CR 82-18

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard R. Malmgren, Commissioner of the State of Wisconsin Office of the Commissioner of Securities and custodian of the official records of said agency do hereby certify that the annexed rules to renumber and amend SEC 3.11 and to create SEC 3.11(2) of the Rules of the Commissioner of Securities relating to adopting amendments to the Real Estate Program Registration Policy of the North American Securities Administrators Association, as incorporated by reference in the Rules of the Commissioner of Securities, were duly approved and adopted by this agency on March 26, 1982.

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

RECEIVED
MAR 29 1982
12:35
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 26th day of March, 1982.

(SEAL)

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

5-1-82

ORDER OF THE OFFICE OF THE

COMMISSIONER OF SECURITIES

STATE OF WISCONSIN

ADOPTING AND AMENDING RULES

To renumber and amend SEC 3.11; and to create SEC 3.11(2) of the Rules of the Commissioner of Securities relating to adopting amendments to the Real Estate Program Registration Policy of the North American Securities Administrators Association, as incorporated by reference in the Rules of the Commissioner of Securities.

Pursuant to authority vested in the Office of the Commissioner of Securities by secs. 551.63(1) and 551.63(2), Wis. Stats., the Commissioner of Securities hereby amends and adopts rules interpreting sec. 551.28(1)(e), Wis. Stats., as follows:

SECTION 1. Section SEC 3.11 of the Wis. Adm. Code is renumbered SEC 3.11(1) and is amended to read:

SEC. 3.11 Real estate programs. (1) ~~The~~ Except as provided in sub. (2), 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, including comments therein. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

SECTION 2. Section SEC 3.11(2) of the Wis. Adm. Code is created to read:

3.11(2)(a) In addition to the provisions of subsection I.B.14. of the Statement of Policy relating to the definition of Investment in Properties, in the case of a specified

property program filed with the Administrator prior to July 1, 1983 where the property is located in Wisconsin and the sponsor has its principal office in Wisconsin, the investment in properties consists of the amount of capital contributions actually paid or allocated to the purchase, development, construction or improvement of properties acquired by the program (including the purchase of properties, working capital reserves allocable thereto and other cash payments such as interest and taxes but excluding front-end fees).

(b) In addition to the provisions of subsection III.B. of the Statement of Policy relating to Sales to Appropriate Persons, in the case of a specified property program filed with the Administrator prior to July 1, 1983 where the property is located in Wisconsin and the sponsor has its principal office in Wisconsin, participants shall have a minimum annual gross income of $20,000 and a net worth of $20,000, or in the alternative, a net worth of $75,000. Except for the minimum annual gross income and net worth levels, all other provisions of subsection III.B.4. of the Statement of Policy shall apply to specified property programs.

(c) In addition to the provisions of subsection IV.C.1. of the Statement of Policy relating to Investment In Properties, in the case of a specified property program filed with the Administrator prior to July 1, 1983 where the property is located in Wisconsin and the sponsor has its principal office in Wisconsin, all front-end fees may be paid to the

sponsor from the first installment so long as the front-end fees do not exceed the permitted percentage the sponsor would be entitled to receive if there were no installment payments.

(d) In addition to the provisions of section VIII.(C) of the Statement of Policy relating to disclosure of Forecasts, the use of projections is permitted as follows:

1. In the case of a specified property program filed with the Administrator prior to July 1, 1983 where the property is located in Wisconsin and the sponsor has its principal office in Wisconsin, the presentation of predicted future results of operations ("projections") of real estate programs shall be permitted but not required for a specified property program investing primarily in improved property and shall be prohibited for non-specified property programs or specified property programs investing primarily in unimproved land. The front cover of the prospectus must contain in boldface language one of the following statements:

a. For specified property programs:

"PROJECTIONS ARE CONTAINED IN THIS PROSPECTUS (OFFERING CIRCULAR). ANY PREDICTIONS AND REPRESENTATIONS, WRITTEN OR ORAL, WHICH DO NOT CONFORM TO THOSE CONTAINED IN THE PROSPECTUS (OFFERING CIRCULAR) SHALL NOT BE PERMITTED."

b. For non-specified property and unimproved land programs:

"THE USE OF PROJECTIONS IN THIS OFFERING IS PROHIBITED. ANY REPRESENTATIONS TO THE CONTRARY AND ANY PREDICTIONS , WRITTEN OR ORAL, AS TO THE AMOUNT OR CERTAINTY OF ANY PRESENT OR FUTURE CASH BENEFIT OR TAX CONSEQUENCE WHICH MAY FLOW FROM AN INVESTMENT IN THIS PROGRAM ARE NOT PERMITTED."

2. Projections for specified property programs filed with the Administrator prior to July 1, 1983 shall be included in the prospectus, offering circular or sales material of the program only if they comply with the following requirements:

a. General

Projections shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Projections shall be compiled by an independent certified public accountant and that person or firm shall be identified in the prospectus or offering circular as being responsible for the compilation of the projections. The general partners shall state their opinion in the prospectus or offering circular of the most probable projected resale result. No projections shall be permitted in any sales literature which do not appear in the prospectus or offering circular. If any projections are included in the sales literature, all projections

must be presented.

b. Material information. Projections shall include the standards set forth in sections VIII.C.1.b. (1) to (3) and (5) to (9) of the Statement of Policy, the required occupancy rate in order to meet debt service and all expenses, and rental revenue shall also be predicted based on occupancy rates 10% below the break-even occupancy rate.

c. Presentation. Projections shall include all the standards set forth in sections VIII.C.1.c.(1) to (4) of the Statement of Policy and the following: The presentation of projections proposed in accordance with these standards shall be coupled with a summary of predicted results in the event of a material adverse change in one or more significant economic factors. These factors include the effect on partnership cash flow and rate of return of revenues of rental projects at rates 10% to 15% less than expected and the effect of a level of operating expenses 10% to 15% greater than anticipated in the primary projections. A break-even point with respect to occupancy and expenses should be disclosed together with other relevant financial ratios.

d. Additional Disclosures and Limitations. Projections shall include all standards set forth in

VIII.C.1.d. (1) to (4) of the Statement of Policy with the word "projections" substituted for the word "forecasts" and the word "projected" substituted for the word "forecasted."

e. Unimproved land. Projections shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs, such as interest, taxes, and insurance shall be inserted. However, where the program intends to develop and sell the land as its primary business, a detailed cash flow statement showing the timing of expenditures and anticipated revenues shall be required. In addition, the consequences of a delayed selling program shall be shown.

* * * *

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

Dated this 26th day of March, 1982.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities

Analysis 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) During 1981, the Office of the Commissioner of Securities made its annual review of its Administrative Rules promulgated under the Wisconsin Uniform Securities Law, the Wisconsin Corporate Take-Over Law, and the Wisconsin Franchise Investment Law for the purposes of: making clarifications to existing rule provisions where language was vague or ambiguous; adopting or amending rules necessary to effectively regulate new circumstances or developments which occurred in the industry and the marketplace that required regulatory treatment; formally adopting and incorporating by reference certain specific securities registration guidelines, and amendments to such guidelines previously adopted by a national securities administrators association of which Wisconsin is a member; and adopting numerous rule changes necessitated by statutory amendments to Ch. 551, the Wisconsin Uniform Securities Law, in Chapter 53, Laws of 1981 (effective January 1, 1982), to Ch. 552, the Wisconsin Corporate Take-Over Law, in Chapter 16, Laws of 1981 (effective June 17, 1981), and to Ch. 553, the Wisconsin Franchise Investment Law, in Chapter 54, Laws of 1981 (effective January 1, 1982).

(2) The required filing of the proposed rule amendments was made with the Rules Clearinghouse of the Wisconsin Legislative Council on July 9, 1981, and those proposed rule amendments were designated in the Rules Clearinghouse Report as Clearinghouse Rule 81-128. In addition, as discussed in paragraphs (7) through (14) of this Section, the specific rule provisions which are the subject of this filing have been separately designated as Clearinghouse Rule 82-18.

(3) Copies of the Comment Draft of the proposed rule revisions (i.e., Clearinghouse Rule 81-128) containing Explanatory Notes to each amended section were distributed in a mailing during July, 1981 (based on the Office's mailing list of its monthly Wisconsin Securities Bulletin), to the general public, securities licensees and registrants, franchise registrants, securities law and franchise law practitioners, securities and franchise trade associations and regulatory bodies, and to other interested persons. The Comment Draft was accompanied by a letter soliciting written comments on

the proposed revisions or testimony at the public hearing that was held on September 10, 1981 in Room 318 Southwest of the State Capitol in Madison, Wisconsin.

(4) Pursuant to the provisions of sec. 227.025, Wis. Stats., authorization was requested in writing by the Wisconsin Commissioner of Securities and was received from the Wisconsin Attorney General and the Revisor of Statutes permitting the incorporation by reference of two specific securities registration guidelines (one relating to real estate programs and the other relating to real estate investment trusts) adopted by a national association of securities administrators of which Wisconsin is a member (the North American Securities Administrators Association, Inc.), and of a franchise disclosure form of the Federal Trade Commission.

(5) During the public comment period, seventeen letters were received setting forth specific comments relating to various of the proposed revisions comprising Clearinghouse Rule 81-128. At the public hearing, testimony was presented by six persons (other than staff) who set forth additional comments. Of those numbers, two of the comment letters and four of the persons appearing at the hearing provided comments pertaining to the only subject matter of this Order as discussed in paras. (7), (8) and (9) below--i.e. Clearinghouse Rule 82-18 which involve the amendments to the securities registration policy relating to real estate programs in section SEC 3.11, Wis. Adm. Code.

(6) Several of the comments made in the comment letters and in hearing testimony resulted in changes and modifications to the form and content of the rules that were submitted under the rule promulgation requirement in secs. 227.018(2) and (3), Wis. Stats., to the presiding officer of each house of the legislature on November 11, 1981 for referral to the legislative standing committee in each house assigned for the Office of the Commissioner of Securities.

(7) In the Notice and Report submitted on November 11, 1981 to the presiding officer of each house of the legislature, it was stated that one of the securities registration policies referred to in paragraph (4) above--namely the policy relating to real estate programs in section SEC 3.11, Wis. Adm. Code,--was not included among the rules submitted to the agency's legislative standing committees on November 11, 1981 under the Rules Clearinghouse Number 81-128. Rather, it was indicated that a separate rule relating to that registration policy regarding real estate syndications would be the subject of a later filing with the legislative standing committees.

(8) The purpose of not including the amendments to section SEC 3.11, Wis. Adm. Code, relating to the Statement of Policy on real estate programs in the filing on November 11, 1981 with the presiding officer of each house of the legislature for Clearinghouse Rule 81-128 was to enable further consideration as to whether language should be added to section SEC 3.11, Wis. Adm. Code, making specific additions or deletions to the Statement of Policy as incorporated by reference.

(9) The amendment to the administrative rule in section SEC 3.11, Wis. Adm. Code, relating to the Statement of Policy Regarding Real Estate Programs--as adopted by the North American Securities Administrators Association and incorporated by reference therein-is the only subject matter of this Order Adopting Rules, and it has been given by the Rules Clearinghouse a separate Clearinghouse Rule number of 82-18.

(10) After the required filing of Clearinghouse Rule 82-18 was made on January 19, 1982 with this agency's legislative standing committees, the Office of the Commissioner of Securities was notified on January 29, 1982 that the Senate Committee on Aging, Business & Financial Institutions and Transportation would hold a public hearing on February 3, 1982 regarding Clearinghouse Rule 82-18.

(11) A hearing by the Senate Committee was held on February 3, 1982, and on February 22, 1982, the Office of the Commissioner of Securities was notified that the Committee objected to adoption of Clearinghouse Rule 82-18 pursuant to sec. 227.018(4), Wis. Stats.

(12) On March 2, 1982, the Office of the Commissioner of Securities was notified by the Joint Committee for Review of Administrative Rules that because of the objection to adoption of the rule raised by the Senate Committee, the Joint Committee pursuant to sec. 227.018(5), Wis. Stats., would hold a public hearing on March 12, 1982 to determine whether to concur or to non-concur in the Senate Committee's objection.

(13) Following a hearing before the Joint Committee on March 12, 1982, the Office of the Commissioner of Securities was notified on March 19, 1982, that the Joint Committee non-concurred in the Senate Committee's objection to adoption of Clearinghouse Rule 82-18. That action was taken by the Joint Committee with the understanding that four additional provisions to the amended NASAA Guidelines being incorporated by reference in section SEC 3.11, Wis. Adm. Code, were voluntarily agreed upon by both the Office of the Commissioner of Securities and the Wisconsin Realtors Association and were to be incorporated into Clearinghouse Rule 82-18.

(14) The language of Clearinghouse Rule 82-18 being adopted in the accompanying Order includes the four additional provisions in the form agreed upon by both the Office of the Commissioner of Securities and the Wisconsin Realtors Association, and the nature of the additional provisions is described in Section (c) of this Analysis.

(15) 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., to cooperate with the securities administrators of other states in prescribing uniform rules for the form and content of registration statements, by adopting and incorporating by reference the securities registration policy and amendments thereto adopted by a national securities administrators association of which Wisconsin is a member as set forth in Section 1 of the Proposed Order.

(16) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to exercise his rule-making authority under secs. 551.63(1) and 551.63(2), Wis. Stats., adopt to amend the rules in Sections 1 and 2 of the attached Order Adopting Rules to carry out the purposes of the Wisconsin Uniform Securities Law.

(b) Statement Explaining Need for Rules

The Order Adopting Rules will adopt amendments to the existing securities registration policy on real estate programs of the North American Securities Administrators Association ("NASAA Real Estate Policy") as currently incorporated by reference in section SEC 3.11, Wis. Adm. Code. The NASAA Real Estate Policy is one of 7 securities registration policies formulated by national associations of securities administrators of which Wisconsin is a member that have been formally adopted by rule in Wisconsin under the Commissioner's authority in sec. 551.63(2), Wis. Stats., to cooperate with the securities administrators of other states in prescribing uniform rules for the form and content of registration statements. (See also sections SEC 3.12 through SEC 3.17, Wis. Adm. Code.)

The NASAA Real Estate Policy is the successor to the Statement of Policy on Real Estate Programs of the Midwest Securities Commissioner's Association ("Midwest Association," a former national securities association of which Wisconsin was a member). The real estate policy, originally formulated in 1973, was one of several Midwest Association Securities registration policies that were formally adopted by rule in Wisconsin and incorporated by reference. After the Midwest Association voted in 1979 to dissolve and reorganize as a separate merit regulation section of NASAA, all of the Midwest Association securities registration policies were formally accepted as securities registration policies of NASAA by vote of its members, including Wisconsin, on April 15, 1980.

The NASAA (formerly Midwest) Real Estate Policy had not been comprehensively amended since its original form adopted in 1973. Consequently, beginning in 1978 (when it was still a Midwest policy), a comprehensive revision of the Policy was begun for the purpose of making needed changes and amendments to reflect new circumstances and developments which had occurred in the real estate industry and the marketplace since the inception of the Policy, as well as to make needed clarifications to its provisions where language was vague or ambiguous. The result of that comprehensive revision, involving several preliminary exposure drafts of proposed changes for public comment, was a significantly amended NASAA Real Estate Policy that was adopted by the NASAA membership, including Wisconsin, at its annual fall business meeting to become effective on March 30, 1982.

The major areas of amendment to the Policy included: a revised basis for computing the amount of program capital that must be invested in properties; increasing investor net worth and income suitability standards; subordinating the promotional interest of sponsors to annual cumulative returns to investors except in specified circumstances; limiting certain kinds of administrative overhead expense reimbursement to sponsors; establishing presumed-reasonable levels of fees for property management services provided by the program sponsor or affiliates; and accepting the federal Securities and Exchange Commission's Guide 60 as a disclosure model. The final guidelines as adopted by NASAA included four changes recommended by Wisconsin as a result of public comments received by this agency at its public hearing on September 10, 1981.

Now that the amendments to the NASAA Real Estate Policy have been adopted by the NASAA membership, the Policy as amended will be applied after March 30, 1982 by member states to registration applications for real estate program securities offerings. In order for this agency to be able to review registration applications for real estate securities offerings sought to be offered in Wisconsin and other states and to apply registration standards in a manner uniform and consistent with the securities administrators in other states, it is necessary to amend section SEC 3.11, Wis. Adm. Code, to include the amendments made to the NASAA Real Estate Policy adopted by the NASAA membership, including Wisconsin.

Further, it is necessary to include in section SEC 3.11, Wis. Adm. Code, additional provisions set forth in new sub. (2) thereof to allow certain categories of registration applications--namely, those filed prior to July 1, 1983 where the property is located in Wisconsin and the sponsor has its principal office in Wisconsin--to comply with alternative registration requirements in four specific respects as set forth in the sub. (2) provisions.

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

The changes in the language of the amendment to section SEC 3.11, Wis. Adm. Code, from its form as sent out for public comment in July, 1981 with the rest of the 1981 rule revisions are: (1) to divide the section into two subsections; (2) to specify in sub. (1) thereof the effective date of the amendments as adopted by the NASAA membership and to specifically include language indicating that the comments in the NASAA policy are also being recognized; and (3) to set forth in sub. (2) thereof the four additional provisions to the amended NASAA Guidelines that were voluntarily agreed upon by both the Office of the Commissioner of Securities and the Wisconsin Realtors Association, which provisions (as discussed in para. (13) to Section (a) of this Analysis) were the basis upon which the Joint Committee for the Review of Administrative Rules non-concurred in the objection of the Senate Committee to adoption of Clearinghouse Rule 82-18.

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

[Note: Of the persons and comment letters listed below, only those preceded by an asterisk gave commentary on the rule amendment that is the subject of this Proposed Order.]

--Attorney Kirby Hendee, 111 South Fairchild Street, Madison, Wisconsin 53703, representing the Investment Company Institute and the Investment Council Association of America.

--Attorney Conrad G. Goodkind, 780 North Water Street, Milwaukee, Wisconsin, representing the Investment Company Institute.

* --Mr. David H. Maiman, 7619 North 60th Street, Milwaukee, Wisconsin 53223, representing Rowland Financial Group, Inc. and the Wisconsin Chapter of the Real Estate Securities & Syndication Institute.

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

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

* --Mr. James Riead, representing Riead Investment Company, Inc., 3333 North Mayfair Road, Wauwatosa, Wisconsin.

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

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

--Comment letters received:

letter dated August 7, 1981, received August 13, 1981 from Edwin F. Hargitt, Dunn & Hargitt, 22 North Second Street, Lafayette, Indiana 47902.

memorandum dated August 14, 1981, from Dennis M. Tuohy of the Licensing & Regulation Division of the Office of Commissioner of Securities, 111 West Wilson Street, Box 1768, Madison, Wisconsin 53701.

letter dated August 10, 1981, received August 17, 1981 from Raymond Aronson, Bear Stearns & Co., 55 Water Street, New York, New York 10041.

letter dated August 24, 1981, received August 26, 1981 from Attorney Terry F. Peppard, Wendel, Center, Lipman & Peppard, Suite 317, 222 West Washington Avenue, P. O. Box 2034, Madison, Wisconsin 53701.

* letter dated August 28, 1981, received August 29, 1981 from Paul E. Magnuson, DiVall Real Estate Investment Corp., 111 North Pinckney Street, Madison, Wisconsin 53703.

letter dated August 27, 1981, received September 2, 1981 from Renee Borchardt Pazan, Association of Registration Management, P. O. Box 133, Bowling Green Station, New York New York 10274.

letter dated September 8, 1981, received September 8, 1981 from Charles J. Finlayson, Lord, Abbett & Co., 63 Wall Street, New York, New York 10005.

letter dated September 3, 1981, received September 7, 1981 from Attorney George C. Baron, Booth & Baron, 122 East 42nd Street, New York, New York 10168.

memorandum dated September 8, 1981 from Ronald J. Burtch of Licensing & Regulation Division of the Office of Commissioner of Securities, 111 West Wilson Street, Box 1768, Madison, Wisconsin 53701.

letter dated September 8, 1981, received September 9, 1981 from Thomas D. Maher, Investment Company Institute, 1775 K Street N.W., Washington, D.C. 20006.

letter dated September 2, 1981, received September 9, 1981 from Renee Borchardt Pazan, Association of Registration Management, P. O. Box 133, Bowling Green Station, New York, New York 10274.

letter dated and received September 10, 1981 from Attorney Kirby Hendee, Winner, McCallum, Hendee & Wixson, Suite 301, 111 South Fairchild Street, Madison, Wisconsin 53703.

* letter dated and received September 10, 1981, signed by 13 real estate firms located in Madison and Milwaukee, Wisconsin.

letter dated September 11, 1981, received September 14, 1981 from David W. Mesker, Securities Industries Association, 20 Broad Street, New York, New York 10005.

letter dated September 4, 1981, received September 14, 1981 from John E. Sundeen, B. C. Christopher and Company, 4800 Main Street, Kansas City, Missouri 64112.

letter dated September 11, 1981, received September 15, 1981 from Gillian Daly, E. F. Hutton & Company, Inc., One Battery Park Plaza, New York, New York 10004.

letter dated September 25, 1981, received September 28, 1981 from Attorney Conrad G. Goodkind, Quarles & Brady, 780 North Water Street, Milwaukee, Wisconsin 53202.

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

(1) through (4)

Not applicable because the Rules Clearinghouse in its Report on the entirety of Clearinghouse Rule 81-128 made no comments with respect to section SEC 3.11, Wis. Adm. Code, which is the only subject matter of the attached Order Adopting Rules.

WISCONSIN LEGISLATIVE COUNCIL

LCRC FORM 2

RULES CLEARINGHOUSE

DAVID J. STUTE
DIRECTOR
(Phone 266-2984)

RON SKLANSKY
ASSISTANT DIRECTOR
(Phone 266-1946)

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

BONNIE REESE
EXECUTIVE SECRETARY

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.029, STATS., AS CREATED BY CH. 34, LAWS OF 1979. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 81-128

AN ORDER to amend and revise chs. SEC. 3, 4, 5, 7, 8, 9, 23, 31, 32, 34 and 35 and to make diverse other changes in the rules of the Office of the Commissioner of Securities, relating to the annual revision of the rules of the Commissioner of Securities concerning the operation of ch. 551, Stats.; the Wisconsin uniform securities law; ch. 552, Stats.; the Wisconsin corporate take-over law; and of ch. 553, Stats., the Wisconsin franchise investment law, with respect to registration exemptions, registration requirements and procedures, securities broker-dealer and investment adviser licensing requirements and procedures, fraudulent practices, fees and administrative procedure.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

7- 9-81. Received by Legislative Council.
8- 4-81. Report sent to Agency.

RS:DS:kja;ws

Report on Clearinghouse Rule No. 81-128
Date 8-4-81

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Pursuant to s. 227.029, Stats.)

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

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

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

   c. Comment attached ☐ yes ☒ no

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

   a. Rules satisfactory ☐

   b. Rules unsatisfactory ☒

   c. Comment attached ☒ yes ☐ no

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

   a. Conflict or duplication not noted ☒

   b. Conflict or duplication noted ☐

   c. Comment attached ☐ yes ☒ no

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

   a. References appear to be adequate ☒

   b. References appear to be inadequate ☐

   c. Comment attached ☐ yes ☒ no

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

   a. Rules satisfactory ☐

   b. Rules unsatisfactory ☒

   c. Comment attached ☒ yes ☐ no

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

   a. No problems noted ☒

   b. Problems noted ☐

   c. Comment attached ☐ yes ☒ no

WLCS
BR:ws;mek
11/20/79

WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

DAVID J. STUTE
DIRECTOR
(Phone 266-2984)

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BONNIE REESE
EXECUTIVE SECRETARY

August 4, 1981

CLEARINGHOUSE RULE 81-128

COMMENTS

[NOTE: All citations to "Manual" in the comments below are to the manual entitled Administrative Rule Procedures, prepared by the Revisor of Statutes Bureau and the Legislative Council, dated March 1981.]

2. Form, Style and Placement in Administrative Code

a. "Pursuant to" Clause: The "Pursuant to" clause at the top of page 1 of the proposed rule is not in the form recommended by s. 227.024 (1) (a), Stats. It should be revised to read:

> Pursuant to authority vested in the Office of the Commissioner of Securities by...the Commissioner of Securities hereby repeals, amends and adopts rules interpreting...as follows: [See s. 1.02 (3), Manual.]

b. s. SEC 2.01 (7m): This subsection would be clearer if it were structured as follows:

> 2.01 (7m) An issuer meets the conditions in sub. (7) (b) to (d) if either the issuer and the issuer's predecessor, taken together, meet those conditions and if:
>
> (a) The succession was primarily...the same as those of the predecessor, or
>
> (b) All predecessors met the conditions....

Note that the word "meets" has been substituted for "shall be deemed to have met."

c. s. SEC 3.17: The use of parentheses in rules should be avoided. If the material that is in parentheses in proposed s. SEC 3.17 is important, it should be set apart with commas, not parentheses. The same comment applies to proposed s. SEC 23.01 (1). [See s. 1.01 (6), Manual.]

d. s. SEC 3.28 (1): On line 5, "subsection" should just be "sub."

e. s. SEC 4.01 (1): The structure of this proposed subsection is confusing. Perhaps it would be clearer if structured as follows:

> (1) Applications...shall be filed with:
>
> (a) The commissioner on forms.... An application shall include all information..., or
>
> (b) The central registration depository...on forms established for the central registration depository.

f. s. SEC 4.05 (5): The proposed subsection states: "If any change is made on a customer information...." Made by whom?

g. s. SEC 5.06 (2) (b): It is unclear how the last phrase ("...or for an investment adviser under direct or indirect common control;") fits into this paragraph. Could this be clarified?

h. s. SEC 7.04: This section is confusing in its structure and its meaning. This section should be revised to clarify its meaning.

i. When a division of a rule is affected, the section number of the rule should always precede the treatment. For example, SECTION 2 of the rule should read as follows:

> SECTION 2. SEC 2.01 (3) (a) of the Wis. Adm. Code is amended to read:
>
> 2.01 (3) (a)....

j. When creating an entire division of a rule section, without treating any other division in the section, underscoring is not necessary. See SECTION 4 of the rule.

k. The use of titles should follow the format shown in s. 1.05, Manual.

l. Unnecessary capitalization should be avoided. [See s. 1.01 (4), Manual.]

m. On page 27, line 14, the phrase "from Section 44" refers to the wrong SECTION and in any event is unnecessary.

5. Clarity, Grammar, Punctuation and Plainness

a. Throughout the proposed rule, the term "shall" should be substituted for "must." For example, in s. SEC 2.01 (3) (a), last line, "the offering shall meet," not "must meet."

b. s. SEC 4.03 (1) (r): Slashed alternatives such as "and/or" should not be used in administrative rules. [See s. 1.01 (9) (a), Manual.]

c. s. SEC 4.06 (1) (u): In line 8, should "requirement" be "requirements"?

d. s. SEC 4.07 (1): On line 23, insert "and" after "agent" and delete the comma on that line and on line 25.

e. s. SEC 5.06 (2) (b): "Dividing or otherwise splitting" is redundant. Just use "dividing."

f. s. SEC 7.01 (7): The slash mark between "file/information" should not be used. [See s. 1.01 (9) (a), Manual.] Should "or" or "and" be substituted for the slash mark? If not, a hyphen would be appropriate.

STATEMENT OF POLICY

adopted by
North American Securities Administrators Association, Inc.
on April 15, 1980 as Amended March 30, 1982

STATEMENT OF POLICY REGARDING
REAL ESTATE PROGRAMS

I. INTRODUCTION

A. Application

1. The rules contained in these guidelines apply to qualifications and registrations of real estate programs in the form of limited partnerships (herein sometimes called "PROGRAM" or partnerships") and will be applied by analogy to real estate programs in other forms. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain guidelines may be modified or waived by the ADMINISTRATOR.

   COMMENT: The purpose of the guidelines is to establish uniform and consistent standards to be applied by the various state securities ADMINISTRATORS throughout the country. These standards are primarily designed for public real estate syndications.

2. Where the individual characteristics of specific PROGRAMS warrant modification from these standards they will be accommodated, insofar as possible while still being consistent with the spirit of these guidelines. When required by the Administrator, a CROSS REFERENCE SHEET shall be furnished with the application.

3. Where these guidelines conflict with requirements of the Securities and Exchange Commission, the guidelines will not apply.

B. Definitions

1. ACQUISITION EXPENSES - expenses including but not limited to legal fees and expenses, travel and communications expenses, costs of appraisals, non-refundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether or not acquired.

   COMMENT: Definition utilized in section IV.C. making clear that all expenses incurred in acquiring properties for the PROGRAM be included in FRONT-END FEES.

2. ACQUISITION FEE - the total of all fees and commissions paid by any party in connection with the purchase or development of property by a PROGRAM, except a development fee paid to a PERSON not affiliated with a SPONSOR in connection with the actual development of a project after acquisition of the land by the PROGRAM. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated.

3. ADMINISTRATOR - the official or agency administering the securities law of a state.

4. AFFILIATE - means (i) any PERSON directly or indirectly controlling, controlled by or under common control with another PERSON (ii) any PERSON owning or controlling 10% or more of the outstanding voting securities of such other PERSON (iii) any officer, director, partner of such PERSON and (iv) if such other PERSON is an officer, director or partner, any company for which such PERSON acts in any such capacity.

5. ASSESSMENTS - additional amounts of capital which may be mandatorily required of or paid at the option of a PARTICIPANT beyond his subscription commitment.

6. CAPITAL CONTRIBUTION - the gross amount of investment in a PROGRAM by a PARTICIPANT, or all PARTICIPANTS as the case may be.

7. CASH FLOW - PROGRAM cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

8. CASH AVAILABLE FOR DISTRIBUTION - CASH FLOW less amount set aside for restoration or creation of reserves.

9. COMPETITIVE REAL ESTATE COMMISSION - that real estate or brokerage commission paid for the purchase or sale of property which is reasonable, customary and competitive in light of the size, type and location of the property.

10. CONSTRUCTION FEE - a fee for acting as general contractor to construct improvements on a PROGRAM's property either initially or at a later date.

11. CROSS REFERENCE SHEET - A compilation of the guideline sections, referenced to the page of the PROSPECTUS, partnership agreement, or other exhibits, and justification of any deviation from the guidelines.

12. DEVELOPMENT FEE - a fee for the packaging of a PROGRAM's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

13. FRONT-END FEES - Fees and expenses paid by any party for any services rendered during the PROGRAM's organizational or acquisition phase including ORGANIZATION AND OFFERING EXPENSES, ACQUISITION FEES, ACQUISITION EXPENSES, and any other similar fees, however designated by the SPONSOR.

14. INVESTMENT IN PROPERTIES - The amount of CAPITAL CONTRIBUTIONS actually paid or allocated to the purchase, development, construction or improvement of properties acquired by the PROGRAM (including the purchase of properties, working capital reserves allocable thereto (except that working capital reserves in excess of 5% shall not be included), and other cash payments such as interest and taxes but excluding FRONT-END FEES).

15. NET WORTH - the excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets, provided that the amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.

16. NON-SPECIFIED PROPERTY PROGRAM - a PROGRAM where, at the time a securities registration is ordered effective, less than 75% of the net proceeds from the sale of PROGRAM INTERESTS is allocable to the purchase, construction, or improvement of specific properties, or a PROGRAM in which the proceeds from any sale or refinancing of properties may be reinvested. Reserves shall be included in the non-specified 25%.

17. ORGANIZATION AND OFFERING EXPENSES - those expenses incurred in connection with and in preparing a PROGRAM for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the PROGRAM and all advertising expenses.

    COMMENT: All advertising expenses, except related to PROGRAM property management, charged to a PROGRAM is included within the definition.

18. PARTICIPANT - the holder of a PROGRAM INTEREST

19. PERSON - any natural PERSON, partnership, corporation, association or other legal entity.

20. PROGRAM - a limited or general partnership, joint venture, unincorporated association or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from an interest in real property.

21. PROGRAM INTEREST - the limited partnership unit or other indicia of ownership in a PROGRAM.

22. PROGRAM MANAGEMENT FEE - a fee paid to the SPONSOR or other PERSONS for management and administration of the PROGRAM.

23. PROPERTY MANAGEMENT FEE - the fee paid for day-to-day professional property management services in connection with a PROGRAM's real property projects.

24. PROSPECTUS - shall have the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary PROSPECTUS; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

25. PURCHASE PRICE OF PROPERTY - the price paid upon the purchase or sale of a particular property, including the amount of ACQUISITION FEES and all liens and mortgages on the property, but excluding points and prepaid interest.

26. SPONSOR - a "SPONSOR" is any PERSON directly or indirectly instrumental in organizing, wholly or in part, a PROGRAM or any PERSON who will manage or participate in the management of a PROGRAM, and any AFFILIATE of any such person, but does not include a PERSON whose only relation with the PROGRAM is as that of an independent property manager, whose only compensation is as such. "SPONSOR" does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests.

II. REQUIREMENTS OF SPONSORS

A. Experience. The SPONSOR, the general partner or their chief operating officers shall have at least two years relevant real estate or other experience demonstrating the knowledge and experience to acquire and manage the type of properties being acquired, and any of the foregoing or any AFFILIATE providing services to the PROGRAM shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed.

COMMENT: "Relevant real estate or other experience" should be interpreted to include actual direct experience by the chief executive officer, or other PERSONS at the management level, either as a principal or agent in performing the services to be provided to the PROGRAM. This would include acquiring and managing real estate for one's own account or acting as an agent in acquiring and managing real estate comparable to that which the PROGRAM will acquire. If the PROGRAM will be in the business of acquiring shopping centers and office buildings, "relevant real estate experience" would not include experience in buying or selling houses. It is apparent that a different level of sophistication and knowledge is required.

B. NET WORTH Requirement of SPONSOR. The financial condition of the SPONSOR liable for the debts of the PROGRAM must be commensurate with any financial obligations assumed in the offering and in the operation of the PROGRAM. As a minimum, such SPONSOR shall have an aggregate financial NET WORTH, exclusive of home, automobile and home furnishings, of the greater of either $50,000 or an amount at least equal to 5% of the gross amount of all offerings sold within the prior 12 months plus 5% of the gross amount of the current offering, to an aggregate maximum NET WORTH of such SPONSOR of one million dollars. In determining NET WORTH for this purpose, evaluation will be made of contingent liabilities and the use of promissory notes, to determine the appropriateness of their inclusion in computation of NET WORTH.

COMMENT: The inclusion of promissory notes may be insufficient to satisfy the NET WORTH requirements where the maker of the notes is inadequately capitalized.

C. Reports to ADMINISTRATOR. The SPONSOR shall submit to the ADMINISTRATOR any information required to be filed with the ADMINISTRATOR, including, but not limited to, reports and statements required to be distributed to limited partners.

COMMENT: The SPONSOR need not file with the ADMINISTRATOR all reports that will be filed with the limited partners, but should retain copies of such reports or information and make them available to the ADMINISTRATOR as required. The length this information must be retained will vary from state to state depending upon its requirements.

D. Liability

1. SPONSORS shall not attempt to pass on to PARTICIPANTS the general liability imposed on them by law except that the PROGRAM agreement may provide that a SPONSOR shall have no liability whatsoever to the PROGRAM or to any PARTICIPANT for any loss suffered by the PROGRAM which arises out of any action or inaction of the SPONSOR if the SPONSOR, in good faith, determined that such course of conduct was in the best interests of the PROGRAM and such course of conduct did not constitute negligence of the SPONSOR. The SPONSOR may be indemnified by the PROGRAM against losses sustained in connection with the PROGRAM, provided the losses were not the result of negligence or misconduct on the part of the SPONSORS.

2. The PROGRAM may not incur the cost of that portion of liability insurance which insures the SPONSOR for any liability as to which the SPONSOR is prohibited from being indemnified under this section.

III. SUITABILITY OF THE PARTICIPANT

A. Standards to be Imposed. Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many real estate PROGRAMS, the SPONSOR and its selling representatives should be cautious concerning the PERSONS to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of PROGRAM to be offered. SPONSORS will be required to set forth in the PROSPECTUS the investment objectives as a PROGRAM, a description of the type of PERSON who could benefit from the PROGRAM and the suitability standards to be applied in marketing it. The suitability standards proposed by the SPONSOR will be reviewed for fairness by the ADMINISTRATOR in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, tax implications, balloon payment financing, excessive investments in unimproved land, and uncertain or no CASH FLOW from PROGRAM property. As a general rule, PROGRAMS structured to give deductible tax losses of 50% or more of the CAPITAL CONTRIBUTION of the PARTICIPANT in the year of investment should be sold only to PERSONS in higher income tax brackets considering both state and federal income taxes.

PROGRAMS which involve more than ordinary investor risk should emphasize suitability standards involving substantial NET WORTH of the investor.

B. Sales to Appropriate PERSONS. The SPONSOR and each PERSON selling PROGRAM interests on behalf of the SPONSOR or PROGRAM shall make every reasonable effort to assure that those PERSONS being offered or sold the PROGRAM INTERESTS are suitable, in light of the standards set forth as required above, and the PROGRAM INTERESTS are appropriate for the customers' investment objectives and financial situations.

The SPONSOR or his representatives shall ascertain that the investor can reasonably benefit from the PROGRAM, and the following shall be evidence thereof:

1. The investor has the capacity of understanding the fundamental aspects of the PROGRAM, which capacity may be evidenced by the following:

   (a) The nature of employment experience;
   (b) Educational level achieved;
   (c) Access to advice from qualified sources, such as, attorney, accountant and tax advisor;
   (d) Prior experience with investments of a similar nature.

2. The SPONSOR or his representatives shall ascertain that the investor has apparent understanding:

   (a) of the fundamental risks and possible financial hazards of the investment;
   (b) of the lack of liquidity of this investment;
   (c) that the investment will be directed and managed by the SPONSOR; and
   (d) of the tax consequences of the investment.

3. The PARTICIPANT can reasonably benefit from the PROGRAM in view of his overall investment objectives and portfolio structure.

4. The PARTICIPANT is able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the ADMINISTRATOR approves a lower suitability standard, PARTICIPANTS shall have a minimum annual gross income of $30,000 and a NET WORTH of $30,000, or in the alternative, a NET WORTH of $75,000. In high risk or principally tax oriented offerings, higher suitability standards may be required. In the case of sales to fiduciary accounts, the suitability standards shall be met by the fiduciary or by the fiduciary account or by a donor who directly or indirectly supplies the funds to purchase the PROGRAM INTERESTS. NET WORTH shall be determined exclusive of home, home furnishings and automobiles.

C. Maintenance of Records. The SPONSOR shall maintain a record of the information obtained to indicate that a PARTICIPANT meets the suitability standards employed in connection with the offer and sale of its interests and a representation of the PARTICIPANT that he is purchasing for his own account or, in lieu of such representation, information indicating that the PARTICIPANTS for whose account the purchase is made meet such suitability standards. Such information may be obtained from the PARTICIPANT through the use of a form which sets forth the prescribed suitability standards in full and which includes a statement to be signed by the PARTICIPANT in which he represents that he meets such suitability standards and is purchasing for his own account. However, where the offering is underwritten or sold by a broker-dealer, the SPONSOR shall obtain a commitment from the broker-dealer to maintain the same record of information required of the SPONSOR.

D. Minimum Investment. A minimum initial cash purchase of $2,500 per investor shall be required. Subsequent transfers of such interests shall be limited to no less than a minimum unit equivalent to an initial minimum purchase, except for transfers by gifts, inheritance, intra-family transfers, family dissolutions, and transfers to AFFILIATES.

COMMENT: Many PROGRAMS have proposed minimum purchase standards for individual retirement accounts (IRAs) of $2,000. The rationale for this lower limit has been that $2,000 is the maximum contribution which can be made to an IRA in any one year.

Such lower limits do not appear to be justified. The Internal Revenue Code provides for tax-free rollovers which could provide an IRA with sufficient assets to satisfy the minimum purchase requirements of the Guidelines. Additionally, the Code provides that the payments be made not later than the due date (including extensions) of an individual's return for the tax year. Therefore, in any calendar year an investor may contribute up to $4,000 into his IRA, claiming deductions for two separate tax years but allowing for sufficient cash to be available to invest in a real estate limited partnership interest if he is so inclined.

Finally, several ADMINISTRATORS have expressed concern about the propriety of real estate PROGRAMS for IRAs. Real estate PROGRAMS provide for a portion of the CASH FLOW received by the investor (the IRA) to be tax-sheltered, because of depreciation and interest expenses. The IRA income is free of tax burden in the year in which income is received, therefore, the account cannot benefit from the tax-sheltered portions of the income.

IV. FEES - COMPENSATION - EXPENSES

A. Fees, Compensation and Expenses to be Reasonable.

1. The total amount of consideration of all kinds which may be paid directly or indirectly to the SPONSOR or its AFFILIATES shall be reasonable, considering all aspects of the syndication PROGRAM and the investors. Such consideration may include, but is not limited to:

   a. ORGANIZATION AND OFFERING EXPENSES.
   b. Compensation for acquisition services.
   c. Compensation for development and/or construction services.
   d. Compensation for PROGRAM management.
   e. Additional compensation to the SPONSOR/subordinated interests and promotional interests.
   f. Real estate brokerage commissions on resale of property.
   g. PROPERTY MANAGEMENT FEE.
   h. Insurance Services.

2. Except to the extent that a subordinated interest is permitted for promotional activities pursuant to Subdivision E. hereof, consideration may only be paid for reasonable and necessary goods, property or services.

3. The application for qualification or registration and the PROSPECTUS must fully disclose and itemize all consideration which may be received from the PROGRAM directly or indirectly by the SPONSOR, its AFFILIATES and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.

B. ORGANIZATION AND OFFERING EXPENSES. All ORGANIZATION AND OFFERING EXPENSES incurred in order to sell PROGRAM interests shall be reasonable and shall comply with all statutes, rules and regulations imposed in connection with the offering of other securities in the state.

C. INVESTMENT IN PROPERTIES

1. The SPONSOR shall be required to commit a substantial portion of the PROGRAM'S CAPITAL CONTRIBUTIONS toward INVESTMENT IN PROPERTIES. The remaining CAPITAL CONTRIBUTIONS may be used to pay FRONT-END FEES. When ACQUISITION FEES are paid by the seller of properties, such fees shall not be included in satisfying the required minimum INVESTMENT IN PROPERTIES. Additionally, in determining the amount committed to INVESTMENT IN PROPERTIES, such calculation shall not take into account any FRONT-END FEES.

   If CAPITAL CONTRIBUTIONS are paid on an installment basis, the FRONT-END FEE shall be paid to the SPONSOR pro rata as installments are paid.

2. At a minimum, the SPONSOR shall commit a percentage of the CAPITAL CONTRIBUTIONS to INVESTMENT IN PROPERTIES which is equal to the greater of:

   (a) 80% of the CAPITAL CONTRIBUTIONS reduced by .1625% for each 1% of indebtedness encumbering PROGRAM properties; or

   (b) 67% of the CAPITAL CONTRIBUTIONS.

3. If the total amount of the INVESTMENT IN PROPERTIES exceeds the minimum required amount in Section 2. above, for each 1% of FRONT-END FEES deferred the SPONSOR may take an additional promotional interest upon sale of the properties equal to 1% of the net proceeds remaining from the sale or refinancing of the property after payment to investors of an amount equal to 100% of CAPITAL CONTRIBUTIONS.

4. For PROGRAMS whose total CAPITAL CONTRIBUTIONS do not exceed $2 million, the ADMINISTRATOR may reduce the required amount of INVESTMENT IN PROPERTIES to that permitted by 2(b) above notwithstanding the level of indebtedness encumbering the PROGRAM'S properties.

COMMENT: The purpose of the section is to require the SPONSOR to invest a specified percentage of CAPITAL CONTRIBUTIONS in the acquisition of properties and use the balance for FRONT-END FEES in any manner he wishes, or defer a portion of the Front-End Fees to a promotional interest.

This will avoid the necessity of having to attempt to establish the reasonableness of the various FRONT-END FEES on an individual basis. However, the formula continues the tradition of the Guidelines by allowing the SPONSOR's fee to increase as leverage is employed to acquire properties. The PROSPECTUS should include an example demonstrating the mechanics of the formula.

To calculate the percent of indebtedness encumbering PROGRAM properties in Section 2., divide the amount of indebtedness by the PURCHASE PRICE OF PROPERTY, excluding FRONT-END FEES. The Quotient is multiplied by .1625% to determine the percentage to be deducted from 80%.

The following are examples of application of the formula using CAPITAL CONTRIBUTIONS of $1 Million in each case:

1) No indebtedness - 80% to be committed to INVESTMENT IN PROPERTIES.
2) 50% indebtedness - 50 x .1625% = 8.125%
   80% - 8.125% = 71.875% to be committed to INVESTMENT IN PROPERTIES.
3) 80% indebtedness - 80 x .1625% = 13%
   80% - 13% = 67% to be committed to INVESTMENT IN PROPERTIES.

"Notwithstanding the language in sub. 4 above, the 2 million dollar limitation is intended to be a benchmark figure and may be adjusted upward or downward by an Administrator based on the marketplace in his jurisdiction."

D. PROGRAM MANAGEMENT FEE

1. A general partner of a PROGRAM owning unimproved land shall be entitled to annual compensation not exceeding ½ of 1% of the cost of such unimproved land for operating the PROGRAM until such time as the land is sold or improvement of the land commences by the limited partnership. In no event shall this fee exceed a cumulative total of 2% of the original cost of the land regardless of the number of years held.

2. A general partner of a PROGRAM holding property in government subsidized projects shall be entitled to annual compensation not exceeding ½ of 1% of the cost of such property for operating the PROGRAM until such time as the property is sold.

3. PROGRAM MANAGEMENT FEES other than as set forth above shall be prohibited.

E. Promotional Interest. An interest in the PROGRAM will be allowed as a promotional interest and PROGRAM MANAGEMENT FEE, provided the amount or percentage of such interest is reasonable. Such an interest will be considered presumptively reasonable if it is within the limitations expressed below:

1. An interest equal to 25% of cash to be distributed from the net proceeds remaining from the sale or refinancing of properties after payment to investors of an amount equal to 100% of CAPITAL CONTRIBUTIONS, plus an amount equal to 6% of CAPITAL CONTRIBUTIONS per annum cumulative, less the sum of prior distributions to investors from CASH AVAILABLE FOR DISTRIBUTION; or

   COMMENT: The SPONSOR should not participate in sale or refinancing proceeds until the PARTICIPANTS have received a minimum return on their CAPITAL CONTRIBUTIONS.

   However, the 6% subordination requirement may be waived in the situation where the PROGRAM invests more than 60% of its CAPITAL CONTRIBUTIONS in newly constructed or totally rehabilitated properties, including housing subsidized under the National Housing Act or similar such programs.

2. An interest equal to:

   (i) 10% of distributions from CASH AVAILABLE FOR DISTRIBUTION; and
   (ii) 15% of cash to be distributed from the net proceeds remaining from the sale or refinancing of properties after payment to investors of an amount equal to 100% of CAPITAL CONTRIBUTIONS, plus an amount equal to 6% of CAPITAL CONTRIBUTIONS per annum cumulative, less the sum of prior distributions to investors from CASH AVAILABLE FOR DISTRIBUTION.

3. For purposes of this Section, the CAPITAL CONTRIBUTION of the investors shall only be reduced by a cash distribution to investors of the proceeds from the sale or refinancing of properties. In addition, the cumulative return to each investor shall commence no later than the end of the calendar quarter in which his CAPITAL CONTRIBUTION is made.

4. Dissolution and liquidation of the partnership. The distribution of assets upon dissolution and liquidation of the partnership shall conform to the applicable subordination provisions of subsections 1 and 2(ii) herein, and appropriate language shall be included in the partnership agreement.

F. Real Estate Brokerage Commissions on Resale of Property. The total compensation paid to all PERSONS for the sale of a PROGRAM property shall be limited to a COMPETITIVE REAL ESTATE COMMISSION, not to exceed 6% of the contract price for the sale of the property. If the SPONSOR provides a substantial amount of the services in the sales effort, he may receive up to one-half of the COMPETITIVE REAL ESTATE COMMISSION, not to exceed 3%, and subordinated as in E. above. If the SPONSOR participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the SPONSOR.

> COMMENT: If the SPONSOR provides a substantial amount of services in connection with the sale, he may then receive up to ½ of the brokerage commission, to a maximum of 3%, with the fee subordinated, to a return of 100% of CAPITAL CONTRIBUTIONS plus a 6% annual comulative return, regardless of the type of property acquired by the PROGRAM.

G. PROPERTY MANAGEMENT FEE. Should the SPONSOR or its AFFILIATES perform property management services permitted under section V.E. 1. of these guidelines, the fees paid to the SPONSOR or its AFFILIATES shall be the lesser of the maximum fees set forth in subsections 1. through 3. below or the fees which are competitive for similar services in the same geographic area. Included in such fees shall be bookkeeping services and fees paid to non-related persons for property management services.

1. In the case of a residential property, the maximum PROPERTY MANAGEMENT FEE (including all rent-up, leasing, and re-leasing fees and bonuses, and leasing related services, paid to any person) shall be 5% of the gross revenues from such property.

2. In the case of industrial and commercial property, except as set forth in 3. below, the maximum PROPERTY MANAGEMENT FEE from such leases shall be 6% of the gross revenues where the SPONSOR or its AFFILIATES includes leasing, re-leasing and leasing related services, and the maximum PROPERTY MANAGEMENT FEE from such leases shall be 3% of the gross revenues where the SPONSOR or its AFFILIATES do not perform the leasing, re-leasing and leasing related services with respect to the property.

3. In the case of industrial and commercial properties which are leased on a long term (ten or more years) net (or similar) bases, the maximum PROPERTY MANAGEMENT FEE from such leases shall be 1% of the gross revenues, except for a one time initial leasing fee of 3% of the gross revenues on each lease payable over the first five full years of the original term of the lease.

COMMENT: This section provides a method to calculate the allowable fees for property management by the SPONSOR. The amount of the fee will be based upon, if competitive, the kinds of property management services performed by the SPONSOR for various types of rental properties and lease arrangements. This section prohibits the SPONSOR from receiving fees for the same service, for which the project has incurred costs to any other PERSON. The salary and fringe benefits of the on-site property personnel may be separately charged, as an operating expense, so long as such manager is not an officer, director, or controlling person of the SPONSOR.

This section is not intended to preclude the charging of a separate competitive fee for the one-time initial rent-up or leasing-up of a newly constructed property if such service is not included in the PURCHASE PRICE OF PROPERTY paid by the PROGRAM. New construction could include a total rehabilitation.

Under Section 3., the initial leasing fee may be taken during each of the first five years on any lease which may include exercised renewals during that period; however, no initial leasing fee may be collected beyond five years for renewals or extensions with the same tenant or tenant's assignee.

The fee limitation would be considered presumptively reasonable unless the SPONSOR can demonstrate, to the satisfaction of the ADMINISTRATOR, thru empirical data that a higher competitive fee in the geographic area for the services rendered, the type of property to be acquired and the terms of the management contract is justified.

H. Insurance Services.

The SPONSOR or his AFFILIATE may provide insurance brokerage services in connection with obtaining insurance on the PROGRAM'S property so long as the cost of providing such service, including cost of the insurance, is no greater than the lowest quote obtained from two unaffiliated insurance agencies and the coverage and terms are likewise comparable. In no event may such services be provided by the SPONSOR or his AFFILIATE unless they are independently engaged in the business of providing such services to other than AFFILIATES and at least 75% of their insurance brokerage service gross revenue is derived from other than AFFILIATES.

V. CONFLICTS OF INTEREST AND INVESTMENT RESTRICTIONS

A. Sales, Leases and Loans.

1. Sales and Leases to PROGRAM

A PROGRAM shall not purchase or lease property in which a SPONSOR has an interest unless:

a. The transaction occurs at the formation of the PROGRAM and is fully disclosed in its PROSPECTUS or offering circular, and

b. The property is sold upon terms fair to the PROGRAM and at a price not in excess of its appraised value, and

c. The cost of the property and any improvements thereon to the SPONSOR is clearly established. If the SPONSOR's cost was less than the price to be paid by the program, the price to be paid by the PROGRAM will not be deemed fair, regardless of the appraised value, unless some material change has occurred to the property which would increase the value since the SPONSOR acquired the property. Material factors may include the passage of a significant amount of time (but in no event less than 2 years), the assumption by the promoter of the risk of obtaining a re-zoning of the property and its subsequent re-zoning, or some other extraordinary event which in fact increases the value of the property.

d. The provisions of this subsection notwithstanding, the SPONSOR may purchase property in its own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property or the borrowing of money or obtaining of financing for the PROGRAM, or completion of construction of the property, or any other purpose related to the business of the PROGRAM, provided that such property is purchased by the PROGRAM for a price no greater than the cost of such property to the SPONSOR, except compensation in accordance with Section IV above of these Rules, and provided there is no difference in interest rates of the loans secured by the property at the time acquired by the SPONSOR and the time acquired by the PROGRAM, nor any other benefit arising out of such transaction to the SPONSOR apart from compensation otherwise permitted by these Rules.

2. Sales and Leases to SPONSOR. The PROGRAM will not ordinarily be permitted to sell or lease property to the SPONSOR except that the PROGRAM may lease property to the SPONSOR under a lease-back arrangement made at the outset and on terms no more favorable to the SPONSOR than those offered other persons and fully described in the PROSPECTUS.

3. Loans. No loans may be made by the PROGRAM to the SPONSOR or AFFILIATE.

4. Dealings with Related PROGRAMS. A PROGRAM shall not acquire property from a PROGRAM in which the SPONSOR has an interest.

COMMENT: This provision prohibits transactions among PROGRAMS where the SPONSOR has an interest whereas section V.A.1. above relates to properties where the SPONSOR has an interest.

B. Exchange of Limited Partnership Interests. The PROGRAM may not acquire property in exchange for limited partnership interests, except for property which is described in the PROSPECTUS which will be exchanged immmediately upon effectiveness. In addition, such exchange shall meet the following conditions:

1. A provision for such exchange must be set forth in the partnership agreement, and appropriate disclosure as to tax effects of such exchange are set forth in the PROSPECTUS;

2. The property to be acquired must come within the objectives of the PROGRAM;

3. The purchase price assigned to the property shall be no higher than the value supported by an appraisal prepared by an independent qualified appraiser;

4. Each limited partnership interest must be valued at no less than market value if there is a market or if there is no market, fair market value of the PROGRAM's assets as determined by an independent appraiser within the last 90 days, less its liabilities, divided by the number of interests outstanding;

5. No more than one-half of the interests issued by the PROGRAM shall have been issued in exchange for property;

6. No securities sales or underwriting commissions shall be paid in connection with such exchange.

C. Exclusive Agreement. A PROGRAM shall not give a SPONSOR an exclusive right to sell or exclusive employment to sell property for the PROGRAM.

D. Commissions on Reinvestment or Distribution. A PROGRAM shall not pay, directly or indirectly, a commission or fee (except as permitted under section IV) to a SPONSOR in connection with the reinvestment or distribution of the proceeds of the resale, exchange, or refinancing of PROGRAM PROPERTY.

COMMENT: This section clarifies that financing, refinancing, or servicing fees are subject to the limitations of section IV.C.

E. Services Rendered to the Program by the SPONSOR.

1. EXPENSES OF THE PROGRAM.

(a) All expenses of the PROGRAM shall be billed directly to and paid by the PROGRAM. The SPONSOR may be reimbursed for the actual cost of goods and materials used for or by the PROGRAM and obtained from entities unaffiliated with the SPONSOR. The SPONSOR may be reimbursed for the administrative services necessary to the prudent operation of the PROGRAM provided that the reimbursement shall be at the lower of the SPONSOR'S actual cost or the amount the PROGRAM would be required to pay to independent parties for comparable administrative services in the same geographic location. No reimbursement shall be permitted for services for which the SPONSOR is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under IV.C.1.) shall be:

(i) rent or depreciation, utilities, capital equipment, other administrative items; and

(ii) salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling persons of the SPONSOR or AFFILIATES.

Controlling person, for purpose of this section, includes but is not limited to, any person, whatever their title, who performs functions for the SPONSOR similar to those of:

(1) Chairman or member of the Board of Directors;

(2) Executive Management, such as the
(i) President,
(ii) Vice-President or Senior Vice-President,
(iii) Corporate Secretary,
(iv) Treasurer;

(3) Senior Management, such as the Vice-President of an operating division who reports directly to Executive Management; or

(4) Those holding 5% or more equity interest in the SPONSOR or a person having the power to direct or cause the direction of the SPONSOR, whether through the ownership of voting securities, by contract, or otherwise.

(b) The annual PROGRAM report must contain a breakdown of the costs reimbursed to the SPONSOR. Within the scope of the annual audit of the SPONSOR'S financial statement, the independent certified public accountants must verify the allocation of such costs to the PROGRAM. The method of verification shall at minimum provide:

(1) A review of the time records of individual employees, the costs of whose services were reimbursed;
(2) A review of the specific nature of the work performed by each such employee.

The methods of verification shall be in accordance with generally accepted auditing standards and shall accordingly include such tests of the accounting records and such other auditing procedures which the SPONSOR'S independent certified public accountants consider appropriate in the circumstance. The additional costs of such verification will be itemized by said accountants on a PROGRAM by PROGRAM basis and may be reimbursed to the SPONSOR by the PROGRAM in accordance with this subsection only to the extent that such reimbursement when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined above.

The PROSPECTUS must disclose in tabular form an estimate of such proposed expenses for the next fiscal year together with a breakdown by year of such expenses reimbursed in each of the last five public programs formed by the SPONSOR.

> COMMENT: This section permits the SPONSOR to be reimbursed for a portion of the costs incurred in performing certain administrative functions for the PROGRAM provided the SPONSOR is both qualified to perform such functions and does so at a cost no greater to the PROGRAM than that which an unaffiliated PERSON would charge the PROGRAM. Regardless of the capacity in which controlling persons of the SPONSOR serve the PROGRAM, their salaries may not be allocated to the PROGRAM.

2. Other Services. No other services may be performed by the SPONSOR for the program except in extraordinary circumstances fully justified to the ADMINISTRATOR. As a minimum, self-dealing arrangements must meet the following criteria:

   a. the compensation, price or fee therefore must be comparable and competitive with the compensation, price or fee of any other PERSON who is rendering comparable services or selling or leasing comparable goods which could reasonably be made available to the PROGRAMS and shall be on competitive terms, and
   b. the fees and other terms of the contract shall be fully disclosed, and
   c. the SPONSOR must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the PROGRAM and as an ordinary and ongoing business, and
   d. all services or goods for which the SPONSOR is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid, which contract may only be modified by a vote of the majority of the limited partners. Said contract shall contain a clause allowing termination without penalty on 60 days notice.

COMMENT: Where the services are available elsewhere from unaffiliated parties, there would be a presumption that there are no extraordinary circumstances. Extraordinary circumstances would only be presumed where there is an emergency situation requiring immediate action by the SPONSOR, and the service is not immediately available from unaffiliated parties. Extraordinary circumstances shall, in no event, include general and administrative expenses, except as otherwise provided herein.

F. Rebates, Kickbacks and Reciprocal Arrangements.

1. No rebates or give-ups may be received by the SPONSOR nor may the SPONSOR participate in any reciprocal business arrangements which would circumvent these Rules. Furthermore the PROSPECTUS and PROGRAM charter documents shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with AFFILIATES or promoters.

2. No SPONSOR shall directly or indirectly pay or award any commissions or other compensation to any PERSON engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular PROGRAM; provided, however, that this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed PERSON for selling PROGRAM INTERESTS.

G. Commingling of Funds. The funds of a PROGRAM shall not be commingled with the funds of any other PERSON.

H. Investments in Other PROGRAMS.

1. Investments in limited partnership interests of another PROGRAM shall be prohibited; however, nothing herein shall preclude the investment in general partnerships or ventures which own and operate a particular property provided the PROGRAM acquires a controlling interest in such other ventures or general partnerships (except as permitted by subsection 3.). In such event, duplicate property management or other fees shall not be permitted.

2. Such prohibitions shall not apply to PROGRAMS participating in the subsidized housing provisions of the National Housing Act or any similar programs that may be enacted, but unless prohibited by the applicable federal statute, such partnership (herein referred to as lower tier partnership) shall provide for its limited partners all of the rights and obligations required to be provided by the original PROGRAM in Section VII of these guidelines.

COMMENT: The investment by a limited partnership in another limited partnership is restricted to investment in those PROGRAMS which have been organized and are regulated pursuant to the subsidized housing provisions of the National Housing Act, or similar state law. This position is based on the recognition that these PROGRAMS have strict compensation parameters outlined by the applicable legislation, and historically have been organized as multiple level limited partnerships. These PROGRAMS will continue to be monitored to determine that duplicative management or other fees are not being paid.

3. The PROGRAM shall be permitted to invest in joint venture arrangements with another PROGRAM formed by the SPONSOR if all the following conditions are met.

   a. The two PROGRAMS have identical investment objectives.
   b. There are no duplicate property management or other fees.
   c. The SPONSOR compensation should be substantially identical in each PROGRAM.
   d. The PROGRAM must have a right of first refusal to buy if the other PROGRAM wishes to sell property held in the joint venture.
   e. The investment of each PROGRAM is on substantially the same terms and conditions.
   f. The PROSPECTUS must disclose the potential risk of impasse on joint venture decisions since neither PROGRAM controls and the potential risk that while one PROGRAM may buy the property from the other joint venturer, in the event of a sale, it may not have the resources to do so.

   COMMENT: In certain situations, it would be to the advantage of the PROGRAM to be able to invest in a joint venture with another PROGRAM where neither PROGRAM has sufficient money to make the entire investment even if the PROGRAM does not acquire a controlling interest. However, in order to provide the necessary protections, there is a need to not only require full disclosure of the joint venture arrangements but also to set out substantive standards that must be adhered to in order to assure these protections.

I. Lending Practices.

1. On financing made available to the PROGRAM by the SPONSOR, the SPONSOR may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated lending institutions on comparable loans for the same purpose in the same locality of the property. No prepayment charge or penalty shall be required by the SPONSOR on a loan to the PROGRAM secured by either a first or a junior or all-inclusive trust deed, mortgage or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance. Except as permitted by subsection 2. of this section, the SPONSOR shall be prohibited from providing permanent financing for the PROGRAM.

2. An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the PROGRAM only if the following conditions are complied with:

   a. The SPONSOR under the all-inclusive note shall not receive interest on the amount of the underlying encumbrance included in the all-inclusive note in excess of that payable to the lender on that underlying encumbrance;
   b. The PROGRAM shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance, and
   c. A paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph a. above, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the PROGRAM.

J. Development or Construction Contract. The SPONSOR will not be permitted to construct or develop properties, or render any services in connection with such development or construction unless all of the following conditions are satisfied:

1. The transactions occur at the formation of the PROGRAM.

2. The specific terms of the development and construction of identifiable properties are ascertainable and fully disclosed in the PROSPECTUS.

3. The purchase price to be paid by the PROGRAM is based upon a firm contract price which in no event can exceed the sum of the cost of the land and the SPONSOR's cost of construction. For the purposes of this subdivision, cost of construction includes the contractor or CONSTRUCTION FEE customarily paid for services as a general contractor, provided, however, that any overhead of the general contractor is not charged to the PROGRAM or included in the cost of construction.

4. In the case of construction, the only fees paid to the SPONSOR in connection with such project shall consist of a CONSTRUCTION FEE for acting as a general contractor, which fees must be comparable and competitive with the fee of disinterested PERSONS rendering comparable services (excluding, however, any overhead of the contractor) and a real estate commission in connection with the acquisition of the land, if appropriate under the circumstances. Any such real estate commission shall be subject to the provisions of Section IV.C..
5. The SPONSOR demonstrates the presence of extraordinary circumstances as required by subsection 2. of Section V.E. and otherwise complies with subdivisions b., c., and d. thereunder.

K. Completion Bond Requirements. The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate completion bond or other satisfactory arrangements.

L. Requirement for Real Property Appraisal.

All real property acquisitions must be supported by an appraisal prepared by a competent, independent appraiser. The appraisal shall be maintained in the SPONSOR's records for at least five years, and shall be available for inspection and duplication by any PARTICIPANT. The PROSPECTUS shall contain notice of this right.

VI. NON-SPECIFIED PROPERTY PROGRAMS. The following special provisions shall apply to NON-SPECIFIED PROPERTY PROGRAMS:

A. Minimum Capitalization. A NON-SPECIFIED PROPERTY PROGRAM shall provide for a minimum gross proceeds from the offering of not less than $1,000,000.00 to be available for INVESTMENT IN PROPERTIES.

B. Experience of SPONSOR. For NON-SPECIFIED PROPERTY PROGRAMS, the SPONSOR or at least one of its principals must establish that he has had the equivalent of not less than five years experience in the real estate business in an executive capacity and two years experience in the management and acquisition of the type of properties to be acquired or otherwise must demonstrate to the satisfaction of the ADMINISTRATOR that he has sufficient knowledge and experience to acquire and manage the type of properties proposed to be acquired by the NON-SPECIFIED PROPERTY PROGRAM.

C. Statement of Investment Objectives. A NON-SPECIFIED PROPERTY PROGRAM shall state types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the PROGRAM and the experience of the SPONSORS. As a minimum the following restrictions on investment objectives shall be observed:

1. Unimproved or non-income producing property shall not be acquired except in amounts and upon terms which can be financed by the PROGRAM's proceeds or from CASH FLOW;

2. Investments in junior trust deeds and other similar obligations shall be limited. Normally such investments shall not exceed 10% of the gross assets of the PROGRAM.

3. The manner in which acquisitions will be financed including the use of an all-inclusive note or wrap-around, and the leveraging to be employed shall all be fully set forth in the statement of investment objectives.

4. The Statement shall indicate whether the PROGRAM will enter into joint venture arrangements and the projected extent thereof.

D. Period of Offering and Expenditure of Proceeds. No offering of securities in a NON-SPECIFIED PROPERTY PROGRAM may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. Treasury Bonds or Bills. Any proceeds of the offering of securities not invested within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the partners as a return of capital so long as the adjusted INVESTMENT IN PROPERTIES is in compliance with section IV.C..

E. Special Reports. At least quarterly, a "Special Report" of real property acquisitions within the prior quarter shall be sent to all PARTICIPANTS until the proceeds are invested or returned to the partners as set forth in paragraph D. above. Such notice shall describe the real properties, and include a description of the geographic locale and of the market upon which the SPONSOR is relying in projecting successful operation of the properties. All facts which reasonably appear to the SPONSOR to materially influence the value of the property should be disclosed. The "Special Report" shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the PROGRAM to acquire each property and a statement regarding the amount of proceeds in the PROGRAM which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the PROGRAM.

F. ASSESSMENTS, Installment Payments, Warrants, Options, or Other Staged or Deferred Payments. Plans calling for such provisions shall not be allowed.

G. Multiple Programs. SPONSORS shall not be permitted to offer for sale more than one NON-SPECIFIED PROPERTY PROGRAM at any point in time unless the PROGRAMS have different investment objectives. Additionally, new offerings by the same SPONSOR shall not be permitted if that SPONSOR has not substantially committed or placed the funds raised from similar NON-SPECIFIED PROPERTY PROGRAMS.

VII. RIGHTS AND OBLIGATIONS OF PARTICIPANTS.

A. Meetings. Meetings of the PROGRAM may be called by the SPONSOR or the PARTICIPANTS holding more than 10% of the then outstanding limited partnership interests, for any matters for which the PARTICIPANTS may vote as set forth in the limited partnership agreement. A list of the names and addresses of all PARTICIPANTS shall be maintained as part of the books and records of the limited partnership and shall be made available on request to any PARTICIPANT or his representative at his cost. Upon receipt of a written request either in PERSON or by registered mail stating the purpose(s) of the meeting, the SPONSOR shall provide all PARTICIPANTS within ten days after receipt of said request, written notice (either in PERSON or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after receipt of said request, at a time and place convenient to PARTICIPANTS.

B. Voting Rights of Limited Partners. To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the SPONSOR, vote to (1) amend the limited partnership agreement, (2) dissolve the PROGRAM, (3) remove the SPONSOR and elect a new SPONSOR, and (4) approve or disapprove the sale of all or substantially all of the assets of the PROGRAM. The agreement should provide for a method of valuation of the SPONSOR interest, upon removal of the SPONSOR, that would not be unfair to the PARTICIPANTS. The agreement should also provide for a successor SPONSOR where the only SPONSOR of the PROGRAM is an individual.

C. Reports to Holders of Limited Partnerships Interests. The partnership agreement shall provide that the SPONSOR shall cause to be prepared and distributed to the holders of PROGRAM INTERESTS during each year the followng reports:

1. In the case of a PROGRAM registered under Section 12(g) of the Securities Exchange Act of 1934, within sixty days after the end of each quarter of the PROGRAM, a report containing:

   (i) a balance sheet, which may be unaudited,
   (ii) a statement of income for the quarter then ended, which may be unaudited, and
   (iii) a CASH FLOW statement for the quarter then ended, which may be unaudited, and
   (iv) other pertinent information regarding the PROGRAM and its activities during the quarter covered by the report;

2. In the case of all other PROGRAMS in addition to the annual report required by paragraph 4. hereof, within sixty days after the end of the PROGRAM's first six-month period, a semi-annual report containing the same information as to the preceding six-month period as that required in quarterly reports under paragraph 1. hereof;

3. In the case of all PROGRAMS, within 75 days after the end of each PROGRAM's fiscal year, all information necessary for the preparation of the limited partners' federal income tax returns;

4. In the case of all PROGRAMS, within 120 days after the end of each PROGRAM's fiscal year, an annual report containing (i) a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a CASH FLOW statement, for the year then ended, all of which, except the CASH FLOW statement, shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant, (ii) a report of the activities of the PROGRAM during the period covered by the report, and (iii) where forecasts have been provided to the holders of limited partnership interests, a table comparing the forecasts previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from (a) CASH FLOW from operations during the period, (b) CASH FLOW from operations during a prior period which had been held as reserves, (c) proceeds from disposition of property and investments, (d) lease payments on net leases with builders and sellers, and (e) reserves from the gross proceeds of the offering originally obtained from the limited partners.

   COMMENT: See the additional reporting requirements of Section V.E.1.(b).

5. Where ASSESSMENTS have been made during any period covered by any report required by paragraphs 1., 2. and 4. hereof, then such report shall contain a detailed statement of such ASSESSMENTS and the application of the proceeds derived from such ASSESSMENTS; and

6. Where any SPONSOR receives fees for services, then he shall, within 60 days of the end of each quarter wherein such fees were received, send to each limited partner a detailed statement setting forth the services rendered, or to be rendered by such SPONSOR and the amount of the fees received. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.

   COMMENT: See the additional reporting requirements of Section V.E.1.(b).

D. Access to Records. The PARTICIPANTS and their designated representatives shall be permitted access to all records of the PROGRAM at all reasonable times.

E. Admission of PARTICIPANTS. Admission of PARTICIPANTS to the PROGRAM shall be subject to the following:

1. Admission of original PARTICIPANTS. Upon the original sale of partnership units by the PROGRAM, the purchasers should be admitted as limited partners not later than 15 days after the release from impound of the purchaser's funds to the PROGRAM, and thereafter purchasers should be admitted into the PROGRAM not later than the last day of the calendar month following the date their subscription was accepted by the PROGRAM. Subscriptions shall be accepted or rejected by the PROGRAM within 30 days of their receipt; if rejected, all subscription monies should be returned to the subscriber forthwith.

2. Admission of substituted limited partners and recognition of assignees. The PROGRAM shall amend the certificate of limited partnership at least once each calendar quarter to effect the substitution of substituted PARTICIPANTS, although the SPONSOR may elect to do so more frequently.

   In the case of assignments, where the assignee does not become a substituted limited partner, the PROGRAM shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation.

F. Redemption of PROGRAM INTERESTS. Ordinarily, the PROGRAM and the SPONSOR may not be mandatorily obligated to redeem or repurchase any of its PROGRAM INTERESTS, although the PROGRAM and the SPONSOR may not be precluded from purchasing such outstanding interests if such purchase does not impair the capital or the operation of the PROGRAM. Notwithstanding the foregoing, a real estate PROGRAM may provide for mandatory redemption rights under the following necessitous circumstances:

1. death or legal incapacity of the owner, or

2. a substantial reduction in the owner's NET WORTH or income provided that (i) the PROGRAM has sufficient cash to make the purchase, (ii) the purchase will not be in violation of applicable legal requirements and (iii) not more than 15% of the outstanding units are purchased in any year.

G. Transferability of PROGRAM INTERESTS. Restrictions on assignment of limited partnership interests will not be allowed. Restrictions on the substitution of a limited partner are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel.

H. ASSESSMENTS and Defaults.

1. ASSESSMENTS. Except as provided in Section VI. F, herein in the case of NON-SPECIFIED PROPERTY PROGRAMS, if the anticipated CASH FLOW from property (after payment of debt service and all operating expenses) is not sufficient to pay taxes and/or special ASSESSMENTS imposed by governmental or quasi-government units, the PROGRAM agreement may include a provision for assessability to meet such deficiencies, including those obligations of a defaulting PARTICIPANT. Assessability must be limited to the foregoing obligations, and all amounts derived from such ASSESSMENTS must be applied only to satisfaction of said obligations.

2. Defaults. In the event of a default in the payment of ASSESSMENTS by a PARTICIPANT his interests shall not be subject to forfeiture, but may be subject to a reasonable penalty for failure to meet his commitment. Provided that the arrangements are fair, this may take the form of reducing his proportionate interest in the PROGRAM, subordinating his interest to that of nondefaulting partners, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet his commitment by the other PARTICIPANTS or a fixing of the value of his interest by independent appraisal or other suitable formula with provision for a delayed payment to him for his interest not beyond a reasonable period, but a debt security issued for such interest should not have a claim prior to that of the other investors in the event of liquidation.

> COMMENT: A limited partner will be reinstated to his full status as a limited partner upon payment of the delinquent ASSESSMENT with interest at the maximum rate allowed by law, within 30 days of the date of default. Default would be the failure to pay the ASSESSMENT within 30 days of the date of notice requesting the ASSESSMENT.

VIII. DISCLOSURE AND MARKETING REQUIREMENTS.

A. Sales Promotional Efforts.

1. Sales Literature. Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings) and advertising used in the offer or sale of partnership interests shall conform in all applicable respects to requirements of filing, disclosure and adequacy currently imposed on sales literature, sales presentations and advertising used in the sale of corporate securities.

2. Group Meetings. All advertisements of and oral or written invitations to "seminars" or other group meetings at which PROGRAM INTERESTS are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such PROGRAM INTERESTS for sale, the minimum purchase price thereof, and the name of the SPONSOR, underwriter or selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective PARTICIPANTS to attend any such meeting. In connection with the offer or sale of PROGRAM INTERESTS, no general offer shall be made of "free" or "bargain price" trips to visit property in which the PROGRAM or proposed PROGRAM has invested or intends to invest.

   All written or prepared audio-visual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the ADMINISTRATOR not less than three business days prior to the first use thereof. The foregoing paragraphs 1. and 2. shall not apply to meetings consisting only of representatives of securities broker-dealers.

B. Contents of PROSPECTUS. The PROSPECTUS shall meet the requirements of Guide 60 as promulgated under general Securities and Exchange Commission guides for the preparation of registration statements for the offering of Securities.

C. Forecasts.

1. Use of Forecasts. The presentation of predicted future results of operations of real estate PROGRAMS shall be permitted but not required for specified property PROGRAMS investing primarily in improved property and shall be prohibited for NON-SPECIFIED PROPERTY PROGRAMS or specified property PROGRAMS investing primarily in unimproved land. The covers of the PROSPECTUS must contain in bold face language one of the following statements:

   (i) for SPECIFIED PROPERTY PROGRAMS:

   FORECASTS ARE CONTAINED IN THIS PROSPECTUS (OFFERING CIRCULAR). ANY PREDICTIONS AND REPRESENTATIONS, WRITTEN OR ORAL, WHICH DO NOT CONFORM TO THOSE CONTAINED IN THE PROSPECTUS (OFFERING CIRCULAR) SHALL NOT BE PERMITTED."

   (ii) for NON-SPECIFIED PROPERTY and unimproved land programs:

   "THE USE OF FORECASTS IN THIS OFFERING IS PROHIBITED. ANY REPRESENTATIONS TO THE CONTRARY AND ANY PREDICTIONS, WRITTEN OR ORAL, AS TO THE AMOUNT OR CERTAINTY OF ANY PRESENT OR FUTURE CASH BENEFIT OR TAX CONSEQUENCE WHICH MAY FLOW FROM AN INVESTMENT IN THIS PROGRAM IS NOT PERMITTED.

Forecasts for specified property PROGRAMS shall be included in the PROSPECTUS, offering circular or sales material of the PROGRAM only if they comply with the following requirements:

a. General

Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts should be reviewed by an independent certified public accountant in accordance with the Guide For A Review Of A Financial Forecast as promulgated by the American Institute of Certified Public Accountants, and that person or firm should be identified in the PROSPECTUS or offering circular as being responsible for the review of the forecasts. No forecasts shall be permitted in any sales literature which does not appear in the PROSPECTUS or offering circular. If any forecasts are included in the sales literature, all forecasts must be presented.

COMMENT: If predicted future results of operations are used, they shall be prepared in the form of a forecast by expert using standard criteria and format.

b. Material Information

Forecasts shall include all the following information:

(1) Annual predicted revenue by source; including the occupancy rate used in predicting rental revenue;
(2) Annual predicted expenses;
(3) Mortgage obligation--annual payments for principal and interest, points and financing fees, shown as dollars, not percentages;
(4) The required occupancy rate in order to meet debt service and all expenses;
(5) Predicted annual CASH FLOW; stating assumed occupancy rate;
(6) Predicted annual depreciation and amortization with full description of methods to be used;
(7) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may not be used;
(8) Predicted construction costs--including disclosure regarding contracts;
(9) Accounting policies--e.g., with respect to points, financing costs and depreciation.

c. Presentation

(1) Caveat. Forecasts shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not occur and may not be relied upon to indicate the actual results which will be obtained.

(2) Additional Guidelines. Explanatory notes describing assumptions made and referring to risk factors should be integrated with tabular and numerical information.

(3) Sale-leasebacks. When a sale-leaseback is employed, the statement that the seller is assuming the operating risk and consequently may have charged a higher price for the property must be included.

d. Additional Disclosures and Limitations

(1) Forecasts shall be for a period at least equivalent to the anticipated holding period for the property, or 10 years, whichever is shorter, and project a resale occurrence, including depreciation recapture, if applicable. The forecasted resale price must be reasonable.

(2) Adequate disclosure shall be made of the changing economic effects upon the limited partners resulting principally from federal income tax consequences over the life of the partnership property, e.g., substantial tax losses in early years followed by increasing amount of taxable income in later years.

(3) Forecasts shall disclose all possible undesirable tax consequences of an early sale of the PROGRAM property (such as, depreciation recapture or the failure to sell the property at a price which would return sufficient cash to meet resulting tax liabilities of the PARTICIPANTS).

(4) In computing the return to investors, no appreciation, so called "equity buildup", or any other benefits from unrealized gains or value shall be shown or included.

2. Unimproved Land - Forecasts shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs, i.e., interest, taxes, and insurance shall be inserted. However, where the PROGRAM intends to develop and sell the land as its primary business, a detailed CASH FLOW statement showing the timing of expenditures and anticipated revenues shall be required. Additionally, the consequences of a delayed selling PROGRAM shall be shown.

IX. MISCELLANEOUS PROVISIONS.

A. Fiduciary Duty. The PROGRAM agreement shall provide that the SPONSOR shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the PROGRAM, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the PROGRAM.

In addition, the PROGRAM shall not permit the PARTICIPANT to contract away the fiduciary duty owed to the PARTICIPANT by the SPONSOR under the common law.

B. Deferred Payments. Arrangements for deferred payments on account of the purchase price of PROGRAM INTERESTS may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

1. The period of deferred payments shall coincide with the anticipated cash needs of the PROGRAM.
2. Selling commissions paid upon deferred payments are collectible when payment is made on the note.
3. Deferred payments shall be evidenced by a promissory note of the investor. Such notes shall be with recourse and shall not be negotiable and shall be assignable only subject to defenses of the maker. Such notes shall not contain a provision authorizing a confession of judgment.
4. The PROGRAM shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the PROGRAM.
5. In the event of a default in the payment of deferred payments by a PARTICIPANT, his interests may be subjected to a reasonable penalty, as set forth in Section VII.H. of these Guidelines.

C. Reserves. Provision should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than 5% of the offering proceeds will be considered adequate.

D. Reinvestment of CASH FLOW and Proceeds on Disposition of Property. Reinvestment of CASH FLOW (excluding proceeds resulting from a disposition or refinancing of property) shall not be allowed. The partnership agreement and the PROSPECTUS shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the PROSPECTUS.

E. Financial Information Required on Application. In any offering of interests by a PROGRAM, the PROGRAM shall provide as an exhibit to the application the following financial information:

1. Balance Sheet of Corporate Sponsor. A balance sheet of any corporate SPONSORS as of the end of their most recent fiscal year, examined and reported upon by an independent certified public accountant and prepared in accordance with generally accepted accounting principles. An unaudited balance sheet as of a date not more than one hundred thirty-five days prior to the date of filing should also be prepared. Such statements shall be included in the PROSPECTUS.

2. Other Sponsors. A balance sheet for each non-corporate SPONSOR (including individual partners or individual joint ventures of a SPONSOR) as of a time not more than one hundred thirty-five days prior to the date of filing an application; such balance sheet shall be examined and reported upon by an independent certified public accountant under the limited review standards set forth by the American Institute of Certified Public Accountants, and shall be signed and sworn to by such SPONSORS. A representation of the amount of such NET WORTH must be included in the PROSPECTUS, or in the alternative, a representation that such SPONSOR meet the NET WORTH requirements of Section II.B.

COMMENT: It is not intended that financial statements of affiliates of the SPONSOR be required to be disclosed unless appropriate in order to comply with the NET WORTH requirements of section II.B.

COMMENT: Section IX.E.2. requires a balance sheet for each non-corporate SPONSOR prepared by an independent certified public accountant under the limited review standards set forth by the AICPA. This will add consistency to the form and structure of non-corporate SPONSOR balance sheets. Currently, unaudited financial statments for non-corporate SPONSORS vary in style and content making consistent evaluation difficult. Applying limited review standards will give uniformity to such financial statements, making evaluation of a SPONSORS financial condition more constant. More importantly, limited review standards offer a higher analysis of a non-corporate SPONSOR's financial condition. Concern has been expressed by ADMINISTRATORS over the validity and reliability of unaudited balance sheets currently being submitted by non-corporate SPONSORS. Limited review standards will allow for greater reliability on this financial information which is needed in determining whether a SPONSOR meets the NET WORTH requirements of section II.B.

F. Opinions of Counsel. The application for qualification and registration shall contain a favorable ruling from the Internal Revenue Service or an opinion of independent counsel to the effect that the issuer will be taxed as a "partnership" and not as an "association" for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the ADMINISTRATOR and shall be unqualified except to the extent permitted by the ADMINISTRATOR. However, an opinion of counsel may be based on reasonable assumptions, such as:

(1) facts or proposed operations as set forth in the offering circular or PROSPECTUS and organizational documents; (2) the absence of future changes in applicable laws; (3) the securities offered are paid for; (4) compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and (5) the continued maintenance of or compliance with certain financial, ownership, or other requirements by the issuer or SPONSOR. The ADMINISTRATOR may request from counsel as supplemental information such supporting legal memoranda and an analysis as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or SPONSOR the offering circular or PROSPECTUS shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance.

There shall be included also an opinion of independent counsel to the effect that the securities being offered are duly authorized or created and validly issued interests in the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer.

G. Provisions of Partnership Agreement. The requirements and/or provisions of appropriate portions of the following sections shall be included in a partnership agreement: II. C.; IV. D.; IV. E.; IV. F.; IV. G.; IV. H.; V. A.; V. B.; V. C.; V. D.; V. E.; V. F.; V. G.; V. H.; V. I.; V. L.; VI. C.; VI. D.; VI. E.; VI. F.; VII. A.; VII. B; VII. C.; VII.D.; VII.E.; VII.F.; VII.H.; IX.A.; IX.B.4; IX.C.; and IX.D.

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

Lee Sherman Dreyfus
Governor

Richard R. Malmgren
Commissioner of Securities

Stephen L. Morgan
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March 26, 1982

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

Revisor of Statutes Bureau
411 West Capitol
Madison, Wisconsin 53702

RECEIVED
MAR 29 1982
Revisor of Statutes Bureau

Mesdames and Gentlemen:

Re: Filing of Certified Copies of Order Adopting Rules/Clearinghouse Rule 82-18

Pursuant to the requirements of sec. 227.023(1), Wis. Stats., a certified copy is herewith filed of the above-reference rules in the form prescribed by sec. 227.024, Wis. Stats., as adopted by this agency on March 26, 1982.

The Rule acts to adopt amendments to the existing securities registration policy of the North American Securities Administrators Association (NASAA) regarding real estate programs as incorporated by reference in section SEC 3.11, Wis. Adm. Code. Pursuant to the provisions of sec. 227.025, Wis. Stats., authorization was requested in writing by the Wisconsin Commissioner of Securities and was received from the Wisconsin Attorney General and the Revisor of Statutes permitting the incorporation by reference of the amended NASAA Real Estate Program Registration Guidelines.

In that regard, a copy of the amended NASAA Guidelines is enclosed to be retained by your agency pursuant to sec. 227.025, Wis. Stats.

Very truly yours,

Randall E. Schumann
General Counsel

RES:klr

Enclosure

5-1-82