CR 90-178

CERTIFICATE

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Walter H. White, Commissioner of the State of Wisconsin Office of the Commissioner of Securities, as custodian of the official records of said agency, do hereby certify that the annexed rules relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, relating to: definitions under the securities law; securities registration exemptions; securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; and various fee-related provisions under the securities law were duly approved and adopted by this agency on November 12, 1990.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the City of Madison, this 12th day of November, 1990.

[SEAL]

Walter H. White, Jr.
Commissioner of Securities
State of Wisconsin

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11:40 am
Revisor of Statutes
Bureau

1-1-91

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

To repeal SEC 3.23(2)(h), 4.04(5), 5.01(4)(c)(intro.), 5.04(4) and 9.01(1)(b)14; to renumber SEC 2.01(3) to (9), 3.23(2)(j), 4.01(2)(b), 4.04(6) to (10), 5.01(4)(c)1 to 5, 5.05(5) and 9.01(1)(b)15 to 17; to renumber and amend SEC 3.23(2)(i); to amend SEC 3.09(1)(b), 4.01(4)(b), 5.01(3)(b), 5.01(4)(a)(intro.), 5.01(4)(b), 5.04(1)(a), 6.04, 7.02(1)(a), and 7.06(1)(b); to repeal and recreate SEC 2.027, 3.01, 3.16, 4.04(4), 5.04(3), 7.01(5)(a), and 9.01(1)(b)8; and to create SEC 1.02(11), 2.01(3), 3.04(2), 4.01(2)(b), 5.01(4)(a)1, and 7.01(5)(d) relating to: definitions under the securities law; securities registration exemptions; securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; and various fee-related provisions under the securities law.

Pursuant to sections 551.62(1), (2) and (3), 551.22(7), 551.23(18), 551.27(7), 551.28(1)(e), 551.28(10), 551.32(1)(a) and (b), 551.32(4), 551.33(2) and (3), 551.34(1)(b) and 551.52(3), Wis. Stats., the Office of the Commissioner of Securities proposes to repeal, amend and adopt rules interpreting those sections as follows:

SECTION 1. SEC 1.02(11) is created to read:

SEC 1.02(11) For purposes of determining availability of the registration exemption of s. 551.22(1)(a), Stats., in connection with the offer or sale of a revenue obligation issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or other instrumentality of any of the forgoing, a "nongovernmental industrial or commercial enterprise" is not present if:

(a) The source, under a lease, sale or loan arrangement, for payment of principal and interest on the revenue obligation, is a duly organized and existing not-for-profit corporation under applicable state law and is an organization described in section 501(c)(3) of the internal revenue code which qualifies for exemption from federal taxation under section 501(a) of the internal revenue code; and

(b) The receipt of a limited amount of revenue by the corporation from commercial or retail sources does not result in a loss of the corporation's status as a qualifying organization under sections 501(a) and (c)(3) of the internal revenue code.

ANALYSIS: This SECTION codifies previously issued and published agency legal interpretations of language contained in the governmental/ municipal securities registration exemption in sec.

551.22(1)(a), Wis. Stats. The interpretations relate to whether the disqualification-from-automatic-use language in the exemption that precludes its use on a self-executing basis for

> "any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a non-governmental industrial or commercial enterprise...."

is triggered with respect to a category of revenue bond offering that involves not-for-profit/Section 501(c)(3) entities conducting operations and activities such as hospitals and nursing homes.

That disqualification-from-automatic-use language in the Wisconsin exemption was added to the Section 402(1)(a) Uniform Securities Act version of the governmental/municipal security exemption when the Wisconsin Uniform Securities Law was enacted effective January 1, 1970. The language was added to restrict use of the exemption for so-called "industrial revenue bonds" ("IRB's") which had recently come into common usage. In these situations, although the nominal issuer of an IRB offering might be a city or municipality, the recipient and user of the proceeds from the bond offering would be a private, for-profit industrial or commercial business which also would be the underlying obligor and source for payment of the principal and interest on the IRB's.

The proposed rule focuses on fact situations where the recipient and user of the proceeds from the revenue bond offering and the underlying obligor and source for payment of principal and interest on the revenue bonds under a lease sale or loan arrangement with a governmental agency or instrumentality is a state-chartered not-for-profit entity described in Section 501(c)(3) of the Internal Revenue Code that qualifies for exemption from federal income taxation under Section 501(a) of the Code. This Office has issued numerous prior interpretations which have been published in the Commerce Clearing House Blue Sky Law Reports that the disqualification-from-automatic-use language in the exemption is not triggered even though the 501(c)(3) corporation may receive limited amounts of revenues from commercial or retail types of sources (e.g. hospital parking ramps or gift shops), so long as the entity does not lose its status as a qualifying organization under Sections 501(a) and 501(c)(3) due to receipt of such revenues.

SECTION 2. SEC 2.01(3) to (9) are renumbered SEC 2.01(4) to (10).

ANALYSIS: The renumbering in this SECTION is necessary because of the creation of a new SEC 2.01(3) in a following SECTION whose numbering maintains the consecutive numbering sequence of the statutes the rules are adopted under.

SECTION 3. SEC 2.01(3) is created to read:

SEC 2.01(3) The exemption provided under s. 551.22(7), Stats., relating to the national market system of the national association of securities dealers, inc. is subject to the authority of the commissioner to terminate the exemption for the system or for a specific issue of securities or category of securities designated on the system. The Commissioner may, by order, terminate an exemption upon a determination that the system's requirements for designation or maintenance set forth in securities act release No. 6810 (Dec. 18, 1988), 53 Federal Register 52550 (December 28, 1988), as amended in the form adopted April 28, 1990 by membership of the North American Securities Administrators Association, Inc. published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The issuance of any such order by the commissioner shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

ANALYSIS: The rule created in this SECTION incorporates by reference a Memorandum of Understanding ("MOU") entered into between the National Association of Securities Dealers, Inc. ("NASD") and the North American Securities Administrators Association, Inc. ("NASAA") which provided the basis for the grant in recently enacted legislation of securities registration exemption status under s. 551.22(7), Wis. Stats., for securities quoted on the NASD's Automated Quotation National Market System ("NASDAQ/NMS")--an electronic securities trading mechanism by brokerage firms that operates nationwide.

The NASDAQ/NMS securities registration exemption was contained in Section 303 of 1989 Wisconsin Act 336 which was passed at the end of the recent Wisconsin legislative session and was published on May 10, 1990 for effectiveness on July 1, 1990.

The rule is necessary in order to adopt the regulatory foundation and framework which provided the basis for this agency initiating and supporting the NASDAQ/NMS exemption legislation. The MOU was entered into in December 1988 by the NASD and NASAA under the auspices of the U.S. Securities and Exchange Commission and provided the framework for consideration by individual NASAA member jurisdictions of a NASDAQ/ NMS securities registration exemption on the basis that under the MOU:

(1) The NASD agreed to increase the listing and maintenance standards, and to strengthen specified corporate governance provisions, for securities to qualify for quotation on the NASDAQ/ NMS to be equivalent to the standards and requirements currently applied by the American Stock Exchange. The American Stock Exchange currently is specified as qualifying under the exemption in s. 551.22(7), Wis. Stats.; and

(2) A decertification/termination process is established whereby the Commissioner can decertify/ terminate the designation of the NASDAQ/ NMS under the exemption by issuance of an Order upon a determination that the NASDAQ/ NMS requirements for designation or maintenance have been so changed or insufficiently applied that the protection of investors contemplated by the NASDAQ/ NMS exemption designation

no longer exists. The MOU establishes the procedure to be followed with respect to the decertification/ termination process, including notice of, and opportunity for, hearing, written findings of fact and conclusions of law, and judicial review.

SECTION 4. SEC 2.027 is repealed and recreated to read:

SEC 2.027 WISCONSIN ISSUER REGISTRATION EXEMPTION BY FILING. If all of the following conditions are met, other than any condition or conditions waived by the commissioner upon a showing of good cause, a transactional registration exemption is available under s. 551.23(18), Wis. Stats., for any offer or sale of the securities of an issuer having, both before and upon completion of the offering, its principal office and a majority of its full-time employees located in this state:

(1) The securities are sold to not more than 50 persons in this state, excluding:

(a) Persons described in s. 551.23(8), Stats.;

(b) Accredited investors as defined in rule 501(a) of Regulation D under the securities act of 1933; and

(c) Members of the immediate family of an executive officer or director of the issuer who have the same permanent residence as the officer or director.

(2) No commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state in reliance on the exemption in this section except to broker-dealers and agents licensed in this state.

(3) Neither the issuer nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. 551.23(19)(c), Stats.

(4) The aggregate offering price of the securities sold in Wisconsin pursuant to this exemption does not exceed $500,000.

(5) If any of the securities being offered and sold in reliance on the exemption in this section are shares of common stock, the offering price of the common stock may be not less than $3 per share.

(6) The issuer reasonably believes that all sales made pursuant to this exemption are suitable for the purchaser and that the purchaser either alone or with the purchaser's representative has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment.

(7) An offering document is delivered to each purchaser prior to the sale of the securities that meets one of the following requirements:

(a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form; or

(b) For offerings by any type of issuer, an offering document that complies with the disclosure requirements of rule 502(b)(2) of Regulation D under the securities act of 1933.

(8) The issuer or applicant files with the commissioner:

(a) The offering document to be used in connection with the offer and sale of the securities, not later than the date of the first use of the document in this state, together with a fee of $200; and

(b) A copy of all advertising, other than the offering document, to be used in connection with the offer and sale of the securities, not later than the date of its first use in this state, and a copy of all material amendments to the offering document, not later than the date of first use of each material amendment in this state.

ANALYSIS: This SECTION repeals and recreates the current rule in SEC 2.027 which, under the transactional registration exemption authority granted the Commissioner in s. 551.23(18), Wis. Stats., accords an exemption by filing to Wisconsin- based issuers who have their principal office and a majority of their full- time employees located in this state. The current exemption rule, which by its terms provides what amounts to an expanded "Regulation D"- type exemption for common stock offerings by Wisconsin- based issuers and is available upon a filing with this Office, has been little- used since the exemption's original adoption in April 1986.

In order to expand and facilitate its use, the recreated exemption contains the following changes: (1) use of the exemption is no longer restricted to common stock offerings, but is made available for use by any entity (corporation, limited partnership, trust, etc.) that meets the Wisconsin-nexus requirements in the rule (which remain unchanged relating to a Wisconsin principal office and a majority of full- time employees located in Wisconsin); (2) the 50 Wisconsin purchaser limitation in para. (1)(intro.) is amended to delete the requirement in the current rule that such purchasers meet the net worth/annual income test cross-referenced in s. 551.28(7), although a knowledgeable/ experienced purchaser requirement is added as new sub. (6); (3) the disclosure document to be proposed for use in the offering can either meet the federal Regulation D disclosure requirement currently in the rule or, alternatively, can be the easier- to- prepare Form U-7 Model Small Corporate Offering disclosure/ registration form adopted in 1989 by NASAA that can be used by corporate issuers for offerings of equity or debt securities; (4) the $5 price per share of common stock limitation in the current rule is changed to $3 per share where common stock is offered under the exemption in its revised form;

(5) a maximum offering amount limitation of $500,000 of securities sold pursuant to use of the exemption is added in sub. (4); (6) the requirement in sub. (6) of the current rule that 80% of the proceeds from the offering be used in Wisconsin is deleted.

Provisions in the current rule that are retained in the exemption's recreated form are: (1) the list of persons in subs. (1)(a) to (c) excluded in the computation of the 50 permitted purchasers; (2) the restrictions in current subs. (3) and (4) on the payment of sales commissions and on use of the exemption by persons triggering the "bad boy disqualifier" under Regulation D; and (3) the filing requirements for use of the exemption, both at the commencement of the offering and for material amendments as well as any advertising materials other than the offering document.

SECTION 5. SEC 3.01 is repealed and recreated to read:

SEC 3.01 SELLING EXPENSES. (1) Except for offerings by issuers specified in subs. (2) and (3), the aggregate amount of selling expenses in an offering 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 Selling Expenses and Selling Security Holders, adopted effective September 14, 1989.

Note: The Statement of Policy is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

ANALYSIS: This SECTION substitutes for current rule SEC 3.01(1) (which establishes the presumed-fair levels of selling expenses, including commissions, for offerings being reviewed for registration) the incorporated- by- reference Statement of Policy Regarding Selling Expenses and Selling Security Holders developed by the North American Securities Administrators Association, Inc. as adopted effective September 14, 1989 by vote of its member jurisdictions, including Wisconsin, at the NASAA 1989 Fall Conference.

The NASAA Policy is based upon the same principle established in current SEC 3.01(1)--namely, to provide a scale of percentages under which a higher percentage of offering expenses is allowed for offerings with smaller dollar amounts in order to reduce the disadvantage that "small" securities offerings are placed vis-a-vis large offerings. In that regard, the NASAA Policy establishes the following presumed-fair selling expense levels: (i) not to exceed 20% of the gross proceeds for public offerings of $2.5 million or less; (ii) not to exceed 18% for offerings over $2.5 million and up to $7.5 million; and (iii) not to exceed 15% for offerings in excess of $7.5 million.

The NASAA Statement of Policy also provides a definition of the term "selling expenses" which includes commissions, underwriter's warrants, solicitation fees, due diligence expenses, attorneys and auditor's fees, and printing costs.

SECTION 6. SEC 3.04 (2) is created to read:

SEC 3.04(2) If an escrow of shares of promotional or cheap stock is required as a result of application of the Statement of Policy in sub. (1), the terms and conditions of the escrow shall comply with the provisions of the North American Securities Administrator's Association Model Security Escrow Agreement adopted effective September 14, 1989.

Note: The Model Agreement is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of

the Wisconsin secretary of state and the revisor of statutes. Copies of the Model Agreement are available from the Commissioner's office for a prepaid fee of $4.

ANALYSIS: This SECTION adopts and incorporates by reference the NASAA Model Security Escrow Agreement developed by the North American Securities Administrators Association, Inc. as adopted effective September 14, 1989, by vote of its member jurisdictions, including Wisconsin, at the NASAA 1989 Fall Conference.

The rule provides that in the event an escrow of shares of promotional/cheap stock is required as a result of the staff's applying the NASAA Statement of Policy on Promotional Shares during review of an application for registration of an offering of common stock, the terms and conditions of such escrow shall comply with the NASAA Model Security Escrow Agreement incorporated by reference in the rule. The NASAA Model Security Escrow Agreement prescribes the specific conditions for escrow including: procedure for deposit of certificates; duration of the escrow; conditions for release of shares; restrictions on share transfers; dividend treatment; voting of shares.

SECTION 7. SEC 3.09(1)(b)1. is amended to read:

SEC 3.09(1)(b) 1. No investment company, other than an investment company that invests more than 80% of its assets in debt securities, may purchase any securities of the classes specified in this subsection, if by reason thereof the value of its aggregate investment in those classes of securities will exceed: 10% of its total assets in securities of issuers which the company is restricted from selling to the public without registration under the securities act of 1933, excluding restricted securities eligible for resale pursuant to Rule 144A under the securities act of 1933 that have been

determined to be liquid by the company's board of directors or trustees based upon the trading markets for the securities; 10% of its total assets in the securities of one or more real estate investment trusts or in one or more investment companies; 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than 3 years, and equity securities of issuers which are not readily marketable.

ANALYSIS: This SECTION amends current rule SEC 3.09(1)(b) which prescribes certain investment restrictions for open-end investment companies. The amendment adds language that excludes from the investment limitation established in the rule relating to restricted securities, securities eligible for resale pursuant to Rule 144A which was recently adopted by the U.S. Securities and Exchange Commission under the Securities Act of 1933.

Rule 144A, adopted in 1989 by the SEC, provides a non-exclusive safe harbor exemption from the registration requirements of the Securities Act of 1933 for resales of "restricted securities" to "qualified institutional investors," which includes mutual funds. SEC Rule 144A reversed previous SEC interpretations that regarded restricted securities as "illiquid" and thus subject to a limit under the federal Investment Company Act of 1940 of 10% of an open-end fund's assets. According to the SEC Release accompanying adoption of Rule 144A, the liquidity of Rule 144A securities will now be a question of fact to be determined by each fund's Board of Directors, based upon the trading markets for the securities.

Current rule SEC 3.09(1)(b) contains a limitation equivalent to that in the Investment Company Act of 1940 which states that not more than 10% of an investment company's assets can be restricted from being sold to the public (and are, therefore, "illiquid"). The amendment in this SECTION will provide an equivalent waiver of the Wisconsin rule limitation relating to restricted/illiquid securities that will be available for Rule 144A securities determined to be liquid by the investment company's board of directors or trustees

based on their evaluation of the trading markets for the securities.

SECTION 8. SEC 3.16 is repealed and recreated to read:

SEC 3.16 TRANSACTIONS WITH AFFILIATES. The offer or sale of securities by an issuer that has engaged or has a policy to engage in transactions with affiliates, may be deemed to be unfair and inequitable to purchasers unless the terms of the transactions comply with the provisions of the North American Securities Administrators Association Statement of Policy Regarding Affiliated Transactions, adopted effective September 14, 1989.

Note: The Statement of Policy is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

ANALYSIS: This SECTION substitutes for the current rule provisions in SEC 3.16 which establish regulatory standards relating to transactions with affiliates, the incorporated-by-reference Statement of Policy Regarding Affiliated Transactions developed by the North American Securities Administrators Association, Inc., as adopted effective September 14, 1989 by vote of its member jurisdictions, including Wisconsin, at the 1989 NASAA Fall Conference.

The NASAA Policy is structured similarly to the existing Wisconsin rule on the subject, in that the NASAA Policy has separate sections that: (i) define terms, including the persons covered by the Policy; (ii) prescribe the terms and conditions that loans with affiliates must contain; and (iii) prescribe the prospectus or offering document

disclosures required to be made where an issuer has made or will make loans to, or engage in material transactions with, company officials, affiliates or associates.

SECTION 9. SEC 3.23(2)(h) is repealed.

ANALYSIS: The rule is repealed because its subject matter is covered by the amendments to current rule SEC 3.23(2)(i) in a following SECTION.

SECTION 10. SEC 3.23(2)(i) is renumbered SEC 3.23(2)(h), and as renumbered, is amended to read:

SEC 3.23(2)(h) If the offering is exempt under either section 3(a)(11) or section 4(2) of the securities act of 1933, the following statements in bold-face type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE

FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME; and.

ANALYSIS: These amendments make the prospectus cover page legend requirements in this rule (which was created last year to adopt the two legends revised in 1989 by the North American Securities Administrators Association, Inc.), applicable additionally to offerings that are exempt from registration federally under the intra-state exemption (section 3(a)(11)) as well as to offerings exempted under the non-public offering exemption (section 4(2)). By amending this rule to have it cover both federal section 3(a)(11) exempt offering situations as well as section 4(2) exempt offering situations, there is no need to have the separate rule provision in current rule SEC 3.23(2)(h) that deals with federal 3(a)(11) exemption situations.

SECTION 11. SEC 3.23(2)(j) is renumbered SEC 3.23(2)(i).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence of rules as a result of the repeal of SEC 3.23(2)(h) in an earlier SECTION.

SECTION 12. SEC 4.01(2)(b) is renumbered SEC 4.01(2)(c).

ANALYSIS: This SECTION renumbers current rule SEC 4.01(2)(b) (relating to the securities agent license application filing procedure under the Central Registration Depository) to make room for a new rule created in a following SECTION (relating to the securities broker-dealer license application filing procedure under the Central Registration Depository) which should precede in numbering sequence the rule relating to the agent license application procedure.

SECTION 13. SEC 4.01(2)(b) is created to read:

SEC 4.01(2)(b). An application for initial license or for renewal of a license as a broker-dealer registered with the national association of securities dealers, inc. consists of the payment of the Wisconsin broker-dealer license fee and, in the case of an initial application, the examination fee prescribed by s. SEC 7.01(3)(a), to the central registration depository of the national association of securities dealers as developed under contract with the north american securities administrators association. An application for initial license as a broker-dealer under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., on the date the application is transferred from "NOSTATUS" to "PENDING" on the records of the central registration depository. An application for renewal of a license as a broker-dealer under this paragraph shall be deemed filed under s. 551.32(1)(a), Stats., when the fee on deposit with the central registration depository has been allocated to the commissioner.

ANALYSIS: This SECTION creates a rule establishing the securities broker-dealer license application filing procedure under the NASAA/NASD Central Registration Depository in equivalent fashion to the current rule in SEC 4.01(2)(b) that establishes the securities agent license application filing procedure under the CRD. The NASAA/NASD agent license application procedure under the CRD was developed and has been utilized by Wisconsin since 1983, and this rule will implement the CRD license application (and renewal) filing procedure developed by NASAA and the NASD in 1989 that is now in place and being utilized by NASAA member jurisdictions, including Wisconsin.

SECTION 14. SEC 4.01(4)(b) is amended to read:

SEC 4.01(4)(b) The applicant has been licensed, within 2 years prior to the date the application for license is filed in this state, as an agent or as a broker-dealer under the securities law of any other state that requires passing the uniform securities agent state law examination and, in the case of examinations required by ~~pars.~~ sub. (3)(a) to ~~(d)~~(e) ~~in--sub.--(3)~~, has been registered with the national association of securities dealers, inc., within two years prior to the date the application for license is filed to engage in the type of business for which the applicant is applying for license.

ANALYSIS: This amendment corrects the cross-reference contained in the rule (to the paragraphs in the examination section of SEC 4.01(3)), by including a reference to para. (e) which was added to SEC 4.01(3) effective January 1, 1989.

SECTION 15. SEC 4.04(4) is repealed and recreated to read:

SEC 4.04(4) Except as provided in subs. (2), (3) and (9), each broker-dealer shall file with the commissioner any notice of change of control or change of name, as well as any material change in the information included in the broker-dealer's most recent application for license, in an amendment to Form BD filed with the central registration depository within 30 days of the date of the change.

ANALYSIS: This SECTION consolidates and recreates in a single rule, the separate rules currently contained in SEC 4.04(4) and (5) that establish the requirement and procedure for a broker-dealer to notify the Commissioner of name changes and control changes (para. (4)) or other material changes (para. (5)) in its most recent licensing application. The revised rule also changes the

notification procedure to conform with the current procedure now established under the Central Registration Depository and utilized by this Office which provides that all notifications by a broker-dealer of such changes must be submitted as an amendment to Form BD and filed with the Central Registration Depository within 30 days of the change. The 30 day deadline for filing under the proposed new consolidated rule is the same 30 day period specified in each of the current rules SEC 4.04(4) and (5).

SECTION 16. SEC 4.04(5) is repealed.

ANALYSIS: Current rule SEC 4.04(5) is repealed because its subject matter is combined into rule SEC 4.04(4) that is recreated in another SECTION.

SECTION 17. SEC 4.04(6) to (10) are renumbered SEC 4.04(5) to (9).

ANALYSIS: The renumbering in this SECTION is necessary because of the repeal of SEC 4.04(5) in an earlier SECTION.

SECTION 18. SEC 5.01(3)(b) is amended to read:

SEC 5.01(3)(b) Unless waived under sub. (4)(a) or (b), each applicant for an initial license as an investment adviser or for qualification as an investment adviser representative after January 1, 1988 and each applicant whose application has not become effective by January 1, 1988, is required to pass Part II of the Wisconsin Investment Adviser Representative Examination with a grade of at least 75%.

ANALYSIS: This amendment clarifies that a waiver for Part II of the Wisconsin Investment Adviser Representative Examination can be obtained by meeting the criteria in either paras. (4)(a) or (4)(b) which are revised in following SECTIONS.

SECTION 19. SEC 5.01(4)(a) is renumbered SEC 5.01(4)(a)(intro.) and amended to read:

SEC 5.01(4)(a) The entirety of the examination requirement in sub. (3) ~~(a)~~ shall be waived for any applicant who ~~has passed either the National Association of Securities Dealers, Inc. Series 2 or 7 Examination as well as the National Association of Securities Dealers, Inc. Series 63 Examination~~ meets any of the following criteria:

ANALYSIS: The revisions in this SECTION and the following three SECTIONS reorganize, modify and clarify the examination waiver rules currently in SEC 5.01(4)(a) to (c). The amendments in this SECTION make para. (a) into an introductory paragraph to begin a list of the criteria that will provide a waiver from the entirety (namely, both Part I and Part II) of the examination requirement prescribed in SEC 5.01(3)(a) and (b). The language stricken in this rule will be made (in a following SECTION) into a separate subdivision (a)1. that will be the first of the listed criteria providing a waiver from the entirety of the examination requirement. The remainder of the criteria that provide a waiver from the entirety of the examination requirement are moved from their current location as subdivisions of (4)(c) to become subdivisions of (4)(a) by means of the renumbering changes in another separate following SECTION.

SECTION 20. SEC 5.01(4)(a)1 is created to read:

SEC 5.01(4)(a)1. The applicant has passed either the National Association of Securities Dealers, Inc. Series 2 or 7 Examination as well as the National Association of Securities Dealers, Inc. Series 63 Examination.

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

SECTION 21. SEC 5.01(4)(b) is amended to read:

SEC 5.01(4)(b) The examination requirement in sub. (3)(b) relating to Part II of the Wisconsin Investment Adviser Representative Examination shall be waived for any applicant who:

ANALYSIS: See ANALYSIS to SEC 5.01(4)(a).

SECTION 22. SEC 5.01(4)(c)1 to 5 are renumbered SEC 5.01(4)(a)2 to 6.

ANALYSIS: See ANALYSIS to SEC 5.01(4)(a).

SECTION 23. SEC 5.01(4)(c)(intro.) is repealed.

ANALYSIS: See ANALYSIS to SEC 5.01(4)(a).

SECTION 24. SEC 5.04(1)(a) is amended to read:

SEC 5.04 REPORTING REQUIREMENTS. (1)(a) Except as provided in par. (b), each investment adviser shall file annually with the commissioner within 60 days after the end of its fiscal year, a copy of its balance

sheet with accompanying notes ~~in the form prescribed in s. SEC 7.06~~, including supporting schedules, which may be audited, prepared or compiled by an independent accountant on either a cash or an accrual basis.

ANALYSIS: These amendments do the following: (1) substitute for the cross-reference in the current rule to the general financial statement preparation rule in SEC 7.06, the language from current rule SEC 7.06(1)(b) which specifies both the form of balance sheet to be provided annually by licensed investment advisers, and who must prepare such balance sheet (an independent accountant); (2) add language to provide both that the balance sheet may be either audited, prepared or compiled by an independent accountant, and that the balance sheet may be prepared on either a cash or accrual basis.

SECTION 25. SEC 5.04(3) is repealed and recreated to read:

SEC 5.04(3) Except as provided in subs. (2) and (4), each investment adviser shall file with the commissioner any notice of change of control or change of name, as well as any material change in the information included in the investment adviser's most recent application for license, in an amendment to Form ADV filed with the commissioner within 30 days of the date of the change.

ANALYSIS: This SECTION, which contains similar revisions to those made to the equivalent broker-dealer licensing rules in SEC 4.04, consolidates and recreates in a single rule, the separate rules currently contained in SEC 5.04(3) and (4) that establish the requirement and procedure for an investment adviser to notify the Commissioner of name changes and control changes (para. (3)) or other material changes (para. (4)) in its most recent licensing application. The 30 day deadline for filing under the proposed new consolidated rule is the same 30 day period

specified in each of the current rules SEC 5.04(3) and (4).

SECTION 26. SEC 5.04(4) is repealed.

ANALYSIS: Current rule SEC 5.04(4) is repealed because its subject matter is combined into rule SEC 5.04(3) that is recreated in another SECTION.

SECTION 27. SEC 5.05(5) is renumbered SEC 5.04(4).

ANALYSIS: The renumbering in this SECTION is necessary because of the repeal of current SEC 5.04(4) in an earlier SECTION.

SECTION 28. SEC 6.04 is amended to read:

SEC 6.04 BROKER-DEALER ACTIVITIES. The terms "manipulative, deceptive or other fraudulent device or contrivance" in s. 551.43, Stats., are defined to include the activities described in rules 15c1-1, 2, 4, 5, 6, 7 and 8 and 15c2-1, 4, 5, 6, 7, 8 and 11 under the securities exchange act of 1934.

ANALYSIS: This amendment incorporates by reference the U.S. Securities and Exchange Commission's recently adopted (effective January 1, 1990) anti-fraud rule in 15c2-6 under the Securities Exchange Act of 1934 dealing with the practice of "cold calling." The SEC rule was enacted to deal with abuses in the penny stock market by restricting the ability of brokerage firms to solicit persons by telephone to purchase low-priced stocks unless certain circumstances exist.

SECTION 29. SEC 7.01(5)(a) is repealed and recreated to read:

SEC 7.01(5)(a) Issuance of a certificate under s. 551.64(4), Stats., relating to the existence or non-existence of documents or entries on file or contained in the records of the commissioner's office. . . . . $50 plus $1 per page for copies included with the certificate.

ANALYSIS: This SECTION makes the following clarifying and substantive revisions to the existing rule relating to certification of agency documents or entires: (1) The language is revised to clarify that the $50 certification fee is for the review, preparation and issuance of a certificate and is not a fee of $50 per document or entry certified to; (2) Language is added to provide that the certification can relate to the existence or non-existence of files or entries in the Office's records; and (3) An additional charge of $1 per page for documents to be included with the certificate is prescribed to cover the costs of agency personnel retrieving files, locating specific documents and making photocopies. Such $1 per page charge is properly higher than the regular per page photocopying fee in SEC 7.01(6) because the regular photocopying fee applies when members of the public themselves review files and locate and make copies of agency documents using the agency's copying facilities.

SECTION 30. SEC 7.01(5)(e) is created to read:

SEC 7.01(5)(e) Filing of a notice under SEC s. 6.05 . . . . $200.

ANALYSIS: This SECTION prescribes a $200 fee for review of filings made under the "going-private" rule in SEC 6.05.

SECTION 31. SEC 7.02(1)(a) is amended to read:

SEC 7.02(1)(a) A prospectus published or circulated in connection with either:

1. ~~an~~ An offering of a security for which a registration statement has been filed under s. 551.25 or 551.26, Stats., that has not become effective; or

2. ~~an~~ An offering of a security for which a notice or application for exemption, including the prospectus, has been filed under s. 551.22 or 551.23, Stats.~~;~~.

ANALYSIS: These amendments clarify the rule by separating into separate subsections the two categories covered by the current language of the rule.

SECTION 32. SEC 7.06(1)(b) is amended to read:

SEC 7.06(1)(b) Examined and reported upon by an independent certified public accountant, provided that this requirement may be waived by the commissioner and does not apply to interim financial statements or to financial statements of investment advisers that are prepared ~~by--an--independent--accountant~~ in compliance with s. SEC 5.04(1)(a), unless otherwise required by the commissioner in particular cases. The accountant's report shall meet the requirements of rule 2-02 of regulation S-X of the U.S. securities and exchange commission and shall accompany the financial statements included in the prospectus.

ANALYSIS: This amendment provides a cross-reference to the specific investment adviser reporting rule (SEC 5.04(1)(a) which is amended in a previous SECTION) which establishes therein the

form and content of financial statements to be provided to the Commissioner's Office annually by licensed investment advisers.

SECTION 33. SEC 9.01(1)(b)8 is repealed and recreated to read:

SEC 9.01(1)(b)8. ADV. Uniform application for investment adviser registration.

ANALYSIS: This SECTION substitutes (for the current Wisconsin form) the federal investment adviser license application form as the form to be submitted when applying for an investment adviser license in Wisconsin.

SECTION 34. SEC 9.01(1)(b)14 is repealed.

ANALYSIS: This SECTION repeals the listing of Form RS-BD, the broker-dealer report of sales, in the Forms Chapter of the rules because of the repeal effective January 1, 1990 of the broker-dealer reporting requirement for which the form was used.

SECTION 35. SEC 9.01(1)(b)15 to 17 are renumbered SEC 9.01(1)(b)14 to 16.

ANALYSIS: The renumbering in this SECTION is necessary to maintain an uninterrupted numbering sequence due to the repeal of SEC 9.01(1)(b)14 in a previous SECTION.

* * * *

The rules and amendments contained in this Order shall take effect as provided in sec. 227.22(2)(intro.), Stats., on the first day of the month following publication in the Wisconsin Administrative Register.

DATED this 12th day of November, 1990.

(SEAL)

WALTER H. WHITE
Commissioner of Securities

LCRC
FORM 2

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RECEIVED
NOV 12 1990
Revisor of Statutes
Bureau

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. 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 90-178

AN ORDER to repeal SEC 3.23 (2) (h), 4.04 (5), 5.01 (4) (c) (intro.), 5.04 (4) and 9.01 (1) (b) 14; to renumber SEC 2.01 (3) to (9), 3.23 (2) (j), 4.01 (2) (b), 4.04 (6) to (10), 5.01 (4) (c) 1 to 5, 5.05 (5) and 9.01 (1) (b) 15 to 17; to renumber and amend SEC 3.23 (2) (i); to amend SEC 3.09 (1) (b), 4.01 (4) (b), 5.01 (3) (b) and (4) (a) (intro.) and (b), 5.04 (1) (a), 6.04, 7.02 (1) (a) and 7.06 (1) (b); to repeal and recreate SEC 2.027, 3.01, 3.16, 4.04 (4), 5.04 (3), 7.01 (5) (a) and 9.01 (1) (b) 8; and to create SEC 1.02 (11), 2.01 (3), 3.04 (2), 4.01 (2) (b), 5.01 (4) (a) 1 and 7.01 (5) (d), relating to definitions under the securities law; securities registration exemptions; securities registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures; and various fee-related provisions under the securities law.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

8-24-90. Received by Legislative Council.
9-21-90. Report sent to Agency.

RNS:DLS:kjf;las

Clearinghouse Rule No. 90-178
Date 9/21/90

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

   Comment attached ____ YES __X__ NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

   Comment attached __X__ YES ____ NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

   Comment attached ____ YES __X__ NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

   Comment attached __X__ YES ____ NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

   Comment attached __X__ YES ____ NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

   Comment attached ____ YES __X__ NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

   Comment attached ____ YES __X__ NO

WLCS
DJS:las;ksm
1/16/90

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September 21, 1990

CLEARINGHOUSE RULE 90-178

COMMENTS

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council, dated April 1989.]

2. Form, Style and Placement in Administrative Code

a. Section SEC 1.02 (11) would be clearer if structured as follows:

> SEC 1.02 (11) For purposes of...a "nongovernment industrial or commercial enterprise" is not present if:
>
> (a) The source, under a lease...under section 501 (a) of the internal revenue code; and
>
> (b) The receipt of a limited amount of revenue...under section 501 (a) and (c) (3) of the internal revenue code.

Note that, in lines 16 and 17, "sections 501 (1) and 501 (c) (3)" is changed to "section 501 (a) and (c) (3)" because both provisions are part of the same section [sec. 501]. Also, the commissioner may wish to consider alphabetizing the "definitions" in s. SEC 1.02. [Some, such as new sub. (11), are not true definitions and might be placed more appropriately in substantive provisions.]

b. In s. SEC 2.01 (3), the first sentence would be clearer if structured as follows:

> SEC 2.01 (3) The exemption provided under...securities designated on the system. The

commissioner may, by order, terminate an exemption upon a determination...no longer exists.

c. In s. SEC 2.01 (3), and throughout the rule, use capitalization sparingly. For example, in line 10, do not capitalize "Securities Act Release No.". In line 17, "Release" should be "release."

d. In the treatment clause to SECTION 2, "are" should replace "is."

e. In s. SEC 2.027 (intro.), (1) (a) and (3), "Wis. Stats." should be "Stats." and "sec." should be "s."

f. In ss. SEC 3.01 (1), 3.04 (2) and 3.16, delete the last sentence and include it in the Note to each of these provisions.

g. In s. SEC 3.09 (1) (b), insert "1" after "(b)" in the treatment clause and delete sub. (1) (b) 2 in the text. Subsection (1) (b) 2 is not being amended, so it is not necessary to include it.

h. In s. SEC 3.23 (2) (h), "TIME. ~~;-and~~" should be "TIME~~;-and~~.".

i. In s. SEC 4.01 (2) (b), delete the quotation marks around "filed" in two places and around "application."

j. In s. SEC 4.01 (4) (b), "sub. (3) (a) to ~~(d)~~ (e)" should replace "pars. (a) to ~~(d)~~ (e) in sub. (3)."

k. The treatment clause to SECTION 19 should state: "SECTION 19. SEC 5.01 (4) (a) is renumbered SEC 5.01 (4) (a) (intro.) and amended to read:". Also, the period after "Examination" in the current provision has to be deleted in the amendment (i.e., "~~Examination.~~ meets...").

l. In s. SEC 7.01 (5) (d), insert "s." before "SEC 6.05."

m. In the effective date clause, "(2) (intro.), Stats." should replace "(intro.), Wis. Stats." Also, "This" should replace "The rules and amendments contained in this."

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

Throughout the rule, references to regulations under the Securities Act of 1933 should be to the U.S. Code or Code of Federal Regulations. [See s. 1.07 (3), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. SEC 1.02 (11), line 13, insert "revenue" before "code."

b. In s. SEC 2.027 (intro.), insert a comma after "met." In sub. (1) (c), is the term "immediate family" defined elsewhere. If not, perhaps it should be defined for purposes of sub. (1) (c). In sub. (5), "shall be" should be "may be." In sub. (6), "shall reasonably believe" should be "reasonably believes." Also, in sub. (6), delete "a representative" and substitute "the purchaser's representative." In sub. (8), delete "such."

c. In s. SEC 4.01 (2) (b), line 12, should "NOSTATUS" be "NO STATUS"?

REPORT PREPARED BY THE
OFFICE OF THE COMMISSIONER OF SECURITIES
RELATING TO PROPOSED FINAL FORM OF AMENDMENTS TO THE
RULES OF THE COMMISSIONER OF SECURITIES

(a) Statement Explaining Need for Proposed Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the rules of the Commissioner of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law. The annual rule revision is made for the following purposes: making clarifications to existing rule provisions where language is vague or ambiguous; adopting or amending rules necessary to effectively regulate new circumstances or developments which have occurred in the industry and the marketplace that require regulatory treatment; formally adopting and incorporating by reference new securities registration guidelines previously adopted by a national securities administrators association of which Wisconsin is a member. Each SECTION in the proposed rules that adopts, repeals or amends a rule is followed by a separate explanatory ANALYSIS which discusses the nature of the revision as well as the rationale behind and/or the necessity for it.

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

None

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Deputy Commissioner of Securities Wesley L. Ringo, as Hearing Officer, and Comment Letters Received

-- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to both ask questions and respond to questions regarding hearing testimony.

-- Terry D. Nelson, Securities Consultant with the law firm of Foley and Lardner, Madison, Wisconsin Office, presented and summarized the comment letter from Joseph Hildebrandt.

Comment Letters Received

-- Comment letter dated September 4, 1990 from Attorney Terry F. Peppard, Madison, Wisconsin

-- Comment letter dated October 1, 1990 from the General Counsel's Office of the Investment Company Institute, Washington, D.C.

-- Comment letter dated October 2, 1990 from the Vice President of the State Liaison Section of the National Association of Securities Dealers, Inc., Washington, D.C.

-- Comment letter dated October 1, 1990 from Attorney Joseph Hildebrandt, Madison, Wisconsin

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

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

-- Consistent with the Rules Clearinghouse comment in para. a. regarding SEC 1.02(11), the section is divided into an introduction plus 2 subparagraphs, and the second reference in the last sentence to "501" is deleted.

-- Consistent with the Rules Clearinghouse comments in para. b. concerning SEC 2.01(3), the section is divided into 2 sentences rather than one.

-- Consistent with the Rules Clearinghouse comments in para. c. concerning SEC 2.01(3), the use of capitalization was reduced in the section.

-- Consistent with the Rules Clearinghouse comments in para. d. concerning the treatment clause to SECTION 2, the term "are" is substituted for "is."

-- Consistent with the Rules Clearinghouse comments in para. e. regarding SEC 2.027(intro.)(1)(a) and (3), "Wis. Stats." is changed to "Stats," and "sec." is changed to "s."

-- Consistent with the Rules Clearinghouse comments in para. f. concerning SEC 3.01(1), 3.04(2) and 3.16, the last sentence in each was deleted and made the last sentence in the Note following each section.

-- Consistent with the Rules Clearinghouse comments in para. g. concerning SEC 3.09(1)(b), in the treatment clause, "1" was added after "(b)," and the entirety of sub. (b)2. was deleted.

-- Consistent with the Rules Clearinghouse comments in para. h. concerning SEC 3.23(2)(h), the period is placed at the end of the paragraph and is underscored.

-- Consistent with the Rules Clearinghouse comments in para. i. concerning SEC 4.01(2)(b), the parentheses were deleted from the terminology "filed" in 2 places and around "application."

-- Consistent with the Rules Clearinghouse comments in para. j. concerning SEC 4.01(4)(b), "sub.(3)" is substituted for "pars.", and "in sub.(e)" is deleted.

-- Consistent with the Rules Clearinghouse comments in para. k. concerning SEC 5.01(4)(a), the treatment clause is revised to provide that the renumbering is to create an intro., and a

period at the end of the current paragraph is deleted by a strike-through.

-- Consistent with the Rules Clearinghouse comments in para. 1. concerning SEC 7.01(5)(d), "s." is inserted before SEC 6.05.

-- Consistent with the Rules Clearinghouse comments in para. m. concerning the effective date clause, the language "(Intro.), Wis. Stats.," is changed to read "(2) (intro.), Stats.,".

Under 5. Clarity, Grammar, Punctuation and Plainness

-- Consistent with the Rules Clearinghouse comments in para. a. concerning SEC 1.02(11), the term "revenue" was inserted before "code" in line 13.

-- Consistent with the Rules Clearinghouse comments in para. b. concerning SEC 2.027(intro.), a comma is added after "met"; in sub. (5), "shall be" is changed to "may be"; in sub. (6), "shall reasonably believe" is changed to "reasonably believes" and "the purchaser's representataive" is substituted for "a representative"; in sub. (8)(b), "such" is deleted.

(2) Acceptance of recommendations in part: None

(3) & (4) Rejection of recommendations and reasons therefor:

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

-- The Rules Clearinghouse recommendation that the U.S. Code citation be substituted for citations in the rules to federal acts was not followed for two reasons: (1) the federal acts cited in the rules are already referred to and incorporated in the definitional section of the Wisconsin Uniform Securities Law in sec. 551.02(12) which specifically refers to the following federal acts--the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940; (2) the securities industry registrants and licensees who are affected by the agency's rules all use for compliance purposes the text of the federal acts involved and do not refer to or use U.S. Code citations.

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

STATEMENT OF POLICY REGARDING SELLING EXPENSES AND SELLING SECURITY HOLDERS

Adopted and effective September 14, 1989

[¶ 3671]

I. INTRODUCTION. The North American Securities Administrators Association, Inc. ("NASAA") has determined it to be in the public interest, and consistent with the goal of investor protection in the public offerings of securities, to provide a guideline which will assure that selling expenses and selling security holders expenses are reasonable. Nothing contained in this guideline shall prevent the Securities Administrator ("Administrator") from considering variations in the application of any, or all, of the standards when such variations are justified in light of all the facts and circumstances surrounding a particular public offering; in particular, the inclusion of items I. through K. of III., below, may be optional at the election of the Administrator. The guideline limitations contained herein shall not apply to securities offerings if the expenses are regulated by other NASAA policies.

II. An offer or sale of securities may be disallowed by the Administrator if the direct and indirect selling expenses of the public offering exceed:

A. Twenty percent (20%) of the gross proceeds of the offering for public offerings of $2,500,000 or less;

B. Eighteen percent (18%) of the gross proceeds of the offering for public offerings over $2,500,000 and up to $7,500,000; and

C. Fifteen percent (15%) of the gross proceeds of the offering for public offerings that exceed $7,500,000.

III. Selling expenses may include, but are not limited to the following:

A. Commissions to underwriters or broker-dealers;

B. Non-accountable fees or expenses to be paid to the underwriter or broker-dealer;

C. Underwriter's warrants, which will be valued at 20% of the public offering price, unless a public market exists for the Issuers warrants;

D. Future registration rights of underwriter's options, warrants, or shares, at the Issuer's expense shall be valued at 1% of the public offering;

E. Right of first refusal, which will be valued at 1% of the public offering;

F. Solicitation fees, which shall be valued at the lesser of actual cost or 1% if the fees are payable within one year of the offering;

G. Consulting or financial advisory agreements or any other type of agreement or fees, however designated, shall be valued at actual cost;

H. Due diligence expenses;

I. Attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;

J. Auditors and accountants fees;

K. The cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;

L. Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers and other experts;

M. Cost of authorizing and preparing the securities, including issue taxes and stamps; and,

N. Other expenses incurred in connection with the public offering of securities as determined by the Administrator.

IV. The Issuer shall file with the Administrator, within 120 days after the termination of the public offering, a written report setting forth the actual amounts of selling expenses incurred in the public offering. The selling expenses are to be broken down by the categories as in III., above.

V. SELLING SECURITY HOLDERS. A public offering or sale of securities, that includes selling security holders, may be disallowed by the Administrator unless the following conditions are met:

A. Selling security holders shall pay a pro rata share of all additional selling expenses that are the result of the inclusion of their shares in the public offering;

B. The prospectus or offering document shall disclose the amount of selling expenses which the selling security holders shall pay; and,

C. With the exception of underwriter's or broker-dealer's compensation, the provisions of Section IV. A. and B., above, shall not apply:

1. If the security holders have a written agreement with the Issuer, that was entered into one year or more prior to the filing of the public offering, whereby the Issuer has agreed to pay all of the selling security holders' selling expenses, and if the selling securities holders have held their securities for at least one year prior to the filing of the public offering; or,

2. If the security holders have a written agreement with the Issuer, whereby the Issuer has agreed to pay all of the selling securities holders' selling expenses, and if the agreement was arrived at through arm's-length negotiations.

[The next page is 2081.]

MODEL SECURITY ESCROW AGREEMENT

Adopted and effective September 14, 1989

[¶ 1651]

SECURITY ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this _____ day of _____, 19 ____, among the persons and parties who have signed this Agreement as security holders (herein collectively referred to as the "Security Holders"), _____ (the "Issuer"), _____ (the "Escrow Agent"), and _____ (the "Administrator");

WITNESSETH THAT:

A. Each of the Security Holders is the owner of the number of shares of common stock of the Issuer or possesses conversion rights, warrants or options to acquire shares of stock of the Issuer listed opposite his or her name on the Exhibit A attached hereto.

B. The Issuer has applied to the Administrator for registration of _____ shares of _____stock (warrants) (options) (units) for sale to the residents of _____, and elsewhere. As a condition of registration the Security Holders, the Escrow Agent, the Issuer and the Administrator agree to be bound by this Agreement and the applicable Rules and Regulations of the Administrator pertaining to such agreements.

C. Each of the Security Holders has deposited the securities listed opposite his or her name or documents evidencing the right to acquire the securities on Exhibit A with the Escrow Agent, and the Escrow Agent hereby acknowledges receipt thereof. The securities are herein collectively referred to as "Escrowed Stock" or "Shares".

NOW THEREFORE, the persons and parties hereto agree as follows:

1. DEPOSIT OF CERTIFICATES. Simultaneously with the execution of this Agreement, the Security Holder is depositing with the Escrow Agent and the Escrow Agent hereby acknowledges receipt of the certificates and documents listed on Exhibit A, representing, convertible into, or exercisable for, —— Shares of stock of the Issuer. At the written request of the Issuer, the Escrow Agent shall make available to the Issuer and any affected Securities Holder, such documents as are necessary to exercise the foregoing rights.

2. TERM. The term of this Agreement and of the escrow provided herein shall commence on the date that the offering is declared effective by the Administrator. The certificates evidencing the securities are to be deposited with the Escrow Agent and are to be held pursuant hereto, for a period of nine years, unless released earlier in accordance with the terms of this Agreement.

3. RELEASE OF SHARES. The Shares shall be released to Security Holders as follows:

a. Twenty-five percent (25%) of each Security Holder's Shares shall be released from escrow on the sixth, seventh, eighth, and ninth anniversary dates; or,

b. One-hundred percent (100%) of the Shares shall be released from escrow after the Issuer has had annual net earnings per share according to generally

accepted accounting principles ("GAAP") equal to, or greater than, five percent (5%) of the public offering price after taxes and excluding extra ordinary items, for any two consecutive fiscal years after the date of effectiveness; or,

c. One-hundred percent (100%) of the Shares shall be released from escrow after the Issuer has had average annual net earnings per share according to GAAP, after taxes and excluding extra ordinary items, equal to, or greater than, five percent (5%) of the public offering price, for any five consecutive fiscal years after the date of effectiveness; or,

d. One-hundred percent (100%) of the Shares shall be released from escrow after the Issuer's Shares have traded in a reliable public market, e.g. either the New York Stock Exchange, the American Stock Exchange, or the NASDAQ National Market System, at a price of at least one-hundred seventy-five percent (175%) of the initial public offering price for at least ninety (90) consecutive trading days after at least one year from the date of effectiveness.

4. DOCUMENTATION TO ESCROW AGENT REGARDING RELEASE OF SHARES. A request for termination of the escrow, based on the satisfaction of either paragraph 3.a., 3.b., 3.c., or 3.d., above, shall be forwarded to the Escrow Agent. A request for termination of the escrow based upon paragraph 3.b. or 3.c. shall be accompanied by an earnings per share calculation audited and reported on by an independent certified public accountant.

5. TERMINATED OR PARTIAL OFFERING. The foregoing notwithstanding, the Shares will be released by the Escrow Agent:

a. If the public offering has been terminated and no securities were sold pursuant thereto; or,

b. If a public best efforts minimum-maximum offering is terminated without sale of the minimum offering and all proceeds have been returned to investors in such offering.

6. RESTRICTION ON TRANSFER. The Escrowed Stock may be transferred by will, or pursuant to the laws of descent and distribution, or through appropriate legal proceedings, but in all cases the Shares shall remain in escrow and subject to the terms of this Agreement until released pursuant to paragraph 3., above. Upon the death of the holder of any Escrowed Stock, the Escrowed Stock of the deceased holder may be hypothecated, subject to all of the terms of this Agreement, to the extent necessary to pay the expenses of the estate. The Shares in escrow may be transferred by gift to family members, provided that the Shares shall remain subject to the terms of this Agreement. The Shares may not be pledged to secure a debt except as noted above.

7. VOTING POWER. The Escrowed Stock shall have all voting rights to which the non-escrowed shares are entitled.

8. DIVIDENDS. Any dividends paid on the Shares shall be paid to the Escrow Agent by checks of the Issuer made payable to the Escrow Agent with a notation of this Agreement thereon, and any such dividends shall be held pursuant to the terms of this Agreement. The Escrow Agent shall treat such dividends as assets of the Issuer, available for distribution under the terms of paragraph 9., below, except as provided herein. The Escrow Agent shall place the dividends in an interest bearing account. The dividends and the interest earned thereon will be disbursed in proportion to the

number of Shares released from the escrow at the time the Shares are released pursuant to paragraph 3, above, or unless they are applied to the payment of the fees of the Escrow Agent under paragraph 13, below.

9. STOCK DIVIDENDS OR SPLITS. Stock dividends on, and shares resulting from stock splits of, the Escrowed Stock shall be delivered to the Escrow Agent and shall be held pursuant to this Agreement as if they were original shares of Escrowed Stock deposited hereunder. In the event of any stock dividend, stock split or recapitalization of the Issuer, the price per share figures herein shall be adjusted appropriately.

10. ADDITIONAL SHARES. Upon the exercise by any Security Holder of his or her conversion rights, warrants or options to acquire additional shares of the Issuer pursuant to the documents listed on Exhibit A, the additional shares received from the exercise of such warrants or optons shall forthwith be deposited in escrow with the Escrow Agent and shall be subject to the terms and conditions of this Agreement.

11. DISSOLUTION PREFERENCE. The Security Holders agree that in the event of dissolution, liquidation, merger, consolidation, sale of assets, exchange, or any transaction or proceeding that results in the distribution of the assets of the Issuer, the Security Holders hereby waive all their rights, titles and interests and participations in the assets of the Issuer until the holders of all non-escrowed shares have been paid, or have had irrevocably set aside for them an amount equal to one hundred percent (100%) of the public offering price per share, adjusted for stock splits and stock dividends. Subsequently, the Shares shall be entitled to receive an amount per share equal to one hundred percent (100%) paid to, or set aside for, the non-escrowed shares. Thereafter, the Security Holders shall participate on a pro rata basis with all shareholders. Mergers, consolidations, or reorganizations may proceed on terms and conditions different than those stated above if a majority of shares held by persons, other than promoters and Security Holders, approve the terms and conditions by vote at a meeting held for such purpose.

12. RELIANCE BY ESCROW AGENT. The Escrow Agent may conclusively rely on, and shall be protected, when it acts in good faith upon, any statement, certificate, notice, request, consent, order or other document which it believes to be genuine and signed by the proper party. The Escrow Agent shall have no duty or liability to verify any such statement, certificate, notice, request, consent, order or other document and its sole responsibility shall be to act only as expressly set forth in this Agreement. The Escrow Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Agreement unless it is indemnified to its satisfaction. The Escrow Agent may consult counsel with respect to any question arising under this Agreement and the Escrow Agent shall not be liable for any action taken, or omitted, in good faith upon advice of counsel. In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for willful default or negligence, and it shall accordingly not incur any such liability with respect to: (i) any action taken or omitted in good faith upon advise of its counsel or counsel for the Issuer given with respect to any questions relating to the duties and responsibility of the Escrow Agent under this Agreement, or (ii) any action taken or omitted in reliance upon any instrument, including written advise provided for herein, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the

provisions of the Agreement. All Shares and funds held pursuant to this Agreement shall constitute trust property. The Escrow agent shall not be liable for any interest on the Shares.

13. COMPENSATION TO ESCROW AGENT. The Escrow Agent shall be entitled to receive from the Issuer reasonable compensation for its services as set forth in Exhibit B attached hereto. In the event that the Escrow Agent renders any additional services not provided for herein, or if any controversy arises hereunder, or if the Escrow Agent is made a party to, or intervenes in any action, suit or proceeding pertaining to this Agreement, it shall be entitled to receive from the Security Holders, or at the option of the Escrow Agent, the Issuer, reasonable compensation for such additional services. Upon notice to the Security Holders, the Escrow Agent may deduct its compensation from any cash dividends or distributions held pursuant to paragraph 8, above.

14. QUALIFICATION AND INDEPENDENCE OF ESCROW AGENT. The Issuer hereby represents that a complete list of its officers, directors and promoters is attached hereto as Exhibit C. Based thereon, the Escrow Agent hereby represents and warrants that it is not affiliated with the Issuer, any officer, director or promoter of the Issuer or any Security Holder.

15. INDEMNIFICATION. The Issuer and the Security Holders agree to hold the Escrow Agent harmless from, and indemnify the Escrow Agent for, any and all costs of investigation or claims, costs, expenses, attorney fees or other liabilities or disbursements arising out of any administrative investigation or proceeding or any litigation, commenced or threatened, relating to this Agreement, including without limitation, the implementation of this Agreement, the distribution of stock or funds, the investment of funds, the interpretation of this Agreement or similar matters, provided that the Escrow Agent shall not be indemnified for any claims, costs, expenses or other liability arising from its bad faith or negligence or that of its employees, officers, directors or agents.

16. SCOPE. This agreement shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, successors and assigns.

17. TERMINATION. Except for the indemnification provisions of paragraph 15, above, which shall survive in any event, this Agreement shall terminate in its entirety when all the Shares have been released as provided in paragraph 3, above.

IN WITNESS WHEREOF, the Security Holders, the Issuer, the Escrow Agent, and the Administrator have entered into this Agreement as of the date first above written, in multiple counterparts, each of which shall be considered an original.

SECURITY HOLDERS

X _____ X _____

X _____ X _____

X _____ X _____

X _____ X _____

X _____ X _____

ISSUER

ATTEST: _____

By _____

Secretary President

ESCROW AGENT

_____

By _____

ADMINISTRATOR

_____

Title:

State: _____

[The next page is 1121.]

STATEMENT OF POLICY REGARDING AFFILIATED TRANSACTIONS

Adopted and effective September 14, 1989

[¶ 371]

I. INTRODUCTION. The North American Securities Administrators Association, Inc. ("NASAA") has determined it to be in the public interest, and consistent with the goal of investor protection in the public offerings of securities, to provide a guideline for the adequate disclosure and appropriate substantive standards concerning material transactions, including loans, between the issuer and its affiliates. Nothing contained in this guideline shall prevent the Securities Administrator ("Administrator") from considering variations in the application of any, or all, of the standards when such variations are justified in light of all the facts and circumstances surrounding a particular public offering. The guideline limitations contained herein shall not apply to securities offerings if the material transactions are regulated by other NASAA policies.

[¶ 372]

II. DEFINITIONS. As used in this Statement of Policy the terms listed below shall have the following meanings:

A. AFFILIATE. A PERSON who, directly or indirectly, CONTROLS, is CONTROLLED by, or is under common CONTROL with, the PERSON specified herein.

B. ASSOCIATE. The term ASSOCIATE, when used to indicate a relationship with any PERSON means:

1. A corporation or organization, other than the Issuer or a majority-owned subsidiary of the Issuer, of which a PERSON is an officer or partner or is, directly or indirectly, the beneficial owner of five percent (5%) or more of any class of the Issuer's equity securities;

2. Any trust or other estate in which a PERSON has a substantial beneficial interest or as to which a PERSON serves as a trustee or in a similar capacity; and

3. Any relative or spouse of a PERSON, or any relative of a spouse, who has the same home as a PERSON or who is a director or officer of the Issuer or any of its parents or subsidiaries.

C. COMPANY OFFICIALS. An Issuer's officers, directors, or any other person performing similar functions.

D. CONTROL. The power to direct the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract, or otherwise.

E. PERSON. Means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

[¶ 373]

III. LOANS. The offer or sale of securities by an Issuer may be disallowed by the Administrator if the Issuer or its AFFILIATES have made, or intends to make loans to, or loan guarantees on behalf of, COMPANY OFFICIALS, officials of AFFILIATES, or ASSOCIATES, other than as described below:

A. Advances for travel, business expense, relocation and similar ordinary operating expenditures;

B. Loans for specific purposes directly related to the ordinary course of the Issuer's business, the purchase by COMPANY OFFICIALS or employees of securities of the Issuer, or an interim loan not exceeding one year in duration in relocating a COMPANY OFFICIAL or employee, provided the loans or forbearances are approved by a majority of the independent outside members of the Issuer's board of directors not having any interest in the transactions; or,

C. An Issuer or its AFFILIATES, whose primary business is that of making loans, may make loans to COMPANY OFFICIALS, officials of AFFILIATES, or other ASSOCIATES provided that the loans:

1. Will be evidenced by a promissory note naming the lender as payee, and bearing interest at rate which is reasonably comparable to that normally charged by other commercial lenders or similar loans made in the lender's locale; and,
2. Will be repaid pursuant to appropriate amortization schedules and will contain default provisions comparable to that normally used by other commercial lenders for similar loans made in the lender's locale; and,
3. Will be made only if credit reports and financial statements show the loan to be collectible and the borrower to be a satisfactory credit risk, or other reasonable investigation appropriate in the light of the nature and terms of the loan and other circumstances, and which meet the loan policies normally used by other commercial lenders for similar loans made in the lender's locale; and,
4. The purpose of the loan and the disbursement of proceeds will be reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale.
5. Will not violate the requirements of any banking or other financial institutions' regulatory authority.

[¶ 374]

IV. EXISTING LOANS. Except such loans as are described under Section III., above, all loans existing at the time of the application for registration shall be repaid in full prior to the offering. However, the Administrator may waive this requirement if:

A. Repayment of such loans will be made pursuant to appropriate amortization schedules; or,

B. Any portion of the offering is by or on behalf of any COMPANY OFFICIAL, officials of AFFILIATES, or other ASSOCIATES, to whom a loan has been made, and such persons undertake to effect repayment from the proceeds of the offering and repayment to the extent of such proceeds will be made immediately upon completion of the offering.

[¶ 375]

V. OTHER AFFILIATED TRANSACTIONS. The offer or sale of securities by an Issuer may be disallowed by the Administrator if the Issuer has engaged, or intends to engage, in material transactions with COMPANY OFFICIALS, officials of AFFILIATES, or ASSOCIATES unless the transactions are fully disclosed in the prospectus or offering document. If the issuer is engaged, or intends to engage, in material transactions, the prospectus or offering document shall disclose that the transactions are or will be:

A. On terms no less favorable to the Issuer than those generally available from unaffiliated third parties; and,

B. Ratified by a majority of independent outside disinterested members of the Issuer's board of directors not having any interest in the transactions.

[¶ 376]

VI. PROSPECTUS OR OFFERING DOCUMENT DISCLOSURE. The Issuer shall disclose in the prospectus or offering document whether or not it or its AFFILIATES have made or will make, loans or have engaged or will engage in material transactions with COMPANY OFFICIALS, officials of AFFILIATES, or ASSOCIATES, and the terms and details with regard thereto. If affiliated transactions or loans have been made in the past, or it is expected that they may be made in the future, the Administrator may require the following representations to appear in the prospectus or offering document:

A. All future material affiliated transactions and loans will be generally available on terms no less favorable to the Issuer than those from unaffiliated third parties; and,

B. All future material affiliated transactions and loans, and any forgiveness of loans, will be approved by a majority of the independent outside members of the Issuer's board of directors not having any interest in the transactions.

NOTE: The Issuer and COMPANY OFFICIALS should consider their due diligence and other obligations to affirmatively demonstrate a reasonable basis for the representations in V. and VI., and, in particular, whether or not the representations in V. B. and VI. B. should be embodied in the Issuer's charter or bylaws.

NOTE: An issuer that intends to engage in affiliated transactions covered by Sections III.B. and V. of this Statement of Policy must have independent outside directors included on its board of directors.

[The next page is 401.]

State of Wisconsin \ OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson
Governor

Walter H. White, Jr.
Commissioner of Securities

Wesley L. Ringo
Deputy Commissioner

111 WEST WILSON STREET
BOX 1768
MADISON, WISCONSIN 53701

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

November 12, 1990

Office of the Secretary of State
30 West Mifflin St.
Madison, WI 53703

✓Revisor of Statutes Bureau
119 Martin Luther King, Jr. Blvd.
Second Floor
Madison, WI 53702

Gentlemen and Mesdames:

Re: Filing of Certified Copies of Final Order Adopting Rules/Clearinghouse Rule 90-178

Pursuant to the requirements of ss. 227.20 and 227.21, Wis. Stats., a certified copy is herewith filed with each of your offices of the above-referenced Final Order Adopting Rules in the form prescribed by sec. 227.14, Wis. Stats. The Final Order Adopting Rules was adopted by this agency on November 12, 1990.

Also attached are photocopies of three securities regulatory standards incorporated by reference in sections SEC 3.01, SEC 3.04(2) and SEC 3.16, Wis. Adm. Code, contained in SECTIONS 5, 6 and 8 of the Final Order Adopting Rules. Authorization for the incorporation by reference of the regulatory standards has been received under s. 227.21(2), Wis. Stats., from the Attorney General and the Revisor of Statutes.

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

Very truly yours,

Randall E. Schumann
General Counsel

RES/sak

enclosures

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

RECEIVED
NOV 12 1990
Revisor of Statutes
Bureau