

CR 84-136

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CERTIFICATE

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

SS

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 Chapters 551, 552 and 553, Stats., with respect to definitions of terms under the Wisconsin Uniform Securities Law; securities franchise registration exemptions; securities registration standards, requirements and procedures; securities broker-dealer, agent and investment adviser licensing requirements and procedures; ownership information filing exemptions; fraudulent securities practices; and securities and franchise examination fees, were duly approved and adopted by this agency on November 30, 1984.

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 30th day
of November, 1984.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities
State of Wisconsin

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

To repeal SEC 7.01(9); to renumber SEC 4.04(1)(b), SEC 35.01(1)(b), (c), (d) and (e) and SEC 35.02(1)(a)3; to renumber and amend SEC 33.01; to amend SEC 1.02(1)(a), SEC 2.02(10)(g), SEC 3.11, SEC 3.12, SEC 3.27(2), SEC 3.28(1), SEC 4.03(1)(r), SEC 4.03(2) and (4), SEC 4.035(2), SEC 4.04(9), SEC 4.05(1)(a), SEC 4.06(1)(a), SEC 4.07(2), SEC 4.08(2), SEC 4.10(4)(a), SEC 5.03(3), SEC 6.05(1)(a)2. and 3., SEC 7.01(4)(d), SEC 24.01(4) and SEC 32.05(1)(a) and (2); to repeal and recreate SEC 1.02(5), SEC 4.04(1)(a) and SEC 4.05(1)(b); and to create SEC 1.02(2)(c), SEC 1.02(8) and (9), SEC 4.04(1)(b), SEC 4.05(1)(c), SEC 4.05(9) and (10), SEC 4.085, SEC 6.05(1)(a)4., SEC 24.01(4)(b), SEC 33.01(2), SEC 35.01(1)(b) and (g) and SEC 35.02(1)(a)3., relating to definitions of terms under the Wisconsin Uniform Securities Law; securities franchise registration exemptions; securities registration standards, requirements and procedures; securities broker-dealer, agent and investment adviser licensing requirements and procedures; ownership information filing exemptions; fraudulent securities practices; and securities and franchise examination fees.

Pursuant to authority vested in the Office of the Commissioner of Securities by ss. 551.63(1) and (2), 551.02(3)(h), 551.27(10), (11) and (12), 551.31(2), (4) and (6), 551.32(1)(a), (b) and (c), (5) and (7), 551.33(1), (2), and (6) 551.52(3), 551.21(2), 552.13(3), 553.25, 553.53 and 553.58, Stats., the Wisconsin Commissioner of Securities repeals, amends and adopts rules interpreting those sections as follows:

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

(a) "Publication" means advertising:

1. Advertising printed in any newspaper, magazine, periodical or other publication and mailed or delivered to its subscribers or addressees, or communicated by radio, television or similar means; or

2. Seminars or meetings whose attendees have been invited by any general solicitation or general advertising;

ANALYSIS: This amendment adds to the definition of "publication" as it relates to securities advertising a seminar or meeting whose attendees have been invited by means of general advertising. This amendment makes the Wisconsin non-public offering exemption under sec. 551.23(10),

Wis. Stats., consistent in this respect with the federal non-public offering exemption in Regulation D under the federal Securities Act of 1933.

The federal non-public offering registration exemption in Regulation D, like the Wisconsin registration exemption in sec. 551.23(10), Wis. Stats., prohibits any general solicitation or general advertising. The language of this amendment relating to public seminars and meetings is identical to that in section 502(c)(2) of Regulation D.

SECTION 2. SEC 1.02(2)(c) is created to read:

SEC 1.02(2)(c) Any financial institution which by contract, agreement or other means associates with a broker-dealer licensed in Wisconsin whereby the broker-dealer provides securities services on the premises of the financial institution in accordance with s. SEC 4.05(9).

ANALYSIS: Pursuant to the authority of the Commissioner of Securities under sec. 551.02(3)(h), Wis. Stats., this SECTION creates an exclusion from the definition of the term "broker-dealer" that may be used, if certain criteria are met, by any financial institution (as defined in a separate rule) which by contract, agreement or other means associates with a licensed broker-dealer to provide securities services to the public on the premises of the financial institution.

This SECTION is substantially revised from its form in the public comment draft of the Proposed Rules as a result of public hearing testimony presented and comment letters submitted. The revisions consist of the following: (1) In order to eliminate confusion and make the rule uniformly applicable to all types of financial institutions, the separate (and non-identical) definitions of "financial institution" in this SECTION and in SECTION 17 of the comment draft are deleted (which in this SECTION defined "financial institution" to mean a savings and loan association or credit union). In substitution, the term "financial institution" is defined in a separate rule created in s. SEC 1.02(8), Wis. Adm. Code (See SECTION 4). The language of that definition is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions under those sections, including banks, savings institutions and trust companies as well as savings and loan associations and credit unions; (2) The definition of "securities services" in the comment draft of this SECTION is transferred to a new definitional section created in s. SEC 1.02(9), Wis. Adm. Code (See SECTION 4) because that language is used in several other related rule provisions; (3) The list of the specific requirements for the exclusion to be available that was set forth in the comment draft of the rule is deleted. In substitution, a cross-reference is made to the broker-dealer Rule of Conduct provision of s. SEC 4.05(9), Wis. Adm. Code (as revised in SECTION 20) which contains those requirements; (4) The requirements listed in subdivisions (c)4. and 5. of the comment draft of this SECTION are deleted as a result of the revisions to this SECTION and to s. SEC 4.05(9), Wis. Adm. Code in SECTION 20. These two

subdivisions would have precluded dual employment of any individual effecting the securities services, and would have precluded sharing by the financial institution in the compensation received by the broker-dealer for executing securities transactions under the arrangement.

The SECTION continues to require that the broker-dealer must be licensed in Wisconsin so that the investor protections under the Wisconsin Uniform Securities Law will be available to a person in this state whose monies and securities will be in securities accounts handled by the broker-dealer located in the financial institution.

SECTION 3. SEC 1.02(5) is repealed and recreated to read:

SEC 1.02(5) "Transact business" as used in ch. 551, Stats., includes:

(a) For purposes of s. 551.31(1), Stats., effecting or attempting to effect transactions in securities for the account of any person in this state through the United States mail, by telephone or by other means from outside or from within this state;

(b) For purposes of s. 551.31(3), Stats., advising any

person in this state through the United States mail, by telephone or by other means from outside or from within this state as to the value of securities, the advisability of investing in, purchasing or selling securities, or issuing analyses or reports concerning securities to any person in this state through the United States mail, by telephone or by other means; and

(c) For purposes of ss. 551.31(1) and (3), Stats., soliciting any person in this state through the United States mail, by telephone or by other means from outside or from within this state to become a customer, client or subscriber of the person on whose behalf the soliciting is performed.

ANALYSIS: This SECTION creates new paragraphs (a) and (b) and amends language in the current rule (designated as new paragraph (c)) to provide that a person will "transact business" within the meaning of the definition when a person engages in any of the enumerated activities in each paragraph with a person in this state through the United States mail, by telephone or other means from outside or from within Wisconsin.

The enumerated activities in paragraph (a) correspond to the definitional tests for transacting business by a securities agent or a securities broker-dealer in secs. 551.02(2) and (3), Wis. Stats. The

enumerated activities in paragraph (b) correspond to the definitional tests for transacting business by an investment adviser in sec. 551.02(7), Wis. Stats. The amendments reflect the recent decision in Underhill Associates, Inc. vs. Bradshaw, 674 F.2d 293 (1983), which held that a state has the power to regulate securities activities directed to persons in the state by mail or by telephone from outside the state.

SECTION 4. SEC 1.02(8) and (9) are created to read:

SEC 1.02(8) "Financial institution", except for purposes of s. SEC 2.02(4), means any of the following entities if authorized to do business in this state:

- (a) Any bank organized under the laws of the United States or any state.
- (b) Any federal savings and loan association and any savings and loan association or similar association organized under the laws of any state.
- (c) Any federal credit union and any credit union or similar association organized under the laws of any state.

(d) Any other savings institution and any trust company organized under the laws of any state.

(9) "Securities services" includes but is not limited to the acceptance of orders to effect securities transactions as agent for the purchaser or seller. "Securities services" does not include exclusively promotional or account-establishing functions subject to s. SEC 4.05(8).

ANALYSIS: These definitional SECTIONS are created incident to revisions to s. SEC 1.02(2)(c), Wis. Adm. Code (See SECTION 2), as a result of public hearing testimony presented and comment letters submitted to the comment draft of the Proposed Rules as discussed in the ANALYSIS to SECTION 2.

The definition of "financial institution" in subsection (8) is created as a separate rule for two reasons: (1) To eliminate the confusion caused by the separate (and non-identical) definitions of that term in SECTIONS 2 and 17 of the comment draft form of the proposed rules; and (2) To make the applicability of s. SEC 1.02(2)(c), as revised in SECTION 2, consistent as to all types of financial institutions. The language of the definition of "financial institution" is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions, including banks, savings institutions and trust companies as well

as savings and loan associations and credit unions. The definition provides that it does not apply for purposes of s. SEC 2.02(4), Wis. Adm. Code, because that rule deals with financial institutions in a separate and unrelated context.

The term "securities services" is made a separate definition in subsection (9) (and was removed from its original location within s. SEC 1.02(2)(c) in the comment draft form of the proposed rules) because that term is used in several other related rule provisions. The definition in sub. (9) focuses on accepting securities transaction orders. However, because the definition uses the word "includes", the definition would permit a financial institution to enter into an arrangement with a broker-dealer licensed in Wisconsin to provide full brokerage services (beyond mere order accepting) on the premises of the financial institution and still enable the financial institution to be excluded from the definition of broker-dealer by application of s. SEC 1.02(2)(c). The definition in sub. (9) contains a specific exclusion for exclusively promotional or account-establishing activities because those activities are the subject of a separate rule in s. SEC 4.05(8), Wis. Adm. Code.

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

SEC 2.02(10)(g) Any offer by a licensed broker-dealer pursuant to a preliminary prospectus, provided all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. 551.25 or 551.26, Stats., or a notice filed under s. 551.22(1) or (8) or 551.23(12) or (15), Stats.~~and provided that the~~

2. The preliminary prospectus has been filed with the U.S. securities and exchange commission or the commissioner for a period of 10 days, and the commissioner does not by order deny the exemption; and

3. Before the securities referred to in subd. 1. may legally be sold, no customer funds are received and no customer signs any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

ANALYSIS: These amendments: (1) Reorganize the rule into separate subdivisions; and (2) Add a provision in sub. 3 that the registration exemption under the rule is not available for an offer where, before the securities may legally be sold, customer funds are received or customers sign any subscription agreement or similar document relating to the securities offered other than a non-binding tentative reservation of securities. The

criteria for what constitutes a non-binding tentative reservation of securities is the same as those set forth in the definition of "offer" in sec. 551.02(11)(b), Wis. Stats.

SECTION 6. SEC 3.11 is amended to read:

SEC 3.11 REAL ESTATE PROGRAMS. 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 amended April 23, 1983 and April 27, 1984, including comments. Note: 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 amendment incorporates by reference the modifications to the North American Securities Administrators Association ("NASAA") Statement of Policy regarding real estate programs, as

adopted on April 27, 1984 by vote of its members, including Wisconsin, at the NASAA 1984 Spring Conference.

SECTION 7. 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, October 31, 1979 and, April 23, 1983 and April 27, 1984. Note: 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 27, 1984 by vote of its members, including Wisconsin, at the NASAA 1984 Spring Conference.

SECTION 8. SEC 3.27(2) is amended to read:

SEC 3.27(2) A registration statement relating to redeemable securities of an investment company registered under the investment company act of 1940, or securities of a finance company licensed under s. 138.09, Stats., is deemed to include an application for the continuous offering of the securities. The offering period of the registration statement is automatically extended until it is permitted to be withdrawn or the commissioner issues a stop order suspending or revoking its effectiveness pursuant to s. 551.28, Stats., if the issuer files the reports required under s. SEC 3.28~~(2)~~(1), and files with the commissioner not less than annually during the offering period, within 120 days of the end of its fiscal year, a prospectus updated in accordance with s. SEC 3.23(5), a balance sheet of the issuer as of the end of the fiscal year, and a statement of income and change in financial position and analysis of surplus of the issuer for the fiscal year meeting the requirements of s. SEC 7.06.

ANALYSIS: This amendment corrects the citation to section SEC 3.28, Wis. Adm. Code, in the rule. Subsections (2), (3) and (4) of section SEC 3.28, Wis. Adm. Code, were renumbered in a rule revision, effective January 1, 1984. However, the citation in this rule was not amended at that time.

SECTION 9. SEC 3.28(1) is amended to read:

SEC 3.28(1). Every Unless the registrant elects to pay the maximum annual fee of \$1500 prescribed in s. 551.52(1)(b), Stats., an open-end management company, unit investment-trust, and face amount certificate company, as defined in the investment company act of 1940, having an effective registration statement under this chapter relating to an indefinite amount of its redeemable securities shall, within 2 months after the end of any fiscal year during which the registration statement was effective, and within 2 months after the registration is terminated, file form RS-IC reporting the amount of securities sold in this state during the fiscal year (or portion thereof if filed after termination), and shall pay the--additional a fee for of 0.05% of the dollar amount of the securities sold to persons in this state, but not less than \$150 nor more than \$1500

computed in accordance with s. 551.52(1)(b), Stats. ~~7--and--s-~~
~~SEC--7.01(8)-~~ Failure to file form RS-IC and pay the proper
additional fee shall be cause for issuance of a stop order
pursuant to s. 551.28(1), Stats.

ANALYSIS: These amendments: (1) Create an option under the sales report filing requirement of the rule for those designated investment companies that pay the maximum annual fee created by 1983 Wisconsin Act 27. That Act amends, effective July 1, 1985, the fee provisions in sec. 551.52(1)(b), Wis. Stats., applicable to investment company registrants to provide for minimum and maximum annual fees based on the dollar amount of sales of a registrant's securities to persons in Wisconsin. This amendment parallels the statutory revision by providing investment company registrants with an option to pay the \$1500 maximum annual fee. Payment of the maximum fee allows the registrant to avoid monitoring Wisconsin sales activity and filing an annual sales report specifying the dollar amount of sales in this state; (2) Delete reference to unit investment trusts because the amendments to sec. 551.52(1), Wis. Stats., in 1983 Wisconsin Act 27 remove applicability of the minimum-maximum fee provisions to unit investment trusts; (3) Add clarification language specifying the percentage upon which the fee computation is based, as well as the minimum and maximum fees payable under the rule (which are the same minimum and maximum fees prescribed in sec. 551.52(1)(b), Wis. Stats.); and (4) Delete the cross-reference to section SEC 7.01(8), Wis. Adm. Code, because the successor to that rule is repealed in SECTION 31.

Because the effective date of the revised registration fees for investment company registrants under 1983 Wisconsin Act 27 is July 1, 1985, in the event this rule is adopted in final form, the Order Adopting Rules will provide for an effective date for this SECTION of July 1, 1985.

SECTION 10. SEC 4.03(1)(r) is amended to read:

SEC 4.03(1)(r) A register relating to each offering participated in by the broker-dealer under the registration exemption provisions of ss. 551.23(10), ~~and (11) and (19)~~, Stats., or made pursuant to an order of exemption issued under s. 551.23(18), Stats., limiting the number of offers or sales permitted in Wisconsin, containing information disclosing the name and address of each offeree of the broker-dealer, the date the offer was made, the control number on any offering circular or other advertising material given to the offeree, the names of all persons making the offer, and the date of any sale as a result of the offer.

ANALYSIS: This amendment extends the record-keeping requirements relating to non-public offerings participated in by a broker-dealer to include offerings under the non-public offering registration exemption in sec. 551.23(19), Wis.

Stats., created by 1983 Wisconsin Act 87
(effective November 17, 1983).

SECTION 11. SEC 4.03(2) and (4) are 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 6 years after the closing of the account; and records required under sub. (1)(o) shall be preserved by the broker-dealer for at least 6 years after withdrawal or expiration of its license in this state. After. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event 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.

SEC 4.03(4) The records required in sub. (3) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than 3 years after the closing of the account. -After The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record ~~or--document~~ has been preserved for one year as required under this subsection, a microfilm copy thereof may be substituted for the remainder of the required period.

ANALYSIS: The amendments to these broker-dealer record-retention requirements permit the records to be retained in computer storage if a printed copy of the record can be immediately prepared upon request. The amendments to this rule parallel identical amendments to the investment adviser record retention rule in SECTION 27.

SECTION 12. SEC 4.035(2) is amended to read:

SEC 4.035(2) A securities holding record for each customer including the customer's name~~7-address7-telephone number7-age7-occupation7-investment-objectives~~ and account number, and a chronological listing of the names and amount

of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale prices;

ANALYSIS: This amendment deletes the requirement for recording on a customer holding record certain items of information relating to a customer's identity and investment objectives because those informational items are kept on a customer's new account form.

SECTION 13. SEC 4.04(1)(b) is renumbered SEC 4.04(1)(c).

ANALYSIS: The renumbering of this rule provision is necessary due to the creation of a new section SEC 4.04(1)(b), Wis. Adm. Code, in SECTION 15.

SECTION 14. SEC 4.04(1)(a) is repealed and recreated to read:

SEC 4.04 REPORTING REQUIREMENTS. (1)(a) Except as provided in pars. (b) and (c), each broker-dealer shall file annually with the commissioner within 60 days from the end of its fiscal year a copy of its annual financial statement in the form specified in the rule 17a-5 under the securities

exchange act of 1934, accompanied by a computation of its net capital using the formula specified in rule 15c3-1 under the securities exchange act of 1934.

SECTION 15. SEC 4.04(1)(b) is created to read as follows:

SEC 4.04(1)(b) The filing requirement in par. (a) is not applicable to any broker-dealer registered under the securities exchange act of 1934 if the broker-dealer is not delinquent in the filing of its annual financial statements with the U.S. securities and exchange commission under rule 17a-5 of the securities exchange act of 1934.

ANALYSIS: This SECTION creates in paragraph (b) an exclusion from the annual financial statement reporting requirement. The exclusion is available for use by any broker-dealer registered under the federal Securities Exchange Act of 1934 provided that the broker-dealer is not delinquent in the filing of its annual financial statements with the U.S. Securities and Exchange Commission. The reporting exclusion is appropriate because: (1) The annual financial statements are informational materials that are infrequently used by the Licensing Division of the Office of the Commissioner of Securities in its oversight of broker-dealer activities; (2) Copies of the financial statements

for broker-dealers registered with the U.S. Securities and Exchange Commission are readily available from that regulatory agency; (3) The financial statements rarely have been used for information purposes by investors or interested persons during the years that the annual financial statements of broker-dealers have been required to be filed with the Office of the Commissioner of Securities; and (4) Any broker-dealer registered with the U.S. Securities and Exchange Commission that has deficiencies in its net capital is required under separate reporting provisions in section SEC 4.04(6), Wis. Adm. Code, to provide immediate notice to the Wisconsin Commissioner of Securities together with a copy of every report or notice relating to the deficiency filed with the U.S. Securities and Exchange Commission.

Paragraph (a) of the rule is repealed and recreated to require a broker-dealer to file a copy of its annual financial statement and computation of net capital. The form of the annual financial statement and the formula used in the net capital computation are prescribed under the Securities Exchange Act of 1934. The filing deadline prescribed under paragraph (a) is 60 days after the end of the broker-dealer's fiscal year.

SECTION 16. SEC 4.04(9) is amended to read:

SEC 4.04(9) Each broker-dealer shall notify the commissioner in writing at least ~~10~~ 14 days prior to either opening ~~and--not-more-than-10-days-after~~ or closing in this

state any "branch office" as defined in s. SEC 1.02(7). The notification shall include such information as the commissioner may request.

ANALYSIS: These amendments change the reporting requirement for the closing by a broker-dealer of a branch office in Wisconsin to 14 days prior to the closing of the office rather than 10 days after the closing. These amendments are consistent with the new Rule of Conduct provision of section SEC 4.05(10), Wis. Adm. Code, in SECTION 21.

SECTION 17. SEC 4.05(1)(a) is amended to read:

SEC 4.05 RULES OF CONDUCT. (1)(a) Except as provided in ~~part~~ parts (b) and (c), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth--

~~1.---A-description-of-the-security---purchased---or---sold,~~
~~the-date-of-the-transaction,~~~~the-price-at-which-the-security~~
~~was-purchased-or-sold-and-any-commission-charged;~~

~~2.---Whether---the---broker-dealer-was-acting-for-its-own~~
~~account,~~~~as-agent-for-the-customer,~~~~as-agent-for-some--other~~

person, or as agent for both the customer and some other person;

3.---When the broker-dealer is acting for the customer, either the name of the person from whom the security was purchased or to whom it was sold, or the fact that the information will be furnished upon the request of the customer, if the information is known to, or with reasonable diligence may be ascertained by, the broker-dealer, and-

4.---Whether the information prescribed in rule 10b-10 of the securities and exchange act of 1934 and whether the transaction was unsolicited.

ANALYSIS: This rule is amended to substitute a cross-reference to rule 10b-10 under the federal Securities Exchange Act of 1934 for the specific informational items in subds. 1.2. and 3. The federal rule specifies the same informational items and provides a more extensive explanation of how the information should be presented. The rule is also amended to create a cross-reference to the exclusion in par. (c) created in SECTION 19.

SECTION 18. SEC 4.05(1)(b) is repealed and recreated to read:

SEC 4.05(1)(b) A broker-dealer engaged solely in the offer and sale of securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940 is not required to give or send a written confirmation under par. (a), provided that the issuer gives or sends a written confirmation directly to the customer for the transaction.

ANALYSIS: See ANALYSIS to SECTION 19.

SECTION 19. SEC 4.05(1)(c) is created to read:

SEC 4.05(1)(c) A broker-dealer engaged solely in the offer and sale of interests in direct participation programs is not required to give or send a written confirmation under par. (a), provided that a customer subscribing to purchase an interest in a direct participation program is provided immediately upon subscription with a copy of the subscription agreement entered into and the issuer gives or sends a written confirmation directly to the customer for the transaction.

ANALYSIS: SECTIONS 18 and 19 create two exclusions from the requirement in

section SEC 4.05(1)(a), Wis. Adm. Code, that all broker-dealers must provide written confirmation of each securities transaction to their customers. Under the two exclusions, broker-dealers engaged solely in the offer and sale of either investment company securities or direct participation program securities do not have to furnish confirmations to customers if certain requirements are met. The exclusions are created because it is industry practice for investment company security issuers and direct participation program issuers to send confirmations directly to purchasers of those securities. The language of the exclusion in paragraph (b) provides that the broker-dealer is not responsible for providing a confirmation for the transaction if the issuer provides a written confirmation directly to the customer for the transaction. Under the exclusion in paragraph (c), an additional condition is established for direct participation program brokers by requiring customers to be provided with a copy of their subscription agreement immediately when they subscribe to purchase an interest in a program. This is necessary because the confirmation of the transaction might not be provided by the issuer to the customer/subscriber for several weeks or months in situations where program subscriptions are held in escrow accounts until a minimum dollar amount of subscriptions is reached. In such cases, it is important that customers signing subscription agreements have immediate evidence of their status as subscribers and the terms and conditions of the subscription agreement.

SECTION 20. SEC 4.05(9) is created to read:

SEC 4.05(9) Each broker-dealer which by contract, agreement or other means provides securities services on the premises of a financial institution that is not licensed as a broker-dealer shall:

- (a) Perform the securities services within a specific area on the premises of the financial institution designated by agreement between the broker-dealer and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the securities services.
- (b) Prominently display the identity of the licensed broker-dealer in the area on the premises of the financial institution designated under par. (a);
- (c) Prominently disclose the identity of the licensed broker-dealer in all advertising,

correspondence and securities records relating to the broker-dealer's securities services provided on the premises of the financial institution; and

(d) Establish and file with the commissioner written supervisory procedures and a system for applying the procedures. The procedures and system shall comply with s. SEC 4.05(2) and shall be designed to accomplish certain supervisory functions, including but not limited to, the following:

1. Prevention and detection of violations of Chapter 551, Stats., and any applicable rules and orders thereunder;
2. Establishment of a system under which the broker-dealer approves prior to use copies of all advertising used by the financial institution relating to the securities services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.41 and

551.53, Stats.; and

3. Establishment of a system for the prompt and proper execution and settlement of securities transaction orders, the safekeeping of customer funds and securities and the maintenance of books and records.
- (e) Disclose to persons having securities services performed for their account on the premises of a financial institution that the securities transactions are not covered by applicable deposit insurance of the financial institution but may be covered by securities transaction insurance of the broker-dealer performing the securities services. The disclosure may be provided to those persons by means of, without limitation, letters to those persons, securities transaction order confirmations or monthly securities account statements.

ANALYSIS: This SECTION creates a Rule of Conduct applicable to any broker-dealer that by contract, agreement or other

means associates with any financial institution whereby the broker-dealer provides securities services to the public on the premises of the financial institution. Definitions of the terms "financial institution" and "securities services" are set forth in separate rules in ss. SEC 1.02(8) and (9), Wis. Adm. Code (See SECTION 4), and association of licensed broker-dealers with financial institutions is the subject of separate rules in SECTIONS 2 and 26.

This SECTION is substantially revised from its form in the public comment draft of the Proposed Rules as a result of public hearing testimony presented and comment letters submitted. The revisions, which parallel several of the changes made to s. SEC 1.02(2)(c), Wis. Adm. Code, as discussed in the ANALYSIS to SECTION 2, consist of the following: (1) In order to eliminate confusion and to make the rule uniformly applicable to all types of financial institutions involved under such an arrangement, the definition of "financial institution" in this SECTION of the comment draft is deleted (which defined "financial institution" in a manner different from the definition used in SECTION 2 of the comment draft). In substitution, the term "financial institution" is defined in a separate rule created in s. SEC 1.02(8), Wis. Adm. Code (See SECTION 4). The language of that definition is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions under those sections, including banks, savings institutions and trust companies as well as savings and loan associations and credit unions; (2) The requirements listed in pars. (c) and (d) of this SECTION in the comment draft of the proposed rules are deleted as discussed in the ANALYSIS to s. SEC 1.02(2)(c),

Wis. Adm. Code, in SECTION 2. These two paragraphs would have precluded dual employment (by both the financial institution and the broker-dealer) of any individual effecting the securities transaction execution services, and would have precluded sharing by the financial institution in the compensation received by the broker-dealer for executing securities transactions under the arrangement; (3) A requirement is added in new par. (d) of this SECTION that the broker-dealer providing the securities services shall establish and file with the commissioner specific written supervisory procedures to accomplish the supervisory functions listed; and (4) A requirement is added in new par. (e) that the broker-dealer shall disclose to persons having securities services performed for them under the arrangement that the securities transactions are not covered by applicable deposit insurance of the financial institution.

This Rule of Conduct continues to require in pars. (a), (b) and (c) that any broker-dealer establishing a securities services arrangement with a financial institution shall take certain prescribed steps and provide for adequate disclosure to persons having securities transactions effectuated on the premises of the financial institution in order to clearly distinguish the provider of the brokerage services from the financial institution. Those disclosure requirements include: (1) Requiring the securities services activities to be performed within a specific area on the premises of the financial institution; (2) Prominently displaying the identity of the broker-dealer within the specific area; and (3) Prominently disclosing the identity of the broker-dealer in all advertising, correspondence and securities records relating to the securities services provided on the

premises of the financial institution.

SECTION 21. SEC 4.05(10) is created to read:

SEC 4.05(10) (a) Except as provided in par. (b), each licensed broker-dealer engaged in a general securities business that ceases to do business at a principal or branch office located in Wisconsin shall mail to each Wisconsin customer with an account at the office at least 14 days before the cessation of business at the office a written notification that shall contain the following information:

1. The date on which the office will cease to do business;
2. A description of the procedure a customer may follow to maintain the customer's account with the broker-dealer, transfer the account to another broker-dealer, or have securities and funds held by the broker-dealer delivered to the customer;
3. The name and telephone number of a person representing the broker-dealer who may be contacted without expense to the customer to answer questions

regarding items in subd. 2; and

4. Any additional information necessary under the circumstances to clarify the information prescribed in this paragraph.

(b) The notification requirement under par. (a) is not applicable to the cessation of business at an office where the cessation is caused by illness or death of all licensed agents at that office, if the cessation of business at the office does not occur for a period exceeding 14 days.

ANALYSIS: This SECTION creates a Rule of Conduct requiring a broker-dealer engaged in a general securities business that ceases to do business at a principal or branch office located in Wisconsin to follow certain office-closing procedures. Two recent investigations conducted by the Office of the Commissioner of Securities into circumstances involving the closing of broker-dealer offices in Wisconsin demonstrate a need for these new provisions. The provisions will assure that all Wisconsin customers at an office that ceases to do business will receive information enabling the customer to either maintain the account with the broker-dealer, transfer the account to another broker-dealer, or have securities and funds held by the broker-dealer delivered to the customer. Paragraph (b) is created to provide an exclusion from the notification requirement in those situations where death or illness of the

licensed agent(s) results in a temporary cessation of business at that office. In those situations, a 14 day grace period is provided to allow the broker-dealer sufficient time to staff the office to enable business to continue.

SECTION 22. SEC 4.06(1)(a) is amended to read:

SEC 4.06(1)(a) Causing any unreasonable delay in the delivery of securities purchased by any of its customers, ~~or in the payment upon request of free credit balances reflecting completed transactions of any of its customers or the transfer of a customer's account securities positions and balances to another broker-dealer;~~

ANALYSIS: This amendment makes it a prohibited business practice under the rule for a broker-dealer to cause an unreasonable delay in the transfer of a customer's account securities positions and balances to another broker-dealer.

SECTION 23. SEC 4.07(2) is amended to read:

SEC 4.07(2) The license of an agent is not effective during any period when the broker-dealer which the agent represents is not licensed or when the securities of the

issuer which the agent represents are not subject to an effective order--of registration statement or an effective exemption, or upon termination of the offering.

ANALYSIS: This amendment deletes the requirement that registration or exemption status must be pursuant to an order. The amendment is necessary because 1983 Wisconsin Act 87 (effective November 17, 1983) provides that agent-for-issuer licenses may be granted to persons representing issuers offering their securities pursuant to the registration exemption provisions of secs. 551.23(10) and (19), Wis. Stats. Registration exemption status under these statutory provisions does not require that an order be issued.

SECTION 24. SEC 4.08(2) is amended to read:

SEC 4.08(2) An application for withdrawal from the status of a licensed agent shall be filed by the broker-dealer or issuer which the agent represents within 15 days of the termination of the agent's employment on Form U-5 prescribed in s. SEC 9.01(1), together with any additional information required by the commissioner.

ANALYSIS: These amendments: (1) Provide a cross-reference to the rule specifying the form to be used; and (2) Add authority paralleling that in section SEC

4.01(2)(a), Wis. Adm. Code (relating to applications for license as a broker-dealer or agent) for the Commissioner of Securities to request additional information in connection with an application to withdraw a securities agent's license.

SECTION 25. SEC 4.085 is created to read:

SEC 4.085 TEMPORARY AGENT TRANSFER. For purposes of agent license applications filed pursuant to s. 551.32(1), Stats., and agent license withdrawal applications filed pursuant to s. 551.34(6), Stats., the commissioner may issue temporary agent licenses and terminate agent licenses in accordance with temporary agent transfer procedures under the central registration depository of the national association of securities dealers, as developed under contract with the north american securities administrators association. The license of an agent transferring from one licensed broker-dealer to another is not effective unless the requirements under the temporary agent transfer procedure are met by the agent, the broker-dealers involved in the transfer, and the central registration depository.

ANALYSIS: This SECTION provides that the Commissioner of Securities may issue temporary agent licenses and terminate

agent licenses in order to implement the temporary agent transfer procedure under 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 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.

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 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 transfer procedures in this SECTION permit a licensed agent for a broker-dealer who changes employment to another licensed broker-dealer to have his or her status as a licensed agent temporarily transferred to the new broker-dealer employer provided that the transfer requirements under the CRD are met.

SECTION 26. SEC 4.10(4)(a) is amended to read:

SEC 4.10(4)(a) Publication or circulation of advertising that offers or describes securities brokerage services available at or through the bank, savings institution or trust company, except for advertising relating to securities transaction execution services provided in accordance with s. SEC 4.05(9); or

ANALYSIS: These amendments make this rule consistent with the rule created in SECTION 2 which, as revised following public hearing testimony presented and comment letters submitted, excludes from the definition of "broker-dealer" all financial institutions (as defined in s. SEC 1.02(8)) that publicly advertise securities services available on their premises where those services are rendered by a licensed broker-dealer in the manner required in s. SEC 4.05(9), Wis. Adm. Code.

The specific revisions to the language of this SECTION to make it consistent with SECTIONS 2 and 20 involve the following: (1) changing "securities brokerage services" in lines 2 and 3 to "securities services", the term defined in s. SEC 1.02(9), Wis. Adm. Code (See SECTION 4); and (2) changing the cross-reference in the last line of the rule to s. SEC 4.05(9), Wis. Adm. Code, where the requirements to be met by a broker-dealer in connection with providing such services are set forth.

SECTION 27. SEC 5.03(3) is amended to read:

SEC 5.03(3) Every licensed investment adviser shall preserve for a period not less than 6 years, the first 2 years in an easily accessible place, all records required under sub. (1) except that records respecting an account required under subs. (1)(i), (j) and (k) shall be preserved by the investment adviser for a period of not less than 6 years after the closing of the account and records required under sub. (1)(a) shall be preserved by the investment adviser for a period of not less than 6 years after withdrawal or expiration of its license in this state. ~~After The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record or other document~~ has been preserved for 2 years as required in this subsection, a microfilm copy may be substituted for the remainder of the required period.

ANALYSIS: The amendments to this investment adviser record-retention requirement permit the records to be retained in computer storage if a printed copy of the record can be immediately prepared upon request. The amendments to this rule parallel identical amendments to the broker-dealer record retention rule in SECTION 11.

SECTION 28. SEC 6.05(1)(a)2. and 3. are amended to read:

SEC 6.05(1)(a)2. The latest public offering of the securities occurred more than 10 years prior to the transaction, or the compensation is greater than the public offering price; and

SEC 6.05(1)(a)3. More than 50% of the securities held by persons not affiliated with the issuer approve the transaction; provided the absence of one or more of the conditions under subds. 1. and 2. shall create no presumption as to the fairness or unfairness of the terms of the transaction; and

ANALYSIS: These amendments are necessary due to the creation of new section SEC 6.05(1)(a)4. in SECTION 29.

SECTION 29. SEC 6.05(1)(a)4. is created to read:

SEC 6.05(1)(a)4. Disclosure materials are distributed to all holders of the securities containing the disclosures

meeting the requirements in rule 13e-3 under the securities exchange act of 1934 and schedule 13E under that rule.

ANALYSIS: This SECTION adds a minimum disclosure provision as a substantive requirement to qualify for use of the presumed-fair/"safe harbor" under the Wisconsin "going-private" rule. The disclosure requirement provides that an entity proposing a going-private transaction must, incident to the transaction, give security holders the disclosures prescribed in the federal going-private rule in 13e-3 under the Securities Exchange Act of 1934. The disclosures listed in the federal rule and schedule relate to the "fairness" of the transaction to security holders and therefore are material informational items necessary to enable a security holder to make an informed investment decision regarding the transaction. Under the federal rule, an issuer is required to state expressly whether or not it believes the transaction is fair to the public security holders. In addition, Schedule 13E referred to in the rule requires the issuer to discuss "...in reasonable detail the material factors upon which the belief...is based." The schedule provides that the disclosures should include an analysis of the fairness of the transaction in relation to: current and historical market prices of the issuer's securities, as well as the going-concern value and liquidation value of the issuer; appraisals or fairness opinions rendered; and firm offers made to the issuer in the preceding 18 months involving a merger or sale of assets. In addition, specific disclosures are required as to whether the transaction requires approval by vote of a majority of unaffiliated security holders and whether an unaffiliated

representative has been retained to act on behalf of security holders or to negotiate or prepare a report on behalf of security holders.

SECTION 30. SEC 7.01(4)(d) is amended to read:

SEC 7.01(4)(d) Prospectus filed by a registered investment-company-or finance company under s.

SEC 3.27(2)\$50.

ANALYSIS: This amendment deletes the requirement that an investment company registrant pay a \$50 fee for examination of its prospectus when it makes a filing under section SEC 3.27(2), Wis. Adm. Code, of an application for the continuous offering of its securities in Wisconsin. This amendment is necessary because 1983 Wisconsin Act 27 amended secs. 551.52(1)(a) and (b), Wis. Stats., to revise the fees for the initial registration of investment company securities and the fees prescribed for annual filings by investment company registrants to maintain their registered status in Wisconsin for continuing sales under their registration statement.

Because the effective date of the revised registration and annual filing fees for investment company registrants under 1983 Wisconsin Act 27 is July 1, 1985, in the event this rule is adopted in final form, the Order Adopting Rules will provide for an effective date for this SECTION of July 1, 1985.

SECTION 31. SEC 7.01(9) is repealed.

ANALYSIS: This rule, which provided for a partial rebate of additional registration fees paid by investment company registrants on the basis of prior-year redemptions, is repealed because of the amendments to sec. 551.52(1), Wis. Stats., in 1983 Wisconsin Act 27. The new statutory fee structure for investment companies makes this rule inapplicable for future use.

Because the effective date of the revised registration fees for investment company registrants under 1983 Wisconsin Act 27 is July 1, 1985, in the event this rule is adopted in final form, the Order Adopting Rules will provide for an effective date for this SECTION of July 1, 1985.

SECTION 32. SEC 24.01(4) is amended to read:

SEC 24.01(4) Any person who acquires or has acquired the direct or indirect beneficial ownership of the equity securities of-a either:

(a) A target company registered under ch. 551 or its predecessor laws if such the company did not have more than 100 stockholders of record as of the end of its most recent

fiscal year; or

ANALYSIS: These amendments are necessary due to the creation of new section SEC 24.01(4)(b) in SECTION 33.

SECTION 33. SEC 24.01(4)(b) is created to read:

SEC 24.01(4)(b) A target company whose securities are exempted from registration under s. 551.22(3), (4) or (5), Stats. or predecessor laws, if the company did not have more than 100 stockholders of record as of the end of its most recent fiscal year.

ANALYSIS: This new rule extends the exemption from filing a Statement of Ownership Information under the Wisconsin Corporate Take-Over Law to the acquisition of equity securities of a target company that is a financial institution designated in secs. 551.22(3), (4) or (5), Wis. Stats., and does not have more than 100 stockholders of record. The amendment is necessary to provide identical treatment under the rule for acquisitions of the equity securities of all target companies included in the definitional provision of sec. 552.01(6)(c), Wis. Stats., which was recently amended by 1983 Wisconsin Act 200 (effective April 24, 1984). The statutory change amends the definition of "target company" under the Wisconsin Corporate Take-Over Law to include financial institutions whose securities

are exempted from registration under secs. 551.22(3), (4) or (5), Wis. Stats.

SECTION 34. SEC 32.05(1)(a) and (2) are amended to read:

SEC 32.05(1)(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchises where ~~it~~-~~the~~-~~i~~

1. ~~The~~ franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature, ~~i~~ or ~~it~~-~~a~~-

2. A franchisee or prospective franchisee of a governmental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired. ~~Any offer to sell or sale of a franchise which is within the scope of this particular exemption shall not be subject to the provisions of s. SEC-34.02.~~

SEC 32.05(2) Unless otherwise specified, nothing in this section shall be construed so as to make inapplicable the provisions of s. SEC 34.02, nor shall this rule prevent the commissioner from exercising his authority under s. 553.28 (1) (a), (b), (c), (e), (f) or (h), Stats.

ANALYSIS: The amendments to these rules delete reference to section SEC 34.02, Wis. Adm. Code, which was repealed effective January 1, 1982.

SECTION 35. SEC 33.01 is renumbered s. SEC 33.01(1) and is amended to read:

SEC 33.01 INCOMPLETE REGISTRATION STATEMENTS OR EXEMPTION APPLICATIONS. (1) Any application for registration under s. 553.26, Stats., registration renewal statement under s. 553.30, Stats., or application to amend a registration statement under s. 553.31, Stats., which a registrant fails to complete within one year from the date of filing thereof shall be is deemed materially incomplete under s. 553.28(1)(a), Stats., and the commissioner may issue a stop an order denying effectiveness to the application or registration renewal statement.

ANALYSIS: These amendments: (1) Add language in the title of the rule to expand its coverage to include incomplete exemption applications; (2) Designate as sub. (1) the current rule which deals only with incomplete registration statements (a new sub. (2) to deal separately with incomplete exemption applications is created in SECTION 36); and (3) Change language to clarify the rule and to provide that an order issued to deny effectiveness to an application does not have to be denominated a stop order.

SECTION 36. SEC 33.01(2) is created to read:

SEC 33.01(2) Any application for exemption under ss. 553.22 or 553.25, Stats., that an applicant fails to complete within one year from the date of filing is deemed materially incomplete under s. 553.28(1)(a), Stats., and the commissioner may issue an order under s. 553.24(1), Stats., denying the exemption application.

ANALYSIS: This SECTION creates a parallel rule to current section SEC 33.01, Wis. Adm. Code (as amended in SECTION 35). This new provision deems as materially incomplete any exemption application which an applicant fails to complete within one year from the date of filing. The rule puts exemption applicants on notice that their application may be denied by order of the

Commissioner of Securities if it is not completed within one year from the date of filing.

SECTION 37. SEC 35.01(1)(b), (c), (d) and (e) are renumbered ss. SEC 35.01(1)(c), (d),(e) and (f).

ANALYSIS: The renumbering of these rule provisions is necessary due to the creation of new sections SEC 35.01(1)(b) and (g) in SECTION 38.

SECTION 38. SEC 35.01(1)(b) and (g) are created to read:

SEC 35.01(1)(b) Application for exemption from registration by order under s. 553.25, Stats.....\$250.

SEC 35.01(1)(g) Application for extension of a registration under s. SEC 32.07(3).\$100.

ANALYSIS: This SECTION creates separate rule provisions prescribing examination expenses both for the review of an application for an Order of Exemption under s. 553.25, Wis. Stats., and for an extension under section SEC 32.07(3), Wis. Adm. Code, of the registration of a franchise. The \$250 fee for examination of an application for an Order of

Exemption corresponds to the \$250 fee prescribed in current section SEC 35.01(1)(a), Wis. Adm. Code, for examination of an application for an opinion confirming an exemption. The \$100 fee for examination of an application for extension of a registration corresponds to the \$100 fee prescribed in current section SEC 35.01(1)(e), Wis. Adm. Code, for examination of an amendment to a registration.

SECTION 39. SEC 35.02(1)(a)3. is renumbered s. SEC 35.02(1)(a)4.:

ANALYSIS: The renumbering of this rule provision is necessary due to the creation of new section SEC 35.02(1)(a)3. in SECTION 40.

SECTION 40. SEC 35.02(1)(a)3. is created to read:

SEC 35.02(1)(a)3. Advertising published, distributed or used relating to a franchise exempted under ss. 553.22, 553.23, 553.25, Stats., or s. SEC 32.05.


ANALYSIS: This SECTION creates an exclusion from the advertising filing requirement in sec. 553.53, Wis. Stats., for advertising materials relating to the offer, sale or purchase of a franchise if the offer of that franchise is exempt from registration in Wisconsin.

* * * *

Except for the rules and amendments to ss. SEC 3.28(1), SEC 7.01(4)(d) and SEC 7.01(9), Wis. Adm. Code, in SECTIONS 9, 30 and 31, respectively, which shall take effect on July 1, 1985, 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 30th day of November, 1984.

(SEAL)



RICHARD R. MALMGREN
Commissioner of Securities

Report Prepared by the
Office of the Commissioner of Securities
Relating to Amendments 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 amendments to certain specific securities registration 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, 1984 monthly Wisconsin Securities Bulletin to the general public, securities broker-dealer and investment adviser licensees, securities and franchise registrants, securities and franchise law practitioners, securities and franchise trade associates and regulatory bodies, and to other interested persons, soliciting written comments on the rule revisions or testimony at the public hearing held on September 11, 1984, in Room 318 Southwest of the State Capitol in Madison, Wisconsin.
- (3) During the public comment period, 14 letters were received setting forth specific comments on the rule revisions.
- (4) At the public hearing held September 11, 1984 at 10:00 a.m. in Room 318 Southwest of the State

Capitol, testimony was presented by nine persons (other than staff), seven of whom also submitted comment letters referred to in para. (3).

- (5) Several of the comments made in the comment letters and in hearing testimony resulted in changes and modifications to the rules as identified in sub. (c) of this Report.
- (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 adopt the amendments as set forth in Sections 6 and 7 of the attached rules to the securities registration policies of the North American Securities Administrators Association, Inc., previously incorporated by reference in sections SEC 3.11 and SEC 3.12, Wis. Adm. Code.
- (7) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to seek to exercise his rule-making authority under sections 551.63(1) and (2), 551.02(3)(h), 551.27(10), (11) and (12), 551.31(2), (4) and (6), 551.32(1)(a), (b) and (c), (5) and (7), 551.33(1), (2), and (6), 551.52(3), 551.21(2), 552.13(3), 553.25, 553.53 and 553.58, Wis. Stats., to amend, adopt and repeal the rules as attached to carry out the purposes of Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, Chapter 552, Wis. Stats., the Wisconsin Corporate Take-Over Law, and Chapter 553, the Wisconsin Franchise Investment Law.

(b) Statement Explaining Need for Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the Rules of the Commissioner of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, Chapter 552, Wis. Stats., the Wisconsin Corporate Take-Over Law, and Chapter 553, the Wisconsin Franchise Investment Law. Each SECTION in the attached 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 include: (1) amending or adopting definitions relating to "publication" of advertising, financial institutions as broker-dealers, and "transact business" (SECTIONS 1, 2 and 3); (2) amending two existing securities registration policies (relating to real estate programs and oil and gas programs in SECTIONS 6 and 7) to adopt the amendments to those registration policies that were recently adopted by the North American Securities Administrators Association, Inc.; (3) adopting a rule to implement in Wisconsin the Temporary Agent Transfer Procedures under the Central Registration Depository (SECTION 25); (4) 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, particularly including a requirement in SECTION 21 that any broker-dealer who ceases to do business at a principal or branch office located in Wisconsin must provide written notice containing prescribed information to Wisconsin customers with accounts at such office; (5) adding a minimum disclosure requirement to the Wisconsin "going-private" rule (SECTION 29); (6) amending an exclusion from the Ownership Information filing requirement under the Wisconsin Corporate Take-Over Law (SECTION 33); and (7) creating an exclusion from the advertising filing requirement under the Wisconsin Franchise Investment Law for advertising relating to franchises exempted from registration (SECTION 40).

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

-- The rule in SECTION 2 of the attached draft (relating to a financial institution which associates with a licensed broker-dealer to provide securities services to the public on the premises of the financial institution) is modified in the following respects: (1) In order to eliminate confusion and make the rule uniformly applicable to all types of financial institutions, the separate (and non-identical) definitions of "financial institution" in this SECTION and in SECTION 17 of the comment draft are deleted (which in this SECTION defined "financial institution" to mean a savings and loan association or credit union). In substitution, the term "financial institution" is defined in a separate rule created in s. SEC 1.02(8), Wis. Adm. Code (See SECTION 4). The language of that definition is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions under those sections, including banks, savings institutions and trust companies as well as savings and loan associations and credit unions; (2) The definition of "securities services" in the comment draft of this SECTION is transferred to a new definitional section created in s. SEC 1.02(9), Wis. Adm. Code (See SECTION 4) because that language is used in several other related rule provisions; (3) The list of the specific requirements for the exclusion to be available that was set forth in the comment draft of the rule is deleted. In substitution, a cross-reference is made to the broker-dealer Rule of Conduct provision of s. SEC 4.05(9), Wis. Adm. Code (as revised in SECTION 20) which contains those requirements; (4) The requirements listed in subdivisions (c)4. and 5. of the comment draft of this SECTION are deleted as a result of the revisions to this SECTION and to s. SEC 4.05(9), Wis. Adm. Code, in SECTION 20. These two subdivisions would have precluded dual employment of any individual effecting the securities services, and would have precluded sharing by the financial institution in the compensation received by the broker-dealer for executing securities transactions under the

arrangement.

Also see the entire ANALYSIS TO SECTION 2.

-- The rule in SECTION 4 of the attached draft is created incident to revisions to s. SEC 1.02(2)(c), Wis. Adm. Code (See SECTION 2).

A separate definition of "financial institution" is created in subsection (8) for two reasons: (1) To eliminate the confusion caused by the separate (and non-identical) definitions of that term in SECTIONS 2 and 17 of the comment draft form of the rules; and (2) To make the applicability of s. SEC 1.02(2)(c), as revised in SECTION 2, consistent as to all types of financial institutions. The language of the definition of "financial institution" is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions, including banks, savings institutions and trust companies as well as savings and loan associations and credit unions. The definition provides that it does not apply for purposes of s. SEC 2.02(4), Wis. Adm. Code, because that rule deals with financial institutions in a separate and unrelated context.

The term "securities services" is made a separate definition in subsection (9) (and was removed from its original location within s. SEC 1.02(2)(c) in the comment draft form of the rules) because that term is used in several other related rule provisions. The definition in sub. (9) focuses on accepting securities transaction orders. However, because the definition uses the word "includes", the definition would permit a financial institution to enter into an arrangement with a broker-dealer licensed in Wisconsin to provide full brokerage services (beyond mere order accepting) on the premises of the financial institution and still enable the financial institution to be excluded from the definition of broker-dealer by application of s. SEC 1.02(2)(c). The definition in sub. (9) contains a specific exclusion for exclusively promotional or account-establishing activities because those activities are the subject of a separate rule in s. SEC 4.05(8), Wis. Adm. Code.

-- The rule in SECTION 20 of the attached draft (SECTION 17 of the comment draft) is substantially revised from its form in the public comment draft. The revisions, which parallel several of the changes made to s. SEC 1.02(2)(c), Wis. Adm. Code, as discussed in the ANALYSIS to SECTION 2, consist of the following: (1) In order to eliminate confusion and to make the rule uniformly applicable to all types of financial institutions involved under such an arrangement, the definition of "financial institution" in this SECTION of the comment draft is deleted (which defined "financial institution" in a manner different from the definition used in SECTION 2 of the comment draft). In substitution, the term "financial institution" is defined in a separate rule created in s. SEC 1.02(8), Wis. Adm. Code (See SECTION 4). The language of that definition is taken from the statutory language in secs. 551.22(3), (4) and (5), Wis. Stats., and refers to all financial institutions under those sections, including banks, savings institutions and trust companies as well as savings and loan associations and credit unions; (2) The requirements listed in pars. (c) and (d) of this SECTION in the comment draft of the rules are deleted as discussed in the ANALYSIS to s. SEC 1.02(2)(c), Wis. Adm. Code, in SECTION 2. These two paragraphs would have precluded dual employment (by both the financial institution and the broker-dealer) of any individual effecting the securities transaction execution services, and would have precluded sharing by the financial institution in the compensation received by the broker-dealer for executing securities transactions under the arrangement; (3) A requirement is added in new par. (d) of this SECTION that the broker-dealer providing the securities services shall establish and file with the Commissioner specific written supervisory procedures to accomplish the supervisory functions listed; and (4) A requirement is added in new par. (e) that the broker-dealer shall disclose to persons having securities services performed for them under the arrangement that the securities transactions are not covered by applicable deposit insurance of the financial institution.

Also see the entire ANALYSIS TO SECTION 20.

- The rule in SECTION 26 of the attached draft is modified in the following respects to make it consistent with the rules in SECTIONS 2, 4 and 20:
(1) changing "securities brokerage services" in lines 2 and 3 to "securities services", the term defined in s. SEC 1.02(9), Wis. Adm. Code (See SECTION 4); and (2) changing the cross-reference in the last line of the rule to s. SEC 4.05(9), Wis. Adm. Code, where the requirements to be met by a broker-dealer in connection with providing such services are set forth.

Also see the entire ANALYSIS to SECTION 26.

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

- 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.
- Mr. Robert J. Bliese, representing St. Francis Savings & Loan Association, Milwaukee, Wisconsin.
- Mr. Theodore Wdowiak, representing ISFA Corporation c/o Cadwalder, Wickersham Law Offices, New York, New York.
- Mr. Gordon Payne, representing CUNA Brokerage Services, Madison, Wisconsin.
- Mr. Fred K. Beatty, representing Wisconsin Credit Union League, c/o the law firm Collins, Beatty & Krekeler, Madison, Wisconsin 53701.
- Attorney Eric R. Christianson, representing Wisconsin League of Financial Institutions c/o the law firm Michael, Best & Friedrich, Milwaukee, Wisconsin 53202-4286.
- Mr. Paul C. Carrer, representing First State Savings of Wisconsin, Watertown, Wisconsin 53094.
- Mr. Kim Babler, representing United Banks of Wisconsin, Inc., Madison, Wisconsin.
- Attorney Joseph P. Hildebrandt, Madison, Wisconsin 53701-1497.
- Attorney Anne E. Ross, Madison, Wisconsin 53701-1497.

Comment Letters received:

- Comment letter dated August 7, 1984, received August 13, 1984 from Munz Corporation, Madison, Wisconsin.
- Comment letter dated August 22, 1984 (supplemented by letter dated September 5, 1984), received August 23 and September 6, respectively, from Cadwalader, Wickersham law firm, New York, New York.
- Comment letter dated August 30, 1984, received September 6, 1984 from United Banks of Wisconsin, Inc., Madison, Wisconsin.
- Comment letter dated September 10, 1984, received September 10, 1984 from Attorney Joseph Hildebrandt, Madison, Wisconsin.
- Memorandum dated September 11, 1984 to Commissioner Richard R. Malmgren from Richard P. Carney and Randall E. Schumann of the staff of the Office of the Commissioner of Securities.
- Comment letter dated September 11, 1984, received September 11, 1984 from First State Savings of Wisconsin, Watertown, Wisconsin.
- Comment letter dated September 7, 1984, received September 12, 1984 from First Wisconsin Corporation, Milwaukee, Wisconsin.
- Comment letter dated September 14, 1984 received September 17, 1984 from United Banks of Wisconsin, Inc., Madison, Wisconsin.
- Comment letter dated September 13, 1984 received September 17, 1984 from National Equity, Milwaukee, Wisconsin.
- Comment letter dated September 18, 1984, received September 19, 1984, from the law firm of Michael, Best & Friedrich, Milwaukee, Wisconsin on behalf of the Wisconsin League of Financial Institutions.

- Comment letter dated September 20, 1984, received September 20, 1984 from Attorney Joseph Hildebrandt, Madison, Wisconsin.
- Comment letter/memorandum dated September 20, 1984, received September 21, 1984 from Attorney Fred Beatty of the law firm Collins, Beatty & Krekeler, Madison, Wisconsin, representing Wisconsin Credit Union League.

(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 "pursuant to" clause was amended to change the language "secs." to "ss." and "Wis. Stats." to "Stats."
- Consistent with the Rules Clearinghouse comment in para. b., the reference to "sub. 1" was changed to "subd. 1." in s. SEC 2.02(10)(g)3.
- Consistent with the Rules Clearinghouse comment in para. c., the language "subdivisions" was substituted for "subsections" in s. SEC 2.02(10)(g).
- Consistent with the Rules Clearinghouse comment in para. d., the last two sentences in ss. SEC 3.11 and 3.12(1) were placed in a note to the rules. Also, "(1)" was inserted after "3.12" in the treatment clause for s. SEC 3.12(1).
- Consistent to the Rules Clearinghouse comment para. e., the language "paras." was changed to "pars." in s. SEC 4.04(1)(a).
- Consistent with the Rules Clearinghouse comment in para. f., SECTION 13 of the original comment draft (now renumbered SECTION 14 as a result of other amendments) was divided into two SECTIONS--one that repeals and recreates s. SEC 4.04(1)(a) and one which creates s. SEC 4.04(1)(b). A similar change was made to SECTION 16 of the comment draft (now SECTION 18 of the attached rule).

- Consistent with the Rules Clearinghouse comment in para. g., the language "the provisions of subds. 1. to 5. of" were deleted from s. SEC 4.10(4)(a).
- Consistent with the Rules Clearinghouse comment in para. h., the language ", Stats." was inserted after "or (5)" in s. SEC 24.01(4)(b). In addition, the incorrect omission of the language "Stats." was remedied by the addition of "Stats." in SECTION 34.
- Consistent with the Rules Clearinghouse comment in para. i., the rules include the appropriate signature and date section at the end.

Under 5. Clarity, Grammar, Punctuation and Plainness

- Consistent with the Rules Clearinghouse comment in para. a., s. SEC 1.02(1)(a) was restructured into two subdivisions.
- Consistent with the Rules Clearinghouse comment in para. b., all of the language and punctuation changes recommended in that paragraph were effectuated in s. SEC 1.02(2)(c) as amended as a result of other comments.
- Consistent with the Rules Clearinghouse comment in para. c., the language "if" was substituted for the language "provided that" in s. SEC 4.03(2)(4), and s. SEC 5.03(3).
- Consistent with the Rules Clearinghouse comment in para. d., the language "shall" was included in s. SEC 4.05(9).
- Consistent with the Rules Clearinghouse comment in para. e., the language "may" was substituted for "can" in s. SEC 4.05(10)(a)2. and 3. Also, the language "SEC 4.05(10)" was deleted from para. (b) and the language "if" was substituted for "provided that".

- Consistent with the Rules Clearinghouse comment in para. f., separate subdivisions 1. and 2. were created in s. SEC 32.05(1)(a).
- Consistent with the Rules Clearinghouse comment in para. g., the language "this rule" was changed to "this section" in s. SEC 32.05(2).

- (2) Acceptance of recommendations in part. None.
- (3) Rejection of recommendations. None.
- (4) Reasons for not accepting recommendations. None.

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