revisions to the
Rules of the Commissioner of Securities

(a) 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 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 rule revisions containing an explanatory ANALYSIS to each amended section were distributed with the mailing of this agency's July, 1983 monthly Wisconsin Securities Bulletin, to the general public, securities licensees and registrants, securities law practitioners, securities and trade associations and regulatory bodies, and to other interested persons, soliciting written comments on the revisions or testimony at the public hearing that was held as noticed on September 12, 1983 in Room 318 Southwest of the State Capitol in Madison, Wisconsin.

(3) During the comment period, five letters were received setting forth specific comments on the 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 Amended Rules as identified in sub. (c) of this Report.

(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 specific securities registration guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA"), a national

association of securities administrators of which Wisconsin is a member.

(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 policies adopted by NASAA as set forth in SECTIONS 8, 9, 13, 15 and 18 of the Rules.

(7) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to exercise his rule-making authority under secs. 551.22(1), 551.23(10)(c), 551.27(10), 551.31(2) and (4), 551.32(1)(a), (1)(b), (1)(c)4., (2), (4), (5) and (7), 551.33(1), (2), (4) and (6), 551.52(3), 551.53, 551.59(6)(b), and 551.63(1) and (2), Wis. Stats., to repeal, amend and adopt the Amendments to the Rules of the Commissioner of Securities as attached to carry out the purposes of the Wisconsin Uniform Securities Law.

(b) Statement Explaining Need for Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are implemented in this matter to make 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.

Many of the Chapters of the Rules of the Commissioner of Securities under the Wisconsin Uniform Securities Law contain revisions, and each SECTION in the revised rules that adopts, repeals or amends a rule is followed by a separate explanatory ANALYSIS which discusses the nature of the revision as well as the rationale behind and/or the necessity for it.

The principal areas of the revisions to the Rules under the Wisconsin Uniform Securities Law include: (1) providing that registration exemption filings relating to revenue bond offerings involving nongovernmental industrial or commercial obligors will be reviewed for compliance with the same minimum net earnings registration standards that are applicable to any issuer of debt securities (SECTION 1); (2) adopting several amendments to the "presumed reasonable" securities registration requirements for corporate common stock offerings relating to offering price standards and requirements (SECTIONS 6 and 7); (3) repealing the registration rule prohibiting "supermajority"

shareholder vote defensive charter provisions (SECTION 12); (4) amending two existing securities registration policies (relating to real estate programs and oil and gas programs in SECTIONS 13 and 15) and adopting three new securities registration policies (relating to promotional stock, promoters' investment and equipment programs in SECTIONS 8, 9 and 18), all of which were recently adopted by the North American Securities Administrators Association, Inc. ("NASAA"); (5) adopting a substituted registration policy relating to transactions with affiliates (SECTION 17); (6) adopting several amendments to the securities agent licensing rules to implement use in Wisconsin of the Central Registration Depository (SECTIONS 22, 24 and 31); (7) reorganizing the format of the broker-dealer, agent and investment adviser examination requirements to list the required examinations and their passing grades as well as the criteria for obtaining a waiver of the examination requirement (SECTIONS 23 and 34); and (8) amending numerous sections of the securities broker-dealer, agent and investment adviser licensing provisions dealing with recordkeeping and reporting requirements, as well as prohibited business practices, to implement recommendations by the Licensing and Regulation Division staff as a result of its experience in administering the licensing requirements of the Wisconsin Uniform Securities Law and in conducting field examinations of the offices of licensees.

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

-- The proposal in SECTION 2 of the public comment draft relating to industrial revenue bonds is modified in two respects: (1) In a revision to that SECTION as a result of public comments received, the amendment in lines 7 to 9 of the public comment draft was modified to clarify that the reference to the earnings requirement in s. SEC 3.06(2) was not meant to be a mandatory requirement without regard to whether or not it would be necessary to impose the requirement for the protection of investors. The language "subject to the standards in" was substituted to give industrial revenue bond issuers and exemption applicants notification that in filings under the exemption, the staff will review the filing with reference to the earnings requirement of s. SEC 3.06(2) so that the earnings requirement would only be applied where it would be necessary to do so for the protection of investors. (2) The proposed deletion of the rule language in lines 11 to the end of the SECTION in the public comment draft was removed because the legislation in 1983 Senate Bill 121 upon which the deletions were contingent was not enacted by the filing deadline required for making that change to this rule.

-- The proposal that was in SECTION 5 of the public comment draft that relates to disclosure requirements under the registration exemption in s. 551.23(10), Stats., which was created in 1983 Wisconsin Act 27, effective July 2, 1983 is withdrawn because of legislation enacted in the Fall 1983 Special Session of the Wisconsin legislature repealing that exemption.

-- The revision in SECTION 10 of the attached final adopted form of the rule relating to the earnings requirement for issuers of preferred stock and debt securities was modified both as a result of this office's analysis of a comment letter from a member of the public relating to SECTION 2 of the public comment draft, and a Rules Clearinghouse comment in Section 5.f. of its Report. The modification consists of adding the language "including, but not limited to, evidence" to the beginning of the underscored language in both subs. (1) and (2) to clarify that preparation of a financial forecast is not the sole and exclusive way in which an issuer can evidence a future net earnings sufficiency. The revision makes it clear that while a financial forecast meeting the requirements in the rule constitutes a standard

for obtaining a waiver of the net earnings requirement, an issuer under appropriate facts and circumstances may be able to provide evidence of a sufficient future net earnings capability through use of other kinds or types of justification data.

-- The revision in SECTION 17 of the attached final adopted form of the rule relating to transactions with affiliates was modified both as a result of public comments received and comments from the Rules Clearinghouse of the Wisconsin Legislative Council. The significant modifications are as follows: (a) Adding definitions of the terms "disinterested independent outside director" and "transaction"; (b) Adding in sub. (1)(intro.) a reference to the disclosure requirement in sub. (2) that establishes a materiality standard. The standard provides that compliance with the requirements of the section is triggered only for transactions between the issuer and the enumerated persons that would have to be disclosed in the disclosure document for the offering; (c) Deleting the definition of the term "relative" from the public comment draft as being too broad and indefinite; (d) Revising the definition of "disinterested director" from its form in the public comment draft to make its applicability less broad by providing that the definition is triggered only if the board member "will not receive a direct financial benefit" from the transaction subject to the vote of the board; (e) Adding the language "one or more of" in sub. (1)(intro.) of the rule to clarify which subsections of the rule apply to a specific transaction; and (f) Adding the clarification language "For any issuers not included under subd. 1" at the beginning of subd. (1)(b)2.

-- The revision in SECTION 34 of the attached final adopted form of the rules relating to s. SEC 5.01(4)(a)3. was modified as a result of testimony at the public hearing by a member of the Licensing and Regulation Division staff of the Office of the Commissioner of Securities. The modification consists of: (1) deleting the reference to the Series 1 examination because that examination is no longer used by the National Association of Securities Dealers; (2) deleting the reference to the Series 6 Examination because that examination is too limited in scope of knowledge tested to be an appropriate basis for waiver of the general Wisconsin Investment Adviser Representative Examination; and (3) substituting in subd. 3 a reference to the NASD Series 2 Examination for the entirety of subd. 4. because the examination named in subd. 4 is the Series 2 Examination.

-- The revision in SECTION 37 of the attached final adopted form of the rules relating to certain exclusions from the advertising filing requirement was modified as a result of this office's analysis of a comment in a letter from a member of the public. The modification consists of adding "(a), (3)(c) or (3)(d)", after the underscoring of s. 551.23(3), Stats. The modification allows use of the advertising filing exclusion thereunder by broker-dealers for all secondary transactions under s. 551.23(3), Stats., except transactions under sub. (3)(b). Precluding use of the advertising filing exclusion for secondary transactions under sub. (b) of s. 551.23(3), Stats., is necessary because of a recent amendment to s. 551.28(7), Stats., in 1983 Wisconsin Act 27, effective July 2, 1983. As a result of that statutory amendment, an investor in Wisconsin could be solicited to purchase the securities of a particular issuer in the secondary market without regard to the investor's financial suitability. This could occur even though the basis for the secondary trading was a registration of those securities in Wisconsin under the condition that the securities could only be purchased by an investor meeting minimum financial suitability standards.

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

-- Attorney Anne E. Ross, One South Pinckney Street, Madison, Wisconsin 53703

-- Representative Steven Brist, 109 North Capitol, Madison, Wisconsin

-- Mr. James A. Buchen, Wisconsin Realtors Association, 4801 Hayes Road, Madison, Wisconsin 53704

-- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to summarize the substantive rule revisions affecting the securities registration and registration exemption sections.

-- Richard P. Carney, Administrator of the Licensing and Regulation Division, made an appearance on behalf of the agency's staff to summarize the substantive rule revisions affecting the broker-dealer, agent and investment adviser licensing sections.

-- Comment letters received:

- letter dated August 22, 1983, received August 23, 1983 from Attorney Terry F. Peppard of the law firm of Wendel, Pappas, Center, Lipman & Peppard, Suite 317, 222 West Washington Avenue, P.O. Box 2034, Madison, Wisconsin 53701.

- letter dated September 9, 1983, received September 12, 1983 from Attorney Christopher S. Berry of the law firm of Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

- letter dated and received September 12, 1983 signed jointly by attorney Joseph P. Hildebrandt and attorney Anne E. Ross of the law firm of Foley & Lardner, 1 South Pinckney Street, Madison, Wisconsin 53701.

- letter/memorandum dated and received September 12, 1983 from the Wisconsin Realtors Association/Real Estate Securities & Syndication Institute, 4801 Hayes Road, Madison, Wisconsin 53704.

- letter dated September 14, 1983, received September 16, 1983 from Kevin P. Howe, Vice President of Investors Diversified Services, Inc., IDS Tower, Minneapolis, Minnesota 55402.

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

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

-- Consistent with the Rules Clearinghouse comment in para. a., the use of "such" and "therein" was avoided throughout the rule in SECTIONS 2, 4, 5, 13, 22, 23 and 34.

-- Consistent with the Rules Clearinghouse comment in para. b., the notation "SEC 2.01(1)(a)" was inserted to precede "3."

-- Consistent with the Rules Clearinghouse comment in para. c., the language "the last sentence of" in the first two lines of s. SEC 2.02(5)(d)1. was stricken as unnecessary.

-- Consistent with the Rules Clearinghouse comment in para. f., the format in the Administrative Rules Procedures Manual for presentation of section titles was followed throughout the entirety of the rule draft.

-- Consistent with the Rules Clearinghouse comment in para. g., the notation ~~"there"~~ at the beginning of s. SEC 3.02(1)(b)3, was moved to the end of (b)(intro.) and the notation to (b)3. was underscored.

-- Consistent with the Rules Clearinghouse comment in para. h., because it was intended that the entirety of ss. SEC 3.04 and 3.05 be repealed, the notation "(1)" was removed from the beginning of each section in the public comment draft.

-- Consistent with the Rules Clearinghouse comment in para. i., the language "waive the foregoing requirement" in s. SEC 3.06(2) of the public comment draft was changed to "waive the requirement under this subsection."

-- Consistent with the Rules Clearinghouse comment in para. j., the word "shall" was replaced with the word "may" in line 16, page 20 of the public comment draft relating to s. SEC 3.16.

-- Consistent with the Rules Clearinghouse comment in para. k., the notation "(1)" was deleted in the numbering citations to ss. SEC 4.07(1)(c), (d) and (e) of the public comment draft.

-- Consistent with the Rules Clearinghouse comment in para. l., the definitions used in s. SEC 3.16 of the attached draft of the rules were put in alphabetical order.

-- Consistent with the Rules Clearinghouse comment in para. m., the reference to "12:00 p.m." was changed to "midnight" in s. SEC 4.07(1)(b) of the public comment draft.

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

-- Consistent with the Rules Clearinghouse comment in para. a., the entirety of the proposed rule was checked to see if a new or revised form was necessary. Incident

to that review, it was determined that a new broker-dealer renewal form was necessary. Accordingly, a new form has been prepared entitled "Application for Renewal, Broker-Dealer and Agent License--Non-NASD Member Firm." In addition, a revision of existing Form BDR(WI) was necessary in which the title of the form was changed to read "Application For Renewal of Wisconsin Broker-Dealer License." Reference to the new form and the amended form was included in a Note to the attached rule-making order.

-- Consistent with the Rules Clearinghouse comment in para. b., all references to the "Securities Act of 1933" and the "Securities and Exchange Act of 1934" in the entirety of the proposed rule were checked for accuracy.

Under 5. Clarity, Grammar, Punctuation and Plainness

-- Consistent with Rules Clearinghouse comment in para. a., a reason is added to the Analysis of the amendment to s. SEC 2.02(1)(a) regarding why the amendment includes only transactions taking place "in this state."

-- Consistent with the Rules Clearinghouse comment in para. b., the language in the last sentence of s. SEC 2.02(5)(d)1. was amended to read verbatim as per the language recommended by the Rules Clearinghouse.

-- Consistent with the Rules Clearinghouse comment in para. d., the language "from the date of filing" was added at the end of s. SEC 2.02(10)(b) to clarify when action to disallow use of the exemption must be taken.

-- Consistent with the Rules Clearinghouse comment in para. e., language was added to s. SEC 3.02(1)(b)3. to clarify that all of the conditions in (b)3. must be met at a minimum in order to qualify for the exemption under subd. 3. In response to the remaining Rules Clearinghouse comment in para. e., the language relating to "stock not listed on a national securities exchange" in lines 9 and 10 of the public comment draft was stricken as unnecessary because of the amendment in subd. (b)1.

-- Consistent with the Rules Clearinghouse comment in para. f., language was added to both s. SEC 3.06

(1) and (2) to clarify that preparation of a financial forecast is not the sole and exclusive way of evidencing an issuer's future net earnings sufficiency.

-- Consistent with the Rules Clearinghouse comment in para. g., language was added to the ANALYSIS for s. SEC 3.07(1) to set forth the statutory authority supporting the amendment and the reason the amendment is necessary.

-- Consistent with the Rules Clearinghouse comments in para. h. that raised in sub. (1) to (8) thereunder a number of questions regarding the clarity of s. SEC 3.16 in its public comment draft form, a special meeting was held by the staff of this office with members of the Rules Clearinghouse staff at which all of the changes and suggestions of the Rules Clearinghouse in items (1) to (8) of 4h. were resolved and incorporated in this proposed final draft.

-- Consistent with the Rules Clearinghouse comment in para. i., clarification of the intended effective date of the rule is made by eliminating the specific reference to January 1, 1984 in the Analysis to s. SEC 2.01(1)(a)3. The effective date of the proposed rules will be on the first day of the month following their publication in the Wisconsin Administrative Register as provided in the Effective Date section of the attached rule-making order.

-- Consistent with the Rules Clearinghouse comment in para. j., the intended meaning of "may" in the fourth line of s. SEC 4.01(2)(b) is clarified by deleting it as being unnecessary and confusing. The deletion of "may" thus makes clear that the application is presumed complete by the Commissioner if the Wisconsin agent license renewal fees are paid to the Central Registration Depository.

-- Consistent with the Rules Clearinghouse comment in para. k., language was added to the ANALYSIS of s. SEC 4.01(3) to specify that the basis for using 70% as the "passing" grade on the Uniform Securities Agent State Law Examination is because the 70% level has been the established passing grade since the inception of the USASLE examination in 1978. Also, the 70% grade has been shown, as a result of several years' experience with the USASLE examination, to correspond with a testing knowledge level sufficient to demonstrate adequate

understanding of state securities law requirements.

-- Consistent with the Rules Clearinghouse comment in para. m., language was added in s. SEC 4.01(3)(intro.) to clarify how a person determines which examination to take by specifying that if a person passes one of the general securities examinations in para. (a), the person can sell any type of security, including the specialized products named in paras. (b) to (d). If a person does not pass any of the general securities examinations in para. (a), the person must pass the specialized examination listed in paras. (b) to (d) that corresponds to each special type of securities product the person wishes to sell.

-- Consistent with the Rules Clearinghouse comment in para. n., the language "is waived under sub. (4)" was added to s. SEC 4.01(5)(intro.) to clarify that the examinations required under s. SEC 4.01(5) are waived automatically if the requirements of any of the specific waiver subsections are met. Consequently, formal waiver approval or action by the Commissioner is not required in all instances.

-- Consistent with the Rules Clearinghouse comment in para. q., the words "it is" were deleted from s. SEC 4.04(1)(a) on page 32, lines 18 and 19 of the public comment draft to improve the readability of the provision.

-- Consistent with the Rules Clearinghouse comment in para. r., language was added to the ANALYSIS of s. SEC 4.07(1) to clarify and explain how the license renewal process operates and how ss. SEC 4.01 and 4.07 are coordinated. Language was added to point out that under s. 551.31(4), Stats., if the required fee is not paid, the license automatically expires by operation of law. Further, that "automatic" license expiration constitutes a request for withdrawal of the license under the same statutory section.

-- Consistent with the Rules Clearinghouse comment in para. s., clarification language was added to s. SEC 5.01(4) to clarify that the "passing" grade is determined by the passing grade established by the administrator of the respective examination.

-- Consistent with the Rules Clearinghouse comment in para. t., the language in s. SEC 5.01(4)(d) relating to an "undertaking" was revised to read "a written statement manually signed by a person duly authorized by the

applicant" to clarify the meaning of the requirement. The meaning and purpose of the requirement is to have an applicant commit itself in writing wherein it agrees either to limit its activities as a condition of obtaining an investment adviser license or agrees to the kind of supervisory procedures it will utilize if the Commissioner grants a license to a representative of an investment adviser seeking a limited qualification type of license.

-- Consistent with the Rules Clearinghouse comment in para. u., language was added in the ANALYSIS to s. SEC 7.01(3)(e) clarifying the purpose and need for the rule relating to transportation costs for records examinations of out-of-state licenses.

(2) Acceptance of Recommendations in Part:

-- With respect to the Rules Clearinghouse comment in para. p. of Item 5. Clarity, Grammar, Punctuation and Plainness, the language "it is" in line 4 of the public comment draft of the rule was deleted consistent with the Rules Clearinghouse comment. However, with respect to their comment that for clarification purposes certain language be substituted for the language in lines 7 to 9 of the public comment draft, only part of the Rules Clearinghouse substituted language was used together with additional revised language supplied by this agency. Using the combined language, the result was achieved of clarification of the language of the rule.

(3) Rejection of Recommendations

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

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

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

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

--The Rules Clearinghouse comment in para. o., 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., neither the U.S. Code nor the Code of Federal Regulations references were used when a federal securities law or rule is cited in the Proposed Rule-Making Order. The reason those references are not used is because the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Company Act of 1940 are all specifically defined terms in s. 551.02(12), Stats. That definitional section does not include the U.S. Code references nor are the U.S. Code references used in Chapter 551, Stats., when those federal laws are cited. Further, as a practical matter, persons affected by and seeking to comply with the requirements of the Rules of the Commissioner of Securities would utilize and have for reference purposes pamphlet copies of the individual federal laws and rules thereunder--not the complete set of the U.S. Code or the Code of Federal Regulations.

--With respect to the Rules Clearinghouse comment in para. e. of Item 2., the modification suggested by the Rules Clearinghouse is not made in the Proposed Rule-Making Order because the rule SECTION the comment refers to (s. SEC 2.02(5)(e) of the public comment draft) has been withdrawn in its entirety.

--With respect to the Rules Clearinghouse comment in para. c of Item 5, no change or modification is made because the rule SECTION the comment refers to (S. SEC 2.02(5)(e)) has been withdrawn in its entirety.

--With respect to the Rules Clearinghouse comment in para. (1) of Item 5, an applicability clause is not added to s. SEC 4.01(3) for the reason that none is necessary or required. The examination passing standards formally established in the proposed rule are the identical standards that are currently applied to licensing applicants in Wisconsin and have been applied for many years as announced in the monthly Wisconsin Securities Bulletin published by this agency. Thus, the same examination standards will be applicable to all persons after the effective date of the rule, not just those persons who have not previously applied for a license under existing requirements.

--With respect to the Rules Clearinghouse comment in para. o., no modification to the proposed amendment to s. SEC 4.01(7)(c) is made because the intended effect of the proposed rule amendment is that a license can be renewed in Wisconsin merely by making a filing with the CRD without any review by the Commissioner.

* * * *

10/11/83

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

APPLICATION FOR RENEWAL OF
WISCONSIN BROKER-DEALER LICENSE

111 WEST WILSON STREET
BOX 1768
MADISON WISCONSIN 53701

The undersigned broker-dealer hereby makes application to the Wisconsin Commissioner of Securities to renew its Wisconsin broker-dealer license pursuant to sec. 551.32(1)(a), Wis. Stats., and acknowledges that, as a member of the National Association of Securities Dealers, Inc., it will file the necessary forms and filing fees to renew licenses of its securities agents licensed in Wisconsin with the Central Registration Depository during December of this year. This application form is accompanied by the $200 application filing fee set forth in sec. 551.52(2), Wis. Stats., and a $30 registration fee for each branch office in this state.

The applicant reaffirms the statements made in its initial application for license, except as set forth herein, and makes the following statements regarding its business and personnel in Wisconsin:

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

   (a) Full name of applicant (If sole proprietor, last name, first name and middle initial):

   _____

   (b) Name under which business is conducted:

   _____

   (c) Address of principal place of business:

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

   (d) Mailing address:

   _____ _____ _____ _____

   (e) Telephone number:

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

2. There have been no material changes in the information contained in the applicant's Form BD, Uniform Application For Registration, License Or Membership As A Broker-Dealer, currently on file with the Commissioner of Securities, except as reflected in the applicant's amendment attached hereto as Exhibit 1. (If none, or if previously filed, so state.)

3. The name of the applicant's employee who is responsible for the securities business of the firm and its personnel under the Wisconsin Uniform Securities Law. (This person must be an agent licensed in Wisconsin.):

   _____ _____
   (Name) (Title)

4. The date on which the applicant's fiscal year ends:_____

5. The applicant has elected to file its audited financial statements with the United States Securities and Exchange Commission on a:

____ fiscal year basis ____ calendar year basis

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

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

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

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

8. Applicant does not now, nor does it have any intention to, engage in fiduciary operations in Wisconsin as defined in s. 223.105, Wis. Stats.*, except as follows:

*Section 223.105, Wis. Stats., provides that any "organization" which holds itself out to residents of this state as available to act, for compensation, as "trustee" or which seeks or consents to serve in any "fiduciary capacity" is subject to rules established by the Commissioner of Banking or other appropriate regulatory agency and subject to periodic examination of its fiduciary operations. "'Organization' means any corporation, association, partnership business trust, other than a national bank, federal savings and loan association or credit union..." "'Trustee' means a person holding in trust, title to, or holding in trust a power over property." "'Fiduciary operation' means any action taken by an organization acting as trustee in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state." The effect of the new law is to require that any securities broker-dealer, whether operating as a corporation, association or partnership, engaging, or intending to engage, in fiduciary operations, so notify this office.

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

10. Is your firm an NASD member firm? Yes____ No ____.

11. List on Exhibit 4, the address, telephone number, and name of branch manager of all "branch offices" located in Wisconsin, and remit the $30 registration fee specified in sec. 551.52(2), Wis. Stats., for each office listed.

The applicant hereby certifies that this application is true, correct, and complete, and agrees that any material changes in any statements made herein or in any exhibits attached hereto shall be reported promptly to the Commissioner as required by sec. 551.33(3), Wis. Stats. The applicant also agrees to comply with the provisions of the Wisconsin Uniform Securities Law and all rules and orders of the Commissioner thereunder. All statements made herein and exhibits attached hereto shall be deemed representations made to the Commissioner in connection with any determination made or license issued with respect to this application.

IN WITNESS WHEREOF, the applicant has caused this application to be executed on its behalf and has affixed its seal this _____ day of _____, 19__ .

(CORPORATE SEAL)

_____
Name of Applicant

BY _____
Signature and Title

(THIS SPACE RESERVED FOR USE OF THE SECURITIES OFFICE.)

FILING FEES	RECEIPT NUMBER	DATE RECEIVED
Broker-Dealer $_____	_____	_____
Office _____	_____	_____
Agent _____	_____	_____
_____		
Total Fees $_____		

ATTACHMENT 4

BRANCH OFFICES

NAME OF FIRM: _____

ADDRESS OF FIRM: _____

TELEPHONE NO. OF PRINCIPAL OFFICE OF FIRM: _____

1. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

2. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

3. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

4. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

5. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

6. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

7. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

8. _____
Street

_____
City, State, Zip Code

_____
Telephone No.

_____
Name of Branch Manager

Form BDR(WI)-NON-NASD
10/11/83

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

APPLICATION FOR RENEWAL:
BROKER-DEALER AND AGENT LICENSE-
NON-NASD MEMBER FIRM

111 WEST WILSON STREET
BOX 1768
MADISON, WISCONSIN 53701

SEE SUPPLEMENTAL INFORMATION ON PAGE 5

The undersigned broker-dealer hereby makes application to the Commissioner of Securities for renewal of the license authorizing it to transact securities business in Wisconsin for the period stated herein. The application is accompanied by the filing fee of $200.00 plus $30.00 for each office in Wisconsin and a $30 filing fee for each agent license renewed. The applicant agrees to pay any expense reasonably attributable to any examination of its business or personnel which the Commissioner deems necessary with respect to this application. The applicant reaffirms the statements made in its application for initial license as a broker-dealer except as set forth herein, and makes the following statements concerning its securities business and personnel in Wisconsin:

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

   (a) Full name of applicant (If sole proprietor, last name, first name and middle intitial):

   _____

   (b) Name under which business is conducted:

   _____

   (c) Address of principal place of business:

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

   (d) Mailing address

   _____ _____ _____ _____

   (e) Telephone number:

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

2. There have been no material changes in any of the information contained in the applicant's Form BD, Uniform Application For Registration, License Or Membership As A Broker-Dealer, currently on file with the Commissioner of Securities, except as reflected in the applicant's amendment attached hereto as Exhibit 1. (If none, or if previously filed, so state.)

3. The name of the applicant's employee who is responsible for the securities business of the firm and its personnel under the Wisconsin Uniform Securities Law (this person must be an agent licensed in Wisconsin):

   _____ _____
   (Name) (Title)

4. The date on which the applicant's fiscal year ends:

_____

5. The applicant has elected to file its audited financial statements with the United States Securities and Exchange Commission on a:

____ fiscal year basis ____ calendar year basis

6. Branch offices of applicant located in Wisconsin:

Office Address	Name of Branch Manager	Area Code	Telephone Number

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

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

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

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

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

9. Applicant does not now, nor does it have any intention to, engage in fiduciary operations in Wisconsin as defined in Wis. Stats. s. 221.105 except as follows (See page 5 for clarification.)·

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

11. Is your firm an NASD member firm? Yes _____ No _____.

Applicant hereby makes application to the Commissioner of Securities for renewal of the securities agents' licenses of the following individuals, authorizing said individuals to represent the undersigned broker-dealer in the sale of securities for the period stated herein at the office named herein. The application is accompanied by the $30.00 filing fee for each individual named below, and the applicant agrees to pay any expenses reasonably attributable to any investigation or examination of the agent(s) that the Commissioner may find necessary with respect to this application. The undersigned broker-dealer undertakes responsibility for the acts of the agent(s) in the sale of securities in this state. If, prior to the end of the license period stated herein, any of the individuals named below cease to represent the broker-dealer in the sale of securities, the applicant agrees to make application for withdrawal of said agents' securities license as required by the Rules of the Commissioner of Securities.

Last name, First name, Middle initial and Address of Residence (list alphabetically)	Business Address (Location from which agent operates on a daily basis-no P.O. Box numbers)
1.	
2.	
3.	

4. _____ _____

_____ _____

_____ _____

5. _____ _____

_____ _____

_____ _____

6. _____ _____

_____ _____

_____ _____

7. _____ _____

_____ _____

_____ _____

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

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

In WITNESS WHEREOF, the applicant has caused this application to be executed on its behalf and has affixed its seal this_____day of_____, 19__.

(CORPORATE SEAL)

_____
Name of Applicant

BY_____
Signature and Title

(THIS SPACE RESERVED FOR USE OF THE SECURITIES OFFICE.)

FILING FEES	RECEIPT NUMBER	DATE RECEIVED
Broker-Dealer $_____	_____	_____
Office _____	_____	_____
Agent _____	_____	_____
_____	_____	_____
Total Fees $_____		

CLARIFICATION TO QUESTION NO. 9.

Wisconsin Statute 223.105 provides that any "organization" which holds itself out to residents of this state as available to act, for compensation, as "trustee" or which seeks or consents to serve in any "fiduciary capacity" is subject to rules established by the Commissioner of Banking or other appropriate regulatory agency and subject to periodic examination of its fiduciary operations.

> "'Organization' means any corporation, association, partnership business trust, other than a national bank, federal savings and loan association or credit union..."
>
> "'Trustee' means a person holding in trust, title to, or holding in trust a power over property."
>
> "'Fiduciary operation' means any action taken by an organization acting as trustee in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state."

The effect of the new law is to require that any securities broker-dealer, whether operating as a corporation, association or partnership, engaging, or intending to engage, in fiduciary operations, so notify this office.

All notifications of fiduciary operations must contain the information specified on forms that will be sent to those license applicants indicating they do engage, or intend to engage, in such fiduciary operations.

SUPPLEMENTAL INFORMATION

The following table lists the expiration dates of broker-dealer licenses under the Wisconsin Uniform Securities Law. The table also indicates the "Renewal Filing Dates" on which this license renewal form must be received by the Commissioner's office. If the renewal form is not timely filed, it will be necessary for the Commissioner to issue an Order granting accelerated licensing (to avoid an interruption in the firm's securities business in this state), the fee for which is $50.

Name Commencing With The Letters	Expiration Date	Renewal Filing Date
A through D	March 31	March 1
E through I	June 30	May 31
J through O	September 30	August 31
P through Z	December 31	December 1

A record of receipt of your application will be provided if you enclose a self-addressed, postage-paid envelope.

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