

CR 88-137

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Walter H. White, Jr., Commissioner of the State of Wisconsin Office of the Commissioner of Securities, as custodian of the official records of said agency, do hereby certify that the annexed rules relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, Ch. 552, the Wisconsin Corporate Take-Over Law and Ch. 553, the Wisconsin Franchise Investment Law, relating to definitions under the securities and franchise laws; securities and franchise registration exemptions; securities and franchise registration standards, requirements and procedures; securities broker-dealer and investment adviser licensing requirements and procedures; broker-dealer and agent prohibited business practices; and examination fees under the securities, franchise and take-over laws, were duly approved and adopted by this agency on November 14, 1988.

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.

RECEIVED

NOV 14 1988  
12:40 pm  
Revisor of Statutes  
Bureau

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 14th day of November, 1988.

[SEAL]

*Walter H. White, Jr.*

WALTER H. WHITE, JR.  
Commissioner of Securities  
State of Wisconsin

1-89

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

To repeal SEC 2.028, 3.28(1), 31.01(5), 32.02 and 32.04; to renumber SEC 3.28(2) and (3), 5.01(4)(g) and (h), 5.01(4)(c), (d), (e), (f) and (i), 9.01(b)6 to 17, and 31.01(2), (6) to (10); to amend SEC 2.01(1)(c)3 and (9)(b)14, 2.02(10)(j), 3.04, 3.05, 3.11, 3.12, 3.13, 3.14, 3.18, 3.19, 4.01(3)(Intro.), 4.06(1)(a), 32.03 and 33.03; to repeal and recreate SEC 2.01(4)(c), 4.06(2)(g), 7.01(Intro.), (1)(a) and (b), (2), (3)(a) to (c) and (4) to (7), 27.01, 32.01 and 35.01(1) to (3) and (4); and to create SEC 2.02(10)(l) and (m), 3.21(3), 3.22(4), 4.01(3)(e) and (9), 4.035, 5.01(4)(c)(Intro.), 7.05(2)(e), 9.01(1)(b)6, 31.01(2)(b) and (3)(e) and 32.05(1)(c)6, relating to definitions under the securities and franchise laws; securities and franchise registration exemptions; securities and franchise registration standards, requirements and procedures; securities broker-dealer and investment adviser licensing requirements and procedures; broker-dealer and agent prohibited business practices; and examination fees under the securities, franchise and take-over laws.

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

SEC 2.01(1)(c)3. The issuer's annual financial statements relating to fiscal years ending on or before December 31, ~~1987~~ 1990, are prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency.

ANALYSIS: The amendment to this rule extends to 1990 the time period that the alternative accounting procedure under the rule can be used by certain issuers of governmental securities to qualify for the "governmental security" registration exemption in sec. 551.22(1)(a), Wis. Stats. This rule was one of several rules promulgated after the enactment (effective January 1, 1983) of 1981 Wisconsin Act 53 that: (1) established as a requirement for use of the exemption in 551.22(1)(a) that the governmental issuer have financials prepared on the basis of generally accepted accounting principles ("GAAP"); and (2) allowed the Commissioner to establish by rule alternative accounting guidelines that would enable use of the exemption. This rule in SEC 2.01(1)(c)3. is one of two rules promulgated in 1982 to provide a "grace period" to enable certain governmental issuers of securities whose financial statements were not prepared according to GAAP, to market their securities without registration under Chapter 551, Wis. Stats., until such governmental securities issuers could act

to revise their accounting procedures and financial statements to GAAP basis.

The form and language of this amended rule is identical to that involved in the situation in June 1986 when this Office acted to promulgate an emergency rule extending the 1985 expiration (or "sunset") date contained in the original form of this rule. Although the June 1986 emergency rule changed the expiration date in SEC 2.01(1)(c)3. from 1985 to 1990, the permanent rule enacted in November 1986 extended the expiration date only to the end of fiscal year 1987, thus necessitating this action in 1988.

During the time since the GAAP financial statement requirement became effective in 1983, numerous issuers of governmental securities have achieved "full-GAAP" status (for example, all 400 Wisconsin school districts, virtually all Wisconsin vocational districts, and a large percentage of Wisconsin municipalities). However, because a number of governmental issuers, including the State of Wisconsin, have not yet completed the full-GAAP conversion process, requests have been made on behalf of governmental issuers to extend the period for use of these rules.

In a request submitted on behalf of the State of Wisconsin by the Capital Finance Office of the Division of Executive Budget and Planning in the Department of Administration, the Commissioner of Securities Office was asked to extend to 1990 the date specified in subd. (c)3. for its use--by which date the full-GAAP conversion by the State is anticipated to be completed. An emergency rule was promulgated by this Office, effective July 1, 1988, making such a change in the date to 1990, and this proposed amendment to subd. (c)3. would act to make permanent the emergency rule change. Accordingly, in order to provide to remaining governmental issuers of securities that have been using these rules, additional time to complete conversion to full-GAAP accounting, and to treat uniformly all issuers using

these rules, the expiration date contained in this rule for its use is changed to a 1990 date.

SECTION 2. SEC 2.01(9)(b)14 is amended to read:

SEC 2.01(9)(b)14. The issuer's financial statements for the preceding 3 years for which such statements are available. If the date of the financial statements for the issuer's most recent fiscal year is more than 180 days prior to the date of a filing for exemption under this subsection, the financial statements shall be updated by providing interim statements, that may be unaudited, to within 180 days of the date of filing;

ANALYSIS: This amendment is necessary to eliminate "stale" financial statement disclosures in offering materials used by governmental securities issuers selling their securities pursuant to the registration exemption in SEC 2.01(9) under sec. 551.22(17), Wis. Stats. The amendment provides that if the financial statements for the issuer's most recent fiscal year contained in the disclosure materials filed to claim the exemption are more than 6 months old (which financial statements must be audited under the requirements of SEC 7.06), updated financial statements (which may be unaudited) must be provided to within 180 days of the filing date. The language of the amendment in this rule is based on similar "stale financial statement" language in the securities registration chapter rule provision of SEC 3.22(1)(p).

SECTION 3. SEC 2.02(4)(c) is repealed and recreated to read:

SEC 2.02(4)(c) Is a venture capital company as a result of meeting any of the following requirements:

1. Operates a small business investment company licensed under the small business investment act of 1958, as amended 15 USC sec. 631.
2. Is a corporation, partnership or association that has been in existence for 5 years or whose net assets exceed ~~\$500,000~~ \$250,000 and either:
  - a. Whose principal purpose as stated in its articles, by-laws or other organizational instruments is investing in securities; or
  - b. Whose primary business is investing in developmental stage companies or eligible small business companies as defined in the regulations of the small business administration at 13 CFR 108.2.

ANALYSIS: This Section makes the following revisions to existing SEC 2.01(4)(c) that establishes by rule a category of "financial institution or institutional investor" for purposes of the registration exemption under s. 551.23(8), Wis. Stats: (1) Restructures the existing rule into 2 subdivisions under a general category of "venture capital company"--a term borrowed from a definitional rule under the Michigan Securities Act in R.459.706.26(1); (2) Includes as subd. 2 of the revised rule, current rule (4)(c) which is amended in

three respects: (i) reducing from 10 years to 5 the number of years that an entity whose principal purpose is investing in securities has to be in existence in order to qualify under the rule as an "institutional investor"; (ii) adds as an alternative business purpose criteria under subd. 2b., language from the Michigan rule that covers entities whose primary business purpose is investing in developmental stage companies or "eligible small business companies" as defined in the regulations of the Small Business Administration; and (iii) reduces from \$500,000 to \$250,000, as a result of a public comment letter received, the net asset requirement in subd. (c)2. The reduction is made on the basis that the "primary-purpose-of-investing" criteria in subd. (c)2a. and b. of the rule is considered a more significant criteria for including an entity under the "institutional investor" exemption than the dollar amount of the entity's net assets; (3) Adds as a "venture capital company" in language from the Michigan rule, an entity that operates a small business investment company licensed under the federal Small Business Investment Act of 1958.

SECTION 4. SEC 2.02(10)(j) is amended to read:

SEC 2.02(10)(j) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. SEC 2.025~~7~~ or 2.027~~7~~-~~er~~-2-028.

ANALYSIS: This amendment is necessary to reflect the repeal of SEC 2.028 in a following Section.

SECTION 5. SEC 2.02(10)(1) is created to read:

SEC 2.02(10)(1) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the commissioner. In order to be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the commissioner either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application required by the commissioner, the commissioner shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, but are not limited to, gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their



business plans and products, or their financing or investment capital needs or proposals.

ANALYSIS: This Section contains the first of 2 proposed registration exemptions to be promulgated under the Office's discretionary authority in s. 551.23(18), Stats. This proposed exemption, as well as the other exemption in SEC 2.02(10)(m) are based on similar securities registration exemptions in proposed statute form that had been contained in 1987 Assembly Bill 255 introduced in the Wisconsin legislature. The bill, which contained a total of 3 exemptions had been recommended by the Legislative Council Special Committee on Venture Capital. In 1987, the Commissioner's Office determined to "parallel track" the statutory exemptions in the Bill by including all 3 exemptions in rule form as part of the 1987 agency's annual rule revision, and including a proviso that in the event 1987 Assembly Bill 255 containing the 3 exemptions in statute form was enacted into law prior to the time this Office promulgated the 3 proposed rule exemptions in final form, the 3 rules would be withdrawn. Because at the time when the 1987 rules were being considered for final adoption, 1987 AB 255 had passed the Assembly and was being assigned to a Senate Committee, it was felt that the Bill would be passed by the legislature and, consequently, the 3 rule proposals were not adopted. However, the Senate did not act upon 1987 AB 255 prior to expiration of the 1987 legislative session with the result that the bill died.

This Section contains in rule form the identical registration exemption contained in s. 551.23(16)(b), Stats., of 1987 AB 255, and is in the same form as contained in the 1987 agency rule revision project, except for the addition of definitions for the terms "venture capital fair" or "investment forum". The Section addresses the situation that under the current Wisconsin Uniform

Securities Law, it is unclear whether presentations by entrepreneurs to potential investors at organized "venture capital fairs" or other "investment forums" involve "offers" of securities under the definition in s. 551.02(11)(b), Stats., that would require registration or exemption under the Wisconsin Uniform Securities Law. The proposed rule would remove the uncertainty by according registration exemption status for any such "offer", but not for any "sale" of the underlying security. Any "sale" of the underlying security would be subject-- for investor protection purposes-- to the securities registration requirement in s. 551.21(1), Stats., which would require either registration or a separate registration exemption.

The rule also provides that for a particular "venture capital fair" or an "investment forum" to be covered by the exemption rule, it must be so designated in writing by the Commissioner. The rule specifies what information must be contained in an application to the Commissioner seeking such designation, and specifies the time period within which the Commissioner must respond to the application. A definition of "venture capital fair" or "investment forum" is included to indicate the types of situations the rule is intended to cover.

In a revision to the rule made as a result of a comment letter received, the reference in the second sentence of the rule to who may submit an application for designation as a "venture capital fair" was expanded to allow an application to be filed either by a sponsor of the fair or by any interested person if accompanied by the written affirmation of a sponsor. Written affirmation of the sponsor is necessary in connection with an application filed by a third party to assure that the sponsor has actual notice of the filing and has formally agreed to be bound by the information and representations contained in the filing.

SECTION 6. SEC 2.02(10)(m) is created to read:

SEC 2.02(10)(m)1. Any offer, sale or option to purchase equity securities issued by a new Wisconsin business corporation if that offer or sale is made by, or the option is offered by, the issuing corporation to its employees, officers or directors. In this subsection, "new Wisconsin business corporation" means a business incorporated under ch. 180, Stats., with its principal office in this state which, on the date of the offer, sale or issuance of the option, has been operating 5 years or less, has no more than 50 employees and has annual gross receipts of \$5,000,000 or less.

2. Prior to any offering made in this state under this paragraph, the corporation shall provide the commissioner with at least 20 days' advance written notice of the offering. The notice shall include a copy of a written disclosure document to be provided to each offeree setting forth, without limitation as to other types of information that can be provided, the amount of funds being raised in the offering; how the proceeds will be expended; basic information about the corporation's business activities and historical operations to date; the identity of its officers, directors and controlling persons; the current ownership levels of the corporation's securities, together with the price per share paid by persons for those shares; and financial statements for the corporation.

ANALYSIS: This Section contains in rule form the second of the 3 statutory registration exemptions contained in 1987 Assembly Bill 255--namely, a "new Wisconsin corporation/ sale of equity securities to its employees" exemption. The language in this proposed rule is the same as contained in the 1987 agency rule revision project. The exemption reduces the regulatory requirements under the Wisconsin Uniform Securities Law for "new Wisconsin business corporations" (as defined in the rule) that seek to raise capital from the sale of its equity securities to its employees. The new exemption would reduce the regulatory requirements that otherwise would be applicable to the offering. Consequently, instead of having to comply with the securities registration requirements-- which involve an extensive filing and review procedure with the Commissioner's Office, including application of certain fairness-to-investor standards-- the rule would require a 30 day prior written notice to be provided to the Commissioner's Office, accompanied by a disclosure document covering the informational items specified in the rule.

The significant policy bases for the exemption are: (1) Because use of the exemption is restricted to "new Wisconsin business corporations" (as defined) that have their principal office in Wisconsin, it is possible for employee/ investors as well as regulatory authorities and interested persons to literally "kick the bricks" by checking the actual physical location, facilities, operation and officers/ employees of the corporation that is seeking to raise the capital; (2) The requirement to prepare and submit a disclosure document will provide that the offeree/ employees who are being asked to purchase securities in the offering be furnished with basic minimum disclosures regarding the key categories of information specified in the rule; (3) The prior notice filing requirement with the Commissioner's Office parallels notification requirements for use of numerous registration exemption in the

securities statutes and rules, and enables the agency to be informed of, and make comments relating to, offerings proposing to use the exemption.

Revisions to the rule as a result of a comment letter received are as follows: (i) expanding the category of persons who may purchase the corporation's securities under the exemption to include not only the corporation's employees, but also its officers and directors who also are knowledgeable about the corporation's business and financial condition; (ii) reducing from 30 days to 20 days the filing and review period by the agency under subd. (m)2. for purposes of staff review of the disclosure materials to be utilized in the offering.

The third of the 3 statutory registration exemptions contained in 1987 Assembly Bill 255--namely, a Wisconsin-based corporation/firm commitment underwriting exemption that was contained in s. 551.23(20), Stats., of the Bill--is not included in the 1988 rule revision project. The reason for its non-inclusion is that such exemption is largely superseded by a "common stock/firm commitment underwriting" exemption created in s. 551.22(18), Stats., (effective January 1, 1988), as part of 1987 Wisconsin Act 27 (the 1987 Executive Budget Bill), that was modified as a result of line-item veto action by the Governor. The statutory exemption in s. 551.22(18), Stats., is available for any public offering of common stock by a corporation organized under the laws of any state (not just Wisconsin-based corporations) that is made pursuant to a firm-commitment underwriting. The statutory exemption contains no pre-filing or agency review requirement; rather, the exemption provides only for a post-offering perfecting step of filing a copy of the final prospectus and \$200 with the Commissioner within 10 days after the first sale of the stock in Wisconsin.

SECTION 7. SEC 2.025(5)(a)4 as amended to read:

SEC 2.025(5)(a)4. A fee of ~~\$500~~ \$200; and

ANALYSIS: This amendment changes from \$500 to \$200 the fee for examination of the Notice filing claiming use of the "non-seasoned issuer" exemption in the rule. The amendment is part of the process of establishing one uniform \$200 fee for all Notice filings claiming registration exemption status under the Wisconsin Uniform Securities Law. The principal rule amendments for establishing a uniform \$200 fee for all exemption Notice filings are under the Exemption section of the Fees Chapter in SEC 7.

SECTION 8. SEC 2.028 is repealed.

ANALYSIS: The registration exemption provision in SEC 2.028 that was created last year (which provides automatic secondary trading exemption status for issuers that have any securities that are exempt under s. 12(g)(3) of the Securities Exchange Act of 1934) is repealed because an identical exemption was created by a statutory amendment to sec. 551.23(3)(a), Wis. Stats., that was contained in Section 6 of 1987 Wisconsin Act 381 (effective May 3, 1988).

SECTION 9. SEC 3.04 is amended to read:

SEC 3.04 PROMOTIONAL OR CHEAP STOCK. (1) 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 Promotional Shares, adopted September 3, 1987. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4. Note: The Statement of Policy is published in Volume--1--of--the Commerce--Clearing--House--Blue--Sky--Law--Reporter CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: These amendments do the following: (1) replace the reference contained in the current rule to the North American Securities Administrators Association (NASAA) securities registration policy dealing with promotional or cheap stock that previously had been adopted by vote of the NASAA membership (including Wisconsin) in April 1983, with a reference to a revised NASAA policy regarding promotional stock that was adopted by vote of the NASAA membership (including Wisconsin) at the 1987 NASAA Fall Conference on September 3, 1987; (2) changes the citation to where the NASAA policy is published to reflect that all NASAA securities registration policies are now contained in a different publication entitled CCH NASAA Reports, published by Commerce Clearing House. Consent has previously been received from both the Attorney General and the Revisor of Statutes for the incorporation by reference of each of the NASAA policies in SEC 3.04, 3.05, 3.11, 3.12, 3.13, 3.14, 3.18 and 3.19.

SECTION 10. SEC 3.05 is amended 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, as amended effective January 1, 1988. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4. Note: The Statement of Policy is published in ~~Volume 1 of the Commerce Clearing House Blue Sky Law Reporter~~ CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: The amendments made to this rule section and to the following rules that incorporate by reference NASAA securities registration review policies, do either or both of the following: (1) Incorporate by reference amendments made to the particular NASAA Policy, as adopted for effectiveness January 1, 1988 by vote of NASAA members, including Wisconsin, at the 1987 NASAA Fall Conference; (2) Change the citation to where the NASAA policy is published to reflect that all NASAA securities registration policies are now contained in a different publication entitled CCH NASAA Reports, published by Commerce Clearing House.



SECTION 11. 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, April 23, 1983, April 27, 1984, and January 1, 1986 and January 1, 1988, including comments. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4. Note: The Statement of Policy is published in the CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05.

SECTION 12. SEC 3.12 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, April 23, 1983 and April 27, 1984. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. Note: The Guidelines are published in ~~Volume 1 of the Commerce Clearing House Blue Sky Law Reporter~~ CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05.

SECTION 13. SEC 3.13 is amended to read:

SEC 3.13 CATTLE FEEDING PROGRAMS. The offer or sale of interests in a limited partnership which will engage in cattle feeding operations may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Publicly Offered Cattle Feeding Programs, adopted September 17, 1980. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. Note: The Guidelines are published in ~~Volume 1 of the Commerce Clearing House Blue Sky Law Reporter~~ CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05.

SECTION 14. SEC 3.14 is amended to read:

SEC 3.14 DEBT SECURITIES ISSUED BY A CHURCH OR CONGREGATION. The offer or sale of debt securities issued by a church or congregation, the proceeds of which are to be utilized to finance or refinance the purchase, construction or improvement of buildings or related facilities (including the underlying property) of the issuer may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for Offerings of Church Bonds, adopted October, 1979. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. Note: The Guidelines are published in ~~Volume 1 of the Commerce Clearing House Blue Sky Law Reporter~~ CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05.

SECTION 15. SEC 3.18 is amended to read:

SEC 3.18 COMMODITY POOL PROGRAMS. The offer or sale of interests in a limited partnership which will engage in the buying and selling of and trading in, commodity futures contracts, options thereon, commodity forward contracts or

similar instruments, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Registration of Commodity Pool Programs, adopted September 21, 1983. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. Note: The Guidelines are published in ~~Volume--1--of--the--Commerce--Clearing--House--Blue--Sky--Law Reporter~~ CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05.

SECTION 16. SEC 3.19 is amended to read:

SEC 3.19 EQUIPMENT PROGRAMS. The offer or sale of interests in a limited partnership which will engage in the acquisition of ownership of equipment for lease or operation 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 for Equipment Programs, adopted September 21, 1983, as amended April 22, 1988. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. Note: The Guidelines are published in ~~Volume--1--of--the--Commerce Clearing--House--Blue--Sky--Law--Reporter~~ CCH NASAA Reports published by Commerce Clearing House and are on file at the

offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: See ANALYSIS to SEC 3.05, except that the amendment to this MASAA registration policy occurred at the 1988 MASAA Spring Conference.

SECTION 17. SEC 3.28(1) is repealed.

ANALYSIS: This subsection of the Periodic Reports post-registration rule-- which establishes an annual sales report and annual sales fee requirement for registered investment companies and face amount certificate companies-- is repealed because it has been superseded by a statutory amendment to s. 551.52(1)(b), Stats., contained in Section 21 of 1987 Wisconsin Act 381 (effective May 3, 1988), that covers these subjects.

SECTION 18. SEC 3.28(2) and (3) are renumbered SEC 3.28(1) and (2).

ANALYSIS: Because of the repeal of SEC 3.28(1), this renumbering is necessary in order to have the remaining Periodic Report rules under SEC 3.28 be in a proper sequential numbering order.

SECTION 19. SEC 4.01(3)(intro.) is amended to read:

SEC 4.01(3)(intro.) 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)~~ (e) that relates to the applicant's proposed securities activities:

ANALYSIS: This amendment is necessary to reflect the addition of the new Series 62 examination provision created in SEC 4.01(3)(e).

SECTION 20. SEC 4.01(3)(e) is created to read:

SEC 4.01(3)(e) The Corporate Securities Limited Representative Examination.

ANALYSIS: This rule will allow agents whose securities licenses will be restricted to offering corporate securities, to meet the examination requirement under SEC 4.01(3) by, instead of having to pass the General Securities Registered Representative Examination, passing a new specialty examination recently developed by the National Association of Securities Dealers (NASD) and approved by the U.S. Securities and Exchange Commission (SEC) entitled the Corporate Securities Limited Representative (Series 62) Examination. The Series 62 Examination relates to all corporate securities, and the SEC has permitted the NASD to use the examination as a prerequisite to a securities agent taking the Series 24 General Securities Principal Examination.

SECTION 21. SEC 4.01(9) is created to read:

SEC 4.01(9) For an agent to simultaneously represent in this state more than one broker- dealer or issuer pursuant to s. 551.31(2)(b)2., Stats., the following requirements shall be met, in addition to the regular agent licensing requirements:

(a) Each broker- dealer or issuer that the agent represents shall sign on a form designated by the commissioner in s. SEC 9.01(1)(b), a written grant of permission to the agent to represent the other employers. The written grant of permission shall include the identity of all other securities employment affiliations of the agent and contain a listing of all restrictions on the agent's securities activities imposed by the agent's employers.

(b) The agent shall sign on the form under par. (a), an acknowledgement and verification of the information required under that paragraph.

(c) The manually signed original of the form under par. (a) shall be filed with the commissioner together with a written application, which may be in letter form, on behalf of the agent to simultaneously represent more than one broker- dealer or issuer. The commissioner shall approve the application in writing prior to the agent's transacting securities business while

simultaneously representing more than one broker- dealer or issuer.

(d) Written disclosure shall be provided regarding the agent's simultaneous representation of more than one broker- dealer or issuer, including the information in par. (a), to each securities customer of the agent not later than the date of receipt of the confirmation for the first securities transaction for the account of the customer by the agent after dual licensing is approved by the commissioner.

ANALYSIS: These rules are necessary to implement statutory licensing provisions recently created in 1987 Wisconsin Act 381 that would permit an agent to simultaneously represent in Wisconsin more than one broker- dealer or issuer. The new statutory provision, contained in s. 551.31(2)(b)2., Stats., provides for such simultaneous representation licensing upon the filing of an application and grant of written approval by the Commissioner in conformance with rules the Commissioner may promulgate. The requirements specified in the rules include: (i) Completion and signing by the agent's employers of a Form listing all of the agent's securities employment affiliations and listing all restrictions on such activities; (ii) Filing the Form, together with a written application, for approval by the Commissioner; (iii) Written disclosure of the agent's multiple representation being provided to each customer of the agent.

In a revision to the public comment draft form of the rule as a result of a comment letter received, the time period for providing the written disclosure to each customer was changed from prior to the first transaction for the account of the customer by the agent after dual



licensing, to not later than the date of receipt of the confirmation for such transaction. The change will provide that a customer will receive disclosure of the agent's dual-licensed status prior to the time the customer is obligated to make payment for the first securities transaction for the customer's account after dual licensing is approved by the Commissioner.

Because the new statute section in 551.32(2)(b)2. does not take effect until February 1, 1989, this rule will provide for a similar effective date.

SECTION 22. SEC 4.035(3) is created to read:

SEC 4.035(3) Records required under this section that are maintained on an electronic data system in lieu of a hard copy shall be reproducible in printed form immediately upon request by the commissioner. Upon termination of employment with a broker-dealer, an agent's records so maintained shall be transferred immediately to printed or other form accessible to the broker-dealer for the broker-dealer's permanent records.

ANALYSIS: Many agents are beginning to maintain by computer or other electronic means, the customer holding records, funds and securities received blotters, and other records required by section SEC 4.035. In some instances during office examinations conducted by agency staff, access to hard copy has not been immediately available for some records electronically maintained by agents. Consequently, this new rule adds an equivalent requirement to that contained in the broker-dealer home office and branch office record-keeping rules in SEC 4.03(2) namely, that records maintained electronically or by computer

must be reproducible in printed form immediately upon request. Additionally, because SEC 4.035 is explicit on the point that the agent records required under the rule are considered the property of the broker-dealer, this rule provides that upon termination of employment, an agent must transfer customer records maintained electronically or by computer to printed or other form accessible to the broker-dealer for its record-keeping purposes.

In a revision to the public comment draft form of the rule as a result of comments received, the term "immediately" was added in the second sentence to specifically provide when a terminating agent's electronically maintained customer records must be transferred or made accessible to the broker-dealer. Immediate transfer of such customer record data is necessary because it may be the only records the broker-dealer has access to regarding certain aspects of a customer's account and the broker-dealer needs the data immediately to maintain complete and current customer records and to service customer accounts.

SECTION 23. SEC 4.06(1)(a) is amended to read:

SEC 4.06(1)(a) Causing any unreasonable delay in the transmitting of customer orders for execution, the delivery of securities purchased by any of its customers, 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: The amendment adds to this broker-dealer prohibited business practices rule, language that includes unreasonable delays in transmitting

customer orders for execution. The amendment is necessary on the basis of agency experience in connection with investigating customer complaints and in conducting broker-dealer office examinations in which unreasonable delays in transmitting customer orders for execution were noted. Consequently, a specific reference to the order execution situation is added to the existing rule which specifies other circumstances where unreasonable delays by a broker-dealer in aspects of its customer dealings constitutes a prohibited business practice.

SECTION 24. SEC 4.06(2)(g) is repealed and recreated to read:

SEC 4.06(2)(g) Failing to accurately describe or disclose in advertising or other materials used in connection with the promotion or transaction of securities business in this state, the identity of an agent's employing broker-dealer or issuer or the nature of the agent's securities services offered. For purposes of this paragraph, "other materials" include, but are not limited to, business cards, business stationery and display signs.

ANALYSIS: This new rule makes it a prohibited business practice for an agent to fail to accurately describe and disclose in advertising and other materials used by the agent in transacting business in Wisconsin, the agent's employer or the nature of the agent's securities services offered. The rule is necessary because of the increasing incidence of securities agents doing business as independent contractors or under their own corporate identity, but who are transacting their securities activities as licensed agents for a

broker-dealer firm. In those circumstances, customers or prospective customers of the agent must receive complete and accurate disclosure regarding the agent's employer and services offered prior to entering into a customer relationship or effecting securities account transactions with the agent and the agent's employer. The rule sets forth the disclosure items that are required to be provided, whether in general "advertising" (which is a defined term in s. 551.02(1), Stats.) utilized by the agent, or in "other materials" that are specified in the rule to include, without limitation, such things as business cards, business stationery and display signs.

, SECTION 25. SEC 5.01(4)(c)(intro.) is created to read:

SEC 5.01(4)(c)(intro.) The entirety of the examination requirement in sub. (3) is waived for any applicant who meets any of the following criteria:

ANALYSIS: This amendment, together with the other amendments to the investment adviser examination waiver provisions of SEC 5.01(4), are needed to revise and clarify amendments made last year to the investment adviser waiver rules. The separate amendments do the following: (1) Make the bases for examination waiver specified in current SEC 5.01(4)(g) and (h) as bases for waiver only of Part II (the general law portion) of the Wisconsin Investment Adviser Representative Examination. The reason being that while the waiver basis in current SEC 5.01(4)(g) (relating to continuous employment as a portfolio manager of securities analyst for the preceding 3 years) and in current SEC 5.01(4)(h) (relating to continuous employment as a general securities agent for the 3 preceding years) warrants a waiver of the general law portion of the Examination, those continuous-

employment- in- the- securities- industry waiver bases do not justify waiver of the Wisconsin law (Part I) portion of the Examination. (2) Create a separate examination waiver section under a new SEC 5.01(4)(c) which accords a waiver of both Part I and Part II of the Examination for applicants who qualify under any of the waiver bases specified in current rule sections SEC 5.01(4)(c), (d), (e), (f) and (i). This change is necessary to provide examination waiver bases for both Parts of the Examination as in existence prior to the 1987 rule changes. (3) Renumber several of the current rule provisions to reflect the changes in (1) and (2).

SECTION 26. SEC 5.01(4)(c), (d), (e), (f) and (i) are renumbered SEC 5.01(4)(c)1, 2, 3, 4 and 5, respectively.

ANALYSIS: See ANALYSIS to SEC 5.01(4)(c)(intro.).

SECTION 27. SEC 5.01(4)(g) and (h) are renumbered SEC 5.01(4)(b)3 and 4 and, as renumbered, are amended to read:

SEC 5.01(4)(b)3. ~~The applicant has~~ 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.

4. ~~The applicant during~~ During the 3 years immediately preceding the filing of an application, has been continuously employed as a securities agent and is designated as a general securities representative by the national association of securities dealers, inc.

ANALYSIS: See ANALYSIS to SEC  
5.01(4)(c)(intro.).

SECTION 28. SEC 7.01(intro.), (1)(a) and (b), (2), (3)(a) to (c) and (4) to (7) are repealed and recreated to read:

SEC 7.01(intro.) FEES. The following fees, prescribed for the examination of various matters arising under ch. 551, Stats., are chargeable to the applicant, registrant or licensee, and are payable, unless otherwise provided by the commissioner, at the time an application or notice is filed:

(1) Registration matters:

- (a) Application for post-effective amendment of a registration statement.....\$200.
- (b) Application for extension of effectiveness of a registration statement.....\$200.

(2) Exemption matters:

- (a) Application for order of exemption under s. 551.22 or 551.23, Stats.....\$200.
- (b) Notice filing for purposes of claiming registration exemption status under ss. 551.22 or 551.23, Stats., or rules promulgated thereunder.....\$200.
- (c) Application for an opinion confirming a registration exemption or an exclusion from a definition.....\$500.

(3) Licensing matters:

- (a) Application for an initial license of a broker-dealer or investment adviser or a successor under s. 551.32(1) or (3), Stats.....\$200.
- (b) Application for an order waiving a licensing provision.....\$200.
- (c) Examination of an agent applicant or a person representing an investment adviser under s. 551.32(4), Stats.....\$ 50.

(4) Advertising:

- (a) Advertising filed with a notice or application under ss. 551.22, 551.23, 551.25 or 551.26, Stats.....No charge.
- (b) Advertising filed under s. 551.53, Stats...\$10 per item.
- (c) Prospectus filed by a registered finance company under s. SEC 3.27(2).....\$50.

(5) Other matters:

- (a) Certification of any document or entry under s. 551.64(4), Stats.....\$ 50.
- (b) Application for issuance of an interpretive opinion under s. 551.64(5), Stats.....\$500.
- (c) Application for exclusion from a definition by order.....\$200.

- (6) Photocopying fee.....\$.25 per page for the first 10 pages and \$.10 per page for any additional pages.
- (7) Delinquent or materially deficient filings:
- (a) Delinquent filing of broker- dealer or investment adviser license renewal application.....\$50.
  - (b) Delinquent filing of broker- dealer or investment adviser transfer of control.....\$50.
  - (c) Delinquent filing of broker- dealer or investment adviser annual financial statements.....\$50.
  - (d) Delinquent filing of broker- dealer report of sales on Form RS-BD.....\$50.
  - (e) Delinquent filing of agent termination notice on Form U-5.....\$50.
  - (f) The commissioner may by order require the payment of a fee of no more than \$200 for delinquent or materially deficient filings of information or documents required to be filed in connection with the examination of any matter under chs. SEC 2 to 6.

ANALYSIS: This Section is the first of several that substantially revises Chapters 7, 27 and 35 of the Rules of the Commissioner of Securities which establish fees for examination of various matters arising under the administration of the Wisconsin Uniform Securities Law, the Wisconsin Corporate Take-Over Law, and the Wisconsin Franchise Investment Law. The revisions to the fee rules not



only make changes in the dollar amounts of numerous of the fees, but also seek to simplify and make uniform the fee provisions by, where feasible, grouping together similar categories of filings. For instance, under recreated SEC 7.01(2)(b) all Notice filings seeking to claim registration exemption status under any of the exemptions in secs. 551.22 or 551.23 of the Wisconsin Uniform Securities Law or rules thereunder are covered by that one fee rule which provides for a single, uniform \$200 fee, irrespective of the particular registration exemption involved in the filing. Also, under recreated SEC 7.01(7), the fee uniformly prescribed for any delinquent or materially deficient filing by a broker-dealer or investment adviser is \$50, irrespective of the type of filing involved.

SECTION 29. SEC 7.05(2)(e) and (f) are created to read:

SEC 7.05(2)(e) A record that is a part of a current investigation that may result in administrative, legal or criminal action, or that relates to any such pending action.

(f) A record whose disclosure would unduly damage a person's reputation so as to outweigh the public interest in disclosure.

ANALYSIS: This Section does the following: (1) Adds investigation files of the Commissioner to the list of records that may be excluded from public inspection under the Wisconsin Open Records Law in s. 19.85(3), Stats., where the Commissioner finds the public interest in non-disclosure outweighs the benefits of open public access to the records. The language of this exclusionary rule is taken from language in an open records exclusionary rule of the Office of the Commissioner of Insurance contained in INS 6.13(3)(c)4.;

(2) Adds another exclusion from the insurance rules in INS 6.13(3)(c)5. that relates to records whose disclosure would unduly damage a person's reputation so as to outweigh the public interest in disclosure. These rules are adopted consistent with the statutory provisions of s. 551.56(1), Stats. (authorizing the Commissioner to make "public or private investigations"), and s. 551.51(2), Stats. (precluding the Commissioner and agency employees from "disclosing any confidential information except among themselves or to other securities administrators or regulatory authorities or when necessary in a proceeding or investigation").

SECTION 30. SEC 9.01(1)(b)6 to 16 are renumbered SEC 9.01(1)(b) 7 to 17, respectively.

ANALYSIS: This renumbering is necessary to make room for the reference to the new form listed in the following SECTION.

SECTION 31. SEC 9.01(1)(b)6 is created to read:

SEC 9.01(1)(b)6. ASIM(WI) Application for agent license to simultaneously represent more than one broker-dealer or issuer.

ANALYSIS: This SECTION designates the form to be submitted on behalf of an agent to apply to the Commissioner for authorization to be licensed simultaneously to represent in Wisconsin more than one broker-dealer or issuer pursuant to the procedures in SEC 4.01(9).

SECTION 32. SEC 27.01 is repealed and recreated to read:

SEC 27.01 FEES. The following fees, prescribed for the examination of various matters arising under ch. 552, Stats., are chargeable to the person filing or the registrant, and are payable, unless otherwise provided by the commissioner, at the time the required form or solicitation material is filed:

- (1) Ownership information matters filed pursuant to s. 552.03, Stats.:
  - (a) Form TO-1 Statement of Ownership Information..\$100.
  - (b) Statement prescribed in section 13(d) of the securities exchange act of 1934.....\$100.
  - (c) Form TO-2 Statement of Ownership Information..\$100.
  - (d) Amendment to Statement of Ownership Information.....\$100.
- (2) Examination of statement filed under s. SEC 26.01(1), .....\$ 50.
- (3) Examination of solicitation materials filed by an offeror, target company or other person--Per Item..\$ 10.
- (4) Application for issuance of an interpretive opinion.....\$500.
- (5) Photocopying fee.....\$.25 per page for the first 10 pages and \$.10 per page for any additional pages.
- (6) Application for issuance of exemption order under ch. 552, Stats.....\$200.

ANALYSIS: See ANALYSIS to SEC 7.01.

SECTION 33. SEC 31.01(2) is renumbered SEC 31.01(2)(a).

SECTION 34. SEC 31.01(2)(b) is created to read:

SEC 31.01(2)(b) "Franchise fee" under s. 553.03(5m), Stats. does not include the following:

1. The purchase or agreement to purchase goods by consignment, if the proceeds remitted by the franchisee from sale of the goods reflects only the bona fide wholesale price of the goods.
2. The purchase or agreement to purchase goods at a bona fide retail price, subject to a commission or compensation arrangement that results in the transaction amounting to a bona fide wholesale transaction.
3. A bona fide loan to the franchisee from the franchisor.
4. The purchase or lease of, or agreement to purchase or lease, supplies or fixtures necessary to enter into the business of the franchisor or to continue the business under the franchise agreement at the fair market or rental value of the supplies or fixtures.
5. The purchase or lease or agreement to purchase or lease real property necessary to enter into the business of the franchisor or to continue the business under the

franchise agreement at the fair market or rental value of the real property.

ANALYSIS: These additional exclusions from the definition of "franchise fee" in s. 553.03(5m), Stats., adopted under authority accorded in sub. (d) thereof, follow recommendations contained in the March, 1987 Report of the Franchise and Business Opportunity Regulation Advisory Committee that was appointed in 1986 by the Commissioner of Securities Office. The Committee Report stated the Committee's view that the proposed additional exclusions only codify existing law and interpretations. The additional exclusions cover the following: (1) Situations that amount to variations on the "bona fide wholesale price" statutory exclusion in s. 553.03(5m)(a), Stats., in the contexts of consignment purchases of goods (par. (a)), or purchases of goods at retail that reflect an included commission (par. (b)); (2) a bona fide loan to the franchisee from the franchisor; (3) purchase or lease of either supplies or fixtures (par. (d)) or real property (par. (e)) at their fair market or rental value.

SECTION 35. SEC 31.01(3)(e) is created to read:

SEC 31.01(3)(e) An adverse financial development involving the franchisor or the franchisor's parent company, controlling person or guarantor of the franchisor's obligations. In this paragraph, "adverse financial development includes, but is not limited to:

1. The filing of a petition under federal or state bankruptcy or receivership laws; or

2. A default in payment of principal, interest, or sinking fund installment on indebtedness that exceeds 5% of total assets which is not cured within 30 days of the default.

ANALYSIS: This rule creates an additional example of what would be considered a "material event" within the meaning of s. 553.31(1), Stats., for purposes of triggering a registered franchisor's obligation to file an amendment to the franchisor's registration statement. The rule adds to the list of presumed "material events" under SEC 31.01(3), adverse financial developments such as the filing of a bankruptcy or receivership petition, or an uncured default in payment of indebtedness that exceeds 5% of the entity's total assets.

SECTION 36. SEC 31.01(5) is repealed.

ANALYSIS: This amendment repeals what has turned out to be a confusing and largely unnecessary definition of the terms "offers to sell", "sales" or "offers to purchase" or "purchases" under the Wisconsin Franchise Investment Law. The definitional rule is confusing because of its being structured with multiple negatives and by being very complex due to the numerous component elements of the rule that include: residents of a foreign state that are not domiciled nor present in Wisconsin; the franchise business being sold is not to be operated in Wisconsin; and the sale of the franchise may not be in violation of any law of a foreign state. Also, because the fact situations covered under the extensive rule criteria are so narrow and limited in scope, the definitional rule is largely unnecessary.

SECTION 37. SEC 31.01(6) to (10) are renumbered SEC 31.01(5) to (9), respectively.

ANALYSIS: Because of the repeal of SEC 31.01(5), this renumbering is necessary to have the definitional rules under SEC 31.01 following the repealed section be in sequential numbering order.

SECTION 38. SEC 32.01 is repealed and recreated to read:

SEC 32.01 REQUIREMENT FOR FRANCHISE EXEMPTION NOTICE FILINGS. A notice of exemption pursuant to a statute or rule under ch. 553, Stats., that does not specify the information to be provided, shall consist of the following:

- (1) The examination fee prescribed under SEC 35.01;
- (2) A statement by the franchisor or the franchisor's attorney on its behalf describing how the franchisor meets the conditions for use of the exemption; and
- (3) A copy of either an offering circular prepared in the form required by SEC 32.06 or a disclosure document prepared in the form required by 16 CFR Part 436, the federal trade commission's disclosure requirements and prohibitions concerning franchising and business opportunity ventures.

ANALYSIS: This Section does the following: (1) Repeals current rule SEC 32.01-- which specifies the information to be included in a filing for exemption

under s. 553.22, Stats.-- because that information is contained in a recent legislative change to that exemption contained in Section 26 of 1987 Wisconsin Act 381 (effective May 3, 1988). (2) Substitutes a general requirement--in language paralleling the securities exemption rule in SEC 2.03(1)--that lists the information to be included in a franchise exemption Notice filing where the particular exemption statute or rule does not specify the information to be submitted.

SECTION 39. SEC 32.02 is repealed.

ANALYSIS: This rule-- which requires an annual filing of updated information by franchisor utilizing the registration exemptions in s. 553.22, Stats., or SEC 32.05(1)(c)-- is repealed for the following reasons: (1) The filing- of- annual- updated- information requirement for s. 553.22, Stats., is now contained within the statutory exemption section as a result of the recent legislative change contained in Section 26 of 1987 Wisconsin Act 381 (effective May 3, 1988). (2) The annual filing requirement for the exemption in SEC 32.05(1)(c) is added directly to that rule as sub. (6) thereof.

SECTION 40. SEC 32.03 is amended to read:

SEC 32.03 MATERIAL EVENTS OR MATERIAL CHANGES AFFECTING EXEMPTED FRANCHISORS AND THEIR FRANCHISES. Franchisors whose franchises are exempted under ss. 553.22~~7~~--~~553.23~~ or 553.25, Stats., shall be required, as a condition of maintenance of the exemption ~~after--confirmation--thereof--as required--by--s.--SEC--32.01,~~ to notify the commissioner in writing within 30 days after the happening of any material event or material change within the meaning of s. SEC



31.01(3), affecting the exempted franchises or the franchisor.

ANALYSIS: The amendments do the following: (1) Delete the cross-reference contained in the rule to the registration exemption in s. 553.23, Stats. Because that exemption (which applies to private franchisee and sub-franchisee sales) is totally self-executing and requires no filing with the commissioner to be utilized, this rule--which establishes conditions for maintaining effectiveness of certain exemptions--is confusing and inconsistent with the self-executing nature of the exemption in s. 553.23, Stats.; (2) Delete the reference to current rule SEC 32.01 which is being repealed and recreated in a separate Section.

SECTION 41. SEC 32.04 is repealed.

ANALYSIS: The repeal of this rule-- which provides that if the Commissioner requests information necessary to establish availability of a franchise registration exemption, the effective date of the exemption does not occur until 10 days after receipt of the information-- is warranted because it is superseded by a recently enacted statutory provision s. 553.24(6), Stats., contained in Section 31 of 1987 Wisconsin Act 381 (effective May 3, 1988).

SECTION 42. SEC 32.05(1)(c)6 is created to read:

SEC 32.05(1)(c)6. The franchisor files annually with the commissioner within 120 days after the close of its fiscal year, a copy of its current offering circular prepared in the form required by s. SEC 32.06, or disclosure document prepared in the form required by 16 CFR Part 436, the federal

trade commission's disclosure requirements and prohibitions concerning franchising and business opportunity ventures. The filing by the franchisor shall be signed by an officer or general partner of the franchisor in the manner prescribed by s. SEC 32.11, and shall be accompanied by a statement by the franchisor setting forth how the requirements for use of the exemption continue to be met.

ANALYSIS: This Section moves the filing-of- annual- updated- information requirement (currently in SEC 32.02) for continuing use of the registration exemption in SEC 32.05(1)(c) to be a specific subdivision of the exemption.

SECTION 43. SEC 33.03 is amended to read:

SEC 33.03 STATE LAWS AFFECTING FRANCHISE OPERATIONS.

The commissioner may, pursuant to s. 553.28, Stats., issue a stop order denying effectiveness to any application for registration of franchises under s. 553.26, Stats., or suspending or revoking the effectiveness of any exemption under s. 553.22, 553.23 or 553.25, Stats., or of any registration statement under s. 553.26, Stats., if the commissioner finds that the sale of franchises pursuant to the application, exemption or registration statement is or would be in violation of the Wisconsin marketing; warehouses; trade practices law, the Wisconsin trusts and monopolies law, the Wisconsin fair dealership law or the Wisconsin uniform securities law (ch. 100, Stats., ch. 133, Stats., ch. 135, Stats., or ch. 551, Stats., respectively).

ANALYSIS: This amendment corrects an omission in the rule by adding identical language to language contained in a parallel franchise rule in SEC 32.02. The added language is necessary to clarify that the action the Commissioner may take under the rule includes the suspension of the registration statement of a franchisor that is in violation of any of the Wisconsin laws specified in the rule.

SECTION 44. SEC 35.01(1) to (3) are repealed and recreated to read:

SEC 35.01 FEES. The following fees, prescribed for examination of various matters arising under ch. 553, Stats., are chargeable to the applicant or registrant and are payable, unless otherwise provided by the commissioner, at the time the application or notice is filed:

- (1) (a) Application for order of exemption under s. 553.25, Stats.....\$200.
- (b) Notice filing for purposes of claiming registration exemption status under ch. 553, Stats., or rules thereunder.....\$200.
- (c) Application for opinion confirming a registration exemption or an exclusion from a definition..\$500.
- (d) Application for issuance of an interpretive opinion under ch. 553, Stats.....\$500.
- (e) Application for approval of written notice under s. 553.51(4), Stats.....\$200.

- (f) Application for renewal of a registration statement under s. 553.30, Stats.....\$200.
- (g) Application for amendment of a registration statement under s. 553.31, Stats.....\$200.
- (2) Advertising filed under s. 553.53, Stats.....\$10.00 per item.
- (3) Certification of any document or entry under s. 553.75(4), Stats.....\$50.

ANALYSIS: See ANALYSIS to SEC 7.01(Intro.).

SECTION 45. SEC 35.04 is repealed and recreated to read:

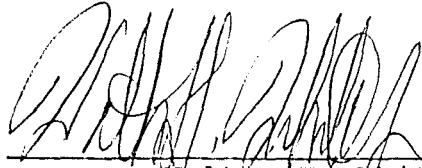
SEC 35.04 FILES AND RECORDS. (1) Except as otherwise provided by law or as specified in sub. (2), any record or document in the commissioner's possession or control of which the commissioner is the legal custodian, may be inspected or copied by any person during regular business hours.

(2) The following records may be excluded from disclosure under this section if the commissioner finds the public interest in nondisclosure outweighs the benefits of open access:

- (a) Personnel files of office employees, former employees and job applicants;
- (b) Communications with legal counsel;
- (c) Records obtained under a pledge or reasonable expectation of confidentiality;

The rules and amendments contained in this Order, other than those contained in SECTION 21 relating to SEC 4.01(9), shall take effect as provided in sec. 227.22(Intro.), Stats., on the first day of the month following publication in the Wisconsin Administrative Register. The rule and amendments contained in SECTION 21 relating to SEC 4.01(9) shall take effect on February 1, 1989.

Dated this 19<sup>th</sup> day of November, 1988.



Walter H. White, Jr.  
Commissioner of Securities

[SEAL]

WHW/trs

**RECEIVED**

NOV 14 1988

Revisor of Statutes  
Bureau



State of Wisconsin \

OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson  
Governor

Walter H. White, Jr.  
Commissioner of Securities

Wesley L. Ringo  
Deputy Commissioner

111 WEST WILSON STREET  
BOX 1788  
MADISON, WISCONSIN 53701

November 14, 1988

INFORMATION (608) 266-3431  
REGISTRATION (608) 266-1064  
LICENSING (608) 266-3693  
LEGAL SERVICES (608) 266-8557  
ADMINISTRATION (608) 266-3583

Office of the Secretary of State  
201 East Washington Avenue  
Madison, WI 53702

RECEIVED

NOV 14 1988

Revisor of Statutes  
Bureau

✓ Revisor of Statutes Bureau  
30 West Mifflin Street  
Madison, WI 53703

Gentlemen and Mesdames:

Re: Filing of Certified Copies of Final Order  
Adopting Rules/Clearinghouse Rule 88-137

Pursuant to the requirements of ss. 227.20 and 227.21, Wis. Stats., a certified copy is herewith filed with each of your offices of the above-referenced Final Order Adopting Rules in the form prescribed by sec. 227.14, Wis. Stats. The Final Order Adopting Rules was adopted by this agency on November 14, 1988.

Also attached is a photocopy of amendments to several securities registration regulatory standards incorporated by reference in sections SEC 3.04, 3.05, 3.11 and 3.19, Wis. Adm. Code, contained in SECTIONS 9, 10, 11 and 16 of the Final Order Adopting Rules. Authorization for the incorporation by reference of the amendments to the regulatory standard has been received under s. 227.21(2), Wis. Stats., from the Attorney General and the Revisor of Statutes. Attached as well is a copy of the new securities agent licensing form that is both prescribed under SEC 4.01(9) and listed in SEC 9.01(1)(b)6 of the Final Order Adopting Rules.

If you have any questions, please call me at 266-3414.

Very truly yours,

Randall E. Schumann  
General Counsel

RES/sak

enclosures

cc: Walter H. White, Jr.  
Commissioner of Securities



State of Wisconsin \

OFFICE OF THE COMMISSIONER OF SECURITIES

Licensing Division  
(608) 266-3693

111 WEST WILSON STREET  
BOX 1768  
MADISON, WISCONSIN 53701

SECURITIES AGENT SIMULTANEOUS LICENSURE DISCLOSURE FORM

Explanatory Note: In order for an agent to simultaneously represent more than one broker-dealer or issuer, §551.31(2)(b)2., Wis. Stats., requires that the Commissioner grant approval in writing prior to the agent engaging in such activities. That statute and administrative rule SEC 4.01(9), Wis. Adm. Code thereunder, requires a written application, which may be a copy of the Form U-4 or in letter form, to be filed with the Commissioner in addition to this disclosure form that contains certain required information. Additionally, the rule requires each broker-dealer or issuer the agent represents to grant written permission to the agent to represent specified other employers, to list all restrictions they have imposed on the agent's securities activities, and to provide written disclosure of such information to its customers. Also, the rule requires the agent to sign the disclosure form. Approval of the application for simultaneous licensure, if granted, will be evidenced on this form by the Commissioner or his designee and a copy supplied to each of the agent's broker-dealer or issuer employers.

\* \* \* \*

The undersigned \_\_\_\_\_ (name of broker-dealer or issuer) acknowledges that \_\_\_\_\_ (name of applicant) is/seeks to become (cross-out as applicable) licensed in Wisconsin as a securities agent to represent the undersigned.

The undersigned hereby grants permission for the applicant identified above to be simultaneously licensed with the undersigned as well as the following securities broker-dealers or issuers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned hereby grants permission for the applicant identified above to simultaneously represent the other securities broker-dealers or issuers listed in the above paragraph, subject to the following restrictions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_