96-143

CERTIFICATE

STATE OF WISCONSIN)
DEPARTMENT OF FINANCIAL INSTITUTIONS) ss.
DIVISION OF SECURITIES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Patricia D. Struck, Administrator of the State of Wisconsin Division of Securities of the Department of Financial Institutions, and custodian of the official records of said agency, do hereby certify that the annexed rules concerning the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law, and Chapter 553, Wis. Stats., the Wisconsin Franchise Investment Law, relating to: securities registration exemptions, securities registration procedures, substantive registration standards and disclosure requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, franchise definitions, franchise registration exemptions, franchise registration procedures, substantive registration standards and disclosure requirements, franchise registration or exemption revocations and fraudulent practices, franchise fee-related provisions and franchise forms were duly approved and adopted by this agency on November 11, 1996.

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 Division of Securities in the City of Madison, this 11th day of November, 1996.

[SEAL]

Patricia D. Struck
Administrator
Division of Securities
Department of Financial Institutions

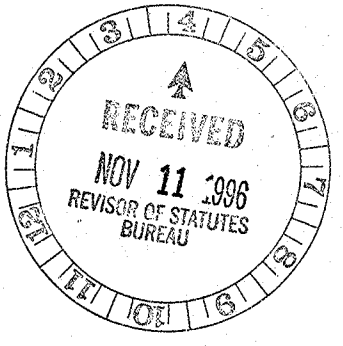
RECEIVED
NOV 11 1996
REVISOR OF STATUTES BUREAU

1-1-97

FINAL ORDER OF THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN
ADOPTING, AMENDING AND REPEALING RULES

To repeal SEC 2.01(6)(a) to (h), 2.02(9)(f)1. to 8., 2.02(9)(l), 2.027(1)(b), 3.001 to 3.19, 3.20, 3.08(1), 3.29, 9.01(1)(a)4, 31.01(1) and (4), 32.01, 32.05(1)(c), 32.05(1)(i) and (2), 32.06(2) and (3), 32.08 to 32.11, 32.12(1), (3) and (5), 32.13, Chapter SEC 33, 35.01(1)(b), (e), (f) and (h), 35.01(5), 35.02, 35.05, and Chapter SEC 37; to renumber SEC 2.01(6)(intro.), 2.02(9)(f)(intro.), 2.02(9)(m) and (n), 2.027, 2.028, 2.027(1)(c), 3.21 to 3.28, 3.03(4) and (5), 3.08(2), 4.06(1)(c), 9.01(1)(a)5, 31.01(2) and (3) and (5) to (9), 32.05(1)(d) to (h), 32.06(1), 32.12(2) and (4), 35.01(1)(c), (d) and (g), 35.01(6); to amend SEC 2.01(6), 2.02(5)(c), 2.02(9)(f), 2.027(1)(c), 3.03(3), 4.04(2), 4.05(5), 4.06(1)(s) and (t), 4.06(1)(u), 4.02(2)(a), 4.10(1)(d) and (2), 5.05(2)(a) and (3), 5.06(9) and (10), 7.06(2), 32.03, 32.06, 32.08(1) and (2), 32.09 and 34.01; to repeal and recreate SEC 32.07 and 35.01(2); and to create SEC 3.03(4), 4.05(12), 4.06(1)(c)2, 5.05(10), (11) and (12) relating to: securities registration exemptions, securities registration procedures, substantive registration standards and disclosure requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, franchise definitions, franchise registration exemptions, franchise registration procedures, substantive registration and disclosure requirements, franchise registration or exemption revocations and fraudulent practices, franchise fee-related provisions and franchise forms.

Pursuant to ss. 551.63(1), (2), and (3), 551.22(10), 551.23(11), 551.23(18), 551.27(4) and (10), 551.28(1)(e), 551.32(1)(b) and (7), 551.33(1), (2) and (6), 553.26(1), 553.27(2), 553.31(1) and (2), 553.58(1) and (2), and 553.72(2) and (3), Stats., the Division of Securities of the Department of Financial Institutions repeals, amends and adopts rules interpreting those sections as follows:



FINAL FORM OF
AMENDMENTS TO RULES OF THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS

SECTION 1. In all places in Chapters SEC 1 to SEC 37, Wis. Adm. Code, that are not the subject of SECTIONS contained in this rule-making proposal, each reference therein to "commissioner" is amended to read "division."

ANALYSIS: As a result of a reorganization of several State of Wisconsin financial regulatory agencies contained as part of 1995 Wisconsin Act 27, effective July 1, 1996, this agency began operations on that date as the "Division of Securities" of the Department of Financial Institutions. The legislation in 1995 Wisconsin Act 27 contained specific amendments to each of the three statutes administered by this agency--Chapter 551, the Wisconsin Uniform Securities Law, Chapter 552, the Wisconsin Corporate Take-Over Law, and Chapter 553, the Wisconsin Franchise Investment Law--changing each reference to "commissioner" contained in those statutes to "division." This SECTION makes an equivalent amendment for purposes of all of the administrative rules of this agency adopted under those three statute chapters that are not the subject of SECTIONS contained in this rule-making proposal (which separately each make the change from "commissioner" to "division" therein as necessary).

SECTION 2. SEC 2.01(6)(intro.) is renumbered SEC 2.01(6) and amended to read:

SEC 2.01(6) A notice filing under s. 551.22(10), Stats., for an employe plan that does not qualify for the self-executing registration exemption in s. SEC 2.02(9)(m) shall consist of a complete description of the plan, including any advertising to be published, circulated or used, and the $200 fee prescribed in s. SEC 7.01(2). ~~The exemption may be denied if the plan is unfair or inequitable~~

~~to-purchasers-of-securities-thereunder.--If-the-plan-involves purchases-of-the-employer's-securities,-a-plan-may-be-deemed unfair-or-inequitable-unless:~~

ANALYSIS: 1995 Wisconsin Act 356, published on June 6, 1996, contained a repeal of the "merit review"/"fair and equitable" requirements under the Wisconsin Uniform Securities Law for purposes of the registration of securities under ss. 551.25 or 551.26, Stats. That Act also repealed the merit-standards-based registration exemption in s. 551.235, Stats., and the merit-standards earnings test contained in the "exchange listing" registration exemption in s. 551.22(7), Wis. Stats., for debt and preferred stock offerings relying on the "senior or substantially equal rank" language in that exemption. This SECTION, together with the following SECTION, deletes the "merit review" requirements established by administrative rule in paragraphs (a) to (h) under SEC 2.01(6) for employee stock purchase and benefit plan registration exemption filings under s. 551.22(10), Stats., for the reasons that: (1) 1995 Wisconsin Act 356 embodied a legislative policy to delete statutorily under the Wisconsin Uniform Securities Law merit review/fair and equitable requirements for securities registration exemptions as well as securities registration purposes; and (2) because merit review/fair and equitable requirements no longer may be applied to registered offerings made to the general public, it would be inconsistent to apply merit review requirements to offerings made pursuant to registration exemptions. A further consideration for purposes of this rule is that many employee stock purchase and benefit plans which in prior years could look only to this rule for exemption status, now can utilize the self-executing registration exemption currently in SEC 2.02(9)(n) adopted by this agency effective January 1, 1996 for employee plans which qualify for use of the federal registration exemption in Rule 701 under sec. 3(b) of the Securities Act of 1933. To give notice in this rule of the existence of that other exemption, specific language is added cross-referencing that self-executing exemption rule (renumbered as SEC 2.02(9)(m) in a following SECTION).

SECTION 3. SEC 2.01(6)(a) to (h) are repealed.

ANALYSIS: See ANALYSIS to preceding SECTION.

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

SEC 2.02(5)(c) A ~~reasonable~~ commission or fee may be paid to a broker-dealer or agent licensed in this state for services rendered in connection with a sale of securities effected under s. 551.23~~(10)~~ ~~or~~ (11), Stats.~~;~~ ~~a commission or fee will be presumed reasonable if it does not exceed the amount permitted under s. SEC 3.01(1);~~ and

ANALYSIS: The amendments in this SECTION do the following: (1) Delete language relating to the merit review "reasonable" commission requirement in the current rule that restricts sales commissions paid to a licensed broker-dealer or agent making sales under the "10 offerees per 12 month period" registration exemption in s. 551.23(11), Stats. Such restriction language--which is based on the "merit review" rule in SEC 3.01(1) cross-referenced in this rule--is repealed because SEC 3.01 is repealed in a later SECTION together with the other "merit review"/"fair and equitable" rules in Chapter SEC 3; and (2) The cross-reference in the rule to the registration exemption in s. 551.23(10), Stats., is deleted because as a result of the deletion of the "reasonable" terminology, the language of the rule regarding payment of sales commissions in connection with the sale of securities under s. 551.23(10), Stats., is no different from the language contained in that statutory section.

SECTION 5. SEC 2.02(9)(f)(intro.) is renumbered SEC 2.02(9)(f) and amended to read:

SEC 2.02(9)(f) Any offer or sale of securities to the employes or agents of the issuer or its subsidiaries pursuant to a stock option plan that does not qualify for the self-executing registration exemption in s. SEC 2.02(9)(m), provided there is filed with the ~~commissioner~~ division a notice consisting of a complete description of the plan including any advertising to be published, circulated or

used, the $200 fee prescribed in s. SEC 7.01(2), and the ~~commissioner-by-order-exempts-the-plan-~~division does not by order disallow the exemption within 10 days after the date of filing the notice or, if additional information is required under s. 551.24(6), Stats., within 10 days after the date of filing that information. ~~The-commissioner-may-find-the-order inappropriate-for-the-protection-of-investors-unless:~~

ANALYSIS: This SECTION and the following SECTION delete the "merit review"/"fair and equitable" requirements for use of this registration exemption rule for stock option plans for the same reasons set forth in the ANALYSIS for the amendments to SEC 2.01(6). The amendments to this rule also include changing the filing and regulatory-action-to-be-taken treatment procedure from an Exemption Order process to a 10-day notice filing process identical to that applicable to stock purchase plan filings made under s. 551.22(10), Stats., and SEC 2.01(6) thereunder (amended in an earlier SECTION). Additionally, in similar fashion to the amendment made in SEC 2.01(6) to give notice of the self-executing registration exemption in SEC 2.02(9)(m) for stock option plans qualifying under Rule 701 under sec. 3(b) of the Securities Act of 1933, a cross-reference is added in this rule to SEC 2.02(9)(m).

SECTION 6. SEC 2.02(9)(f)1. to 8. are repealed.

ANALYSIS: See ANALYSIS to preceding SECTION.

SECTION 7. SEC 2.02(9)(l) is repealed.

ANALYSIS: This SECTION repeals, for the reasons stated below, the registration exemption rule under s. 551.23(18), Stats., for offers and sales by a "new Wisconsin business corporation" of its equity securities as well as stock options to its officers, directors or employees: (1) all Wisconsin business corporations, whether or not "new," can use the automatic/self-executing registration exemption contained in SEC 2.02(4)(g)1. under s. 551.23(8), Stats., for offers or sales of equity securities or the granting of stock options to the corporation's officers or directors; (2) amendments made in earlier SECTIONS

to both the employee stock purchase plan rule in SEC 2.01(6) and to the stock option plan rule in SEC 2.02(9)(f) deleted the "merit review" requirements therein, thus making both exemptions available on a notice-filing basis that does not involve application of "merit"/"fairness" requirements; (3) even after amendments were made to this rule as part of the agency's 1995 rule revision to facilitate its use, there have been only 2 filings made under the revised rule since January 1, 1996.

SECTION 8. SEC 2.02(9)(m) and (n) are renumbered SEC 2.02(9)(l) and (m).

ANALYSIS: This renumbering is necessary to continue uninterrupted the numbering sequence of the remaining paragraphs in SEC 2.02(9) following the repeal of SEC 2.02(9)(l) in the preceding SECTION.

SECTION 9. SEC 2.027(1)(b) is repealed.

ANALYSIS: This SECTION repeals paragraph (1)(b) under the Wisconsin-Issuer-Registration-Exemption-By-Filing rule which states that "accredited investors" as defined under the federal Securities Act of 1933 are not counted toward the 100-securityholder maximum specified therein. Such paragraph is no longer necessary because as a result of the creation of the rule in SEC 2.02(4)(h) for "entity accredited investors" incident to the agency's 1995 rule revision, when coupled with the existing "individual accredited investor" statute in s. 551.23(8)(g) and SEC 2.02(4)(g) thereunder, results in all categories of "accredited investors" being covered by the language in existing par. (1)(a) referring to "persons described in s. 551.23(8), Stats."

SECTION 10. SEC 2.027(1)(c) is renumbered (1)(b).

ANALYSIS: This renumbering is necessary to eliminate the gap in sequential numbering resulting from the repeal of (1)(b) in the preceding SECTION.

SECTION 11. SEC 2.027 is renumbered SEC 2.028, SEC 2.028 is renumbered SEC 2.027, and SEC 2.027(1)(c), as renumbered, is amended to read:

SEC 2.027(1)(c) ~~Any~~ The text of any published notice or script for broadcast, and any printed material delivered ~~apart from the~~ in any solicitation of interest ~~form~~ under this section, shall ~~contain~~ begin with the disclosures and information required in, and in the format of, ~~specified in~~ the solicitation of interest form specified in s. SEC 9.01(1)(c).

ANALYSIS: The renumbering in this SECTION (switching the sequence of SEC 2.027 and SEC 2.028) is made so that the placement of the "testing the waters" registration exemption (in current SEC 2.028)--which can be used to make offers prior to the time that an issuer would need to have available a registration exemption to effectuate a sale of securities--precedes the registration exemption in current SEC 2.027 which can be utilized for sales of securities by an issuer that may have used the "testing the waters" exemption to make offers of its securities.

The amendments to subsection (1)(c) of the "test the waters" registration exemption as renumbered add clarification language to specifically provide that all published notices, scripts for broadcast or printed materials used when making a solicitation of interest must begin with the disclosures and information required in, and in the format of, the SOI Form. Such amendment language is intended to ensure that the important disclosures and information specified in the SOI Form are not "buried" in the middle or end of, or scattered throughout, the notices/scripts/printed materials.

SECTION 12. SEC 3.001 to SEC 3.19 are repealed:

ANALYSIS: Because 1995 Wisconsin Act 356, published June 6, 1996, repealed the "fair and equitable"/"merit review" authority in s. 551.28(1)(e), (f) and (i), Stats., for securities registration applications filed under s. 551.25 or 26, Stats., the specific merit review administrative rules in Chapter SEC 3 that are based on that statutory authority are repealed. Such repealed rules include not only those merit review rules developed separately by this agency

(such as in SEC 3.02 relating to offering price, in SEC 3.06 for preferred stock and debt securities, in SEC 3.08 regarding debt-to-equity capitalization, and in SEC 3.09 and 3.10 for open-end and closed-end investment companies), but also the numerous merit review rules (14 in total contained in Chapter SEC 3) based on North American Securities Administrators Association ("NASAA") Statements of Policy or Guidelines. Those NASAA policies relate to such merit review issues as selling expenses, options and warrants, promotional stock and promoters' investment, as well as to types of specific industry-oriented investment programs--real estate, oil and gas, cattle feeding, equipment leasing, REIT's and commodity pools.

Also repealed is the preamble rule section in SEC 3.001, adopted effective January 1, 1996, as part of this agency's 1995 rule revision which made the merit review rules in Chapter SEC 3 inapplicable for certain categories of registered securities offerings. Such preamble rule is no longer necessary because the repeal of merit review authority under 1995 Wisconsin Act 356 applies to all registration filings. Also repealed are the rules in SEC 3.04 and SEC 3.05 regarding impoundment of promotional stock because the statutory authority for such impoundment under s. 551.27(7), Stats., was repealed in 1995 Wisconsin Act 356. Related amendments are made to the prospectus-disclosure rule in SEC 3.23 in another SECTION to provide that for those securities registration filings that will be subject to agency disclosure review (either because they will not be the subject of a federal registration that receives full review by the U.S. Securities and Exchange Commission or because they will not be investment company prospectuses under federal Form N-1A or S-6), the disclosure-related aspects of the various NASAA Statements of Policy/Guidelines (as contrasted with the merit review requirements of those policies/guidelines) may be used by agency staff in its disclosure adequacy review.

SECTION 13. SEC 3.20 is repealed.

ANALYSIS: This rule is repealed as no longer necessary for the reason that with the repeal in a prior SECTION of the merit review provisions in SEC 3.01 to 3.19 referred to in sub. (1) of this rule, its remaining language merely restates the language

in s. 551.28(1), Stats., setting forth the division's general authority to deny, suspend or revoke a registration.

SECTION 14. SEC 3.21 to 3.28 are renumbered SEC 3.01 to 3.08, respectively.

ANALYSIS: This SECTION renumbers the remaining rules in Chapter SEC 3 (other than rule SEC 3.29 that is being repealed in a later SECTION) to reflect the repeal of ss. SEC 3.001 to 3.20 in the preceding two SECTIONS.

SECTION 15. SEC 3.03(3), as renumbered from SEC 3.23(3) in an earlier SECTION, is amended to read:

SEC 3.03(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements ~~of form S-1~~ under the securities act of 1933 that receives full review by the U.S. securities and exchange commission, ~~or a prospectus or offering circular relating to the debt or equity securities of an issuer that meets the requirements in s. SEC 3.001(1), (2) or (3)(a) or (b),~~ shall not be subject to disclosure adequacy review or comment by the ~~commissioner~~ division. A prospectus meeting the requirements of form N-1A or form S-6 and subsequent post-effective amendments as filed under the securities act of 1933, or the investment company act of 1940, or both, by a registration applicant or an existing ~~registrant that qualifies under s. SEC 3.09(7)(b) or s. SEC 3.001(4)~~ shall not be subject to disclosure adequacy review or comment by the ~~commissioner~~ division. If the offering is ~~being made for federal purposes~~ pursuant to use of either

Rule 504 of Regulation D under the securities act of 1933 or rule 147 under section 3(a)(11) of the securities act of 1933,-a-the form U-7 disclosure document-~~in-compliance-with~~ as adopted by the north american securities administrators association, inc.-~~form-U-7-is-an-acceptable-disclosure-format and-shall-be-subject-to-disclosure-adequacy-review-and comment-by-the-commissioner~~-may be used.

ANALYSIS: This SECTION does the following: (1) deletes the language added to this rule in the agency's 1995 rule revision referring to prospectuses for offerings specified under SEC 3.001 because SEC 3.001, together with the related merit review rules in SEC 3.01 to 3.19, are being repealed in an earlier SECTION; and (2) deletes the language in the second sentence of the rule referring to federal registration statement Form S-1 to thereby provide that any prospectus that receives full review by the U.S. Securities and Exchange Commission--irrespective of the "Form" used--will not be subject to disclosure review by the division; and (3) makes non-substantive language changes in the last sentence referring to the NASAA Form U-7 disclosure document which may be used for offerings made under Rule 504 or Rule 147 under the Securities Act of 1933.

SECTION 16. SEC 3.03(4) and (5), as renumbered from SEC 3.23(4) and (5) in a previous SECTION, are renumbered SEC 3.03(5) and (6).

ANALYSIS: This renumbering is necessary to make room for new rule SEC 3.03(4) created in the following SECTION that should follow SEC 3.03(3) in sequence.

SECTION 17. SEC 3.03(4) is created to read:

SEC 3.03(4) The disclosure-related provisions of the following guidelines or statements of policy of the north american securities administrators association or other state

securities organization listed, may be used by the division for purposes of reviewing the adequacy of disclosure in the prospectus filed with the registration application:

(a) The North American Securities Administrators Statement of Policy Regarding Selling Expenses and Selling Security Holders, as adopted effective September 14, 1989, and amended effective October 24, 1991.

(b) The North American Securities Administrators Association Statement of Policy Regarding Options and Warrants, as adopted effective October 24, 1992.

(c) The North American Securities Administrators Association Statement of Policy on Promotional Shares, adopted September 3, 1987.

(d) The North American Securities Administrators Association Statement of Policy Regarding Unequal Voting Rights, as adopted October 24, 1991.

(e) The North American Securities Administrators Association Statement of Policy regarding real estate programs, adopted April 15, 1980, as amended through August 27, 1990, including comments.

(f) The North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs, adopted September 22, 1976, as amended through April 27, 1984.

(g) The North American Securities Administrators Association Guidelines for the Registration of Publicly Offered Cattle Feeding Programs, adopted September 17, 1980.

(h) The North American Securities Administrators Association Guidelines for Offerings of Church Bonds, adopted October 1979.

(i) The North American Securities Administrators Association Health Care Facility Statement of Policy, adopted April 5, 1985.

(j) The Central Securities Administrators Council Statement of Policy on Finance Company Debt Securities, adopted August 12, 1976.

(k) The North American Securities Administrators Association Statement of Policy Regarding Affiliated Transactions, as adopted effective September 14, 1989, and amended effective October 24, 1991.

(l) The North American Securities Administrators Association Statement of Policy on Real Estate Investment Trusts, as adopted April 28, 1981, and amended through September 29, 1993.

(m) The North American Securities Administrators Association Statement of Policy on Registration of Commodity Pool Programs, adopted September 21, 1983, as amended effective August 30, 1990.

(n) The North American Securities Administrators Association Statement of Policy for Equipment Programs, adopted September 21, 1983, as amended April 22, 1988.

Note: All of the NASAA Guidelines are published in CCH NASAA Reports published by Commerce Clearing House and are

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

ANALYSIS: This SECTION creates a new rule which lists the NASAA Statements of Policy/Guidelines whose disclosure-related provisions can be used by the division when it conducts its disclosure adequacy review of prospectuses. No substantive, merit-review-related aspects of any such policy can be used because of the repeal of statutory merit review authority in 1995 Act 356 and the repeal of all of the NASAA policies in current rules SEC 3.01 to SEC 3.19 for merit review purposes in an earlier SECTION of this rule revision.

SECTION 18. SEC 3.08(1) as renumbered, is repealed, and SEC 3.08(2) is renumbered SEC 3.08.

ANALYSIS: This SECTION: (1) repeals the quarterly sales report filing requirement in sub. (1) of this rule for finance company registrants that are licensed under s. 138.09, Stats., because there is only one such current registrant; and (2) renumbers sub. (2) because it is the only other subsection of current section SEC 3.28.

SECTION 19. SEC 3.29 is repealed.

ANALYSIS: The current rule in SEC 3.29 (which specifies investor financial suitability standards for purposes of s. 551.28(7), Stats.) is repealed because that statutory section was repealed in 1995 Wisconsin Act 356.

SECTION 20. SEC 4.04(2) is amended to read:

SEC 4.04(2) Each broker-dealer shall file with the ~~commissioner~~ division a copy of ~~any~~ every complaint or equivalent pleading related to its business, transactions, or operations in this state, naming the broker-dealer or any of its partners, officers, or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint or

equivalent pleading is served on the broker-dealer, or the broker-dealer otherwise receives notice thereof; a copy of ~~any~~ every answer or reply thereto ~~filed by the broker-dealer~~ within 10 days of the date ~~such~~ it is filed; and a copy of ~~any~~ the decision, order, or sanction made with respect to ~~any~~ ~~such~~ the proceeding within 20 days of the date the decision, order, or sanction is rendered.

ANALYSIS: This SECTION revises the existing broker-dealer reporting requirement in SEC 4.04(2) that requires the filing with the division of copies of complaints in civil or criminal proceedings or in administrative or disciplinary proceedings by regulatory authorities involving the broker-dealer's Wisconsin activities. The various revisions do the following: (1) Technical language changes are made in the existing rule to add "or equivalent pleading" in two places because administrative/disciplinary proceedings by regulatory agencies can be commenced by Notices of Hearing or other pleadings that are not technically "complaints." (2) An additional language change adds the phrase "or the broker-dealer otherwise receives notice thereof" to clarify that the broker-dealer's responsibility to file copies with the division--as it relates to situations where the complaint or equivalent pleading names its officers, partners or sales agents only and does not name the broker-dealer itself--is only triggered if the broker-dealer receives notice thereof.

As a result of public comment letters received, the agency has withdrawn the proposed rule in SEC 4.04(2)(b) of the public comment draft of this SECTION which would have required broker-dealers to file with the division copies of arbitration claims or actions relating to the broker-dealer's Wisconsin activities. The division's determination to withdraw the rule was made based on recent developments for enhancing national disciplinary and complaint reporting made electronically--including regarding arbitration actions or proceedings--through the Central Registration Depository ("CRD") as jointly negotiated by the North American Securities

Administrators Association ("NASAA") and the National Association of Securities Dealers ("NASD").

Under the expanded reporting requirements of revised Question 22.I. for the CRD, broker-dealers will be required to report all pending arbitrations as well as arbitration awards against a broker-dealer or its partners or agents regardless of amount, and an anticipated feature of the CRD revisions/enhancements is an imaging capability that will enable state securities agency CRD users to "download" the underlying documentation relating to arbitration actions--including the statement of claim or equivalent pleading, and any award or other disposition. Such would obviate the need for a separate paper-document filing requirement. The division will make use of the enhanced CRD system and its additional electronic information capacities over the next 6 to 8 months and will revisit this issue in connection with the Division's annual rule revision next year.

SECTION 21. SEC 4.05(5) is amended to read:

SEC 4.05(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts ~~or~~ and agreements between the broker-dealer and the customer ~~and a copy of the customer information form prescribed under s. SEC 4.03(1)(k),~~ not later than 20 days after the customer's account is first established on the books and records of the broker-dealer. Each broker-dealer shall provide each customer with a conformed copy of the customer information form prescribed under s. SEC 4.03(1)(k) or an alternative document that contains at a minimum the customer's name, address, net worth, annual income, investment objectives and any other information affecting the agent's ability to make suitable recommendations, not later than 20 days after the customer's account is first established on the books and

records of the broker-dealer. Each contract or agreement and new account form for a customer whose account involves both an introducing broker and a clearing broker who provides services to the customer, shall contain or be accompanied by a disclosure of the identity and address of each broker-dealer. A copy of any material amendment to a customer's contract, agreement or customer information form shall be provided to the customer within 20 days from the date of the material amendment. In this subsection, a material amendment is presumed to exist, without limitation, in the event the broker-dealer receives from the customer and records on the customer information form, changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the agent's ability to make suitable recommendations for the customer as required under s. SEC 4.06(1)(c).

ANALYSIS: These amendments provide for separate-sentence treatment for the customer information form in this Rule of Conduct provision because of the creation of a permissible alternative to use of that form. With the increasing use of computer-generated and retained information, broker-dealers have approached the staff requesting "no action" relief to allow computer-generated documents to be used as an alternative rather than providing the traditional version of the new account form to customers. Some firms are beginning to enter this information directly into the computer without an initial hard copy. The staff recently issued an opinion that it would not object to use of a computer-generated customer information form that contained all of the information an agent would be expected to rely on in making a recommendation to a client. The amendment language provides regulatory flexibility that permits use of an alternative computer-generated document by broker-dealers so

long as it provides the same customer information contained in the "traditional" version of the form, and may be used with customers without the necessity for no-action relief by the division on a firm-by-firm basis.

SECTION 22. SEC 4.05(12) is created to read:

SEC 4.05(12) No broker-dealer or agent, in connection with a telephone or electronic solicitation, shall:

(a) Fail to provide both the caller's identity and the identity of the broker-dealer with whom the caller is affiliated, at the beginning of any telephone or electronic solicitation.

(b) Telephone any person in this state between the hours of 9:00 PM and 8:00 AM local time at the called person's location without that individual's prior consent.

(c) Telephone or electronically solicit any person in this state after that individual has requested that he or she not be telephoned.

(d) Make repeated telephone or electronic solicitations in an annoying, abusive or harassing manner, either individually or in concert with others.

(e) Use threats, intimidation or obscene language in connection with securities recommendations, transactions or other brokerage account activities.

ANALYSIS: In August, 1995, the Federal Trade Commission ("FTC") proposed rules regarding the prohibition of deceptive and abusive telemarketing as required by the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Act"). The proposed rules in sub. (12)(a) to (e) parallel the rules in the FTC proposals and would address abusive telemarketing practices separately reported by Wisconsin investors who have contacted the

division staff about their own experiences. Such abusive practices covered include: (i) failing to immediately provide the identity of the caller and the caller's employer [par. (a)]; (ii) telephoning between the hours of 9:00 p.m. and 8:00 a.m. [par. (b)]; (iii) telephoning or electronically soliciting any person on the "do not call" list [par. (c)]; (iv) making repeated or harassing telephone or electronic solicitations [par. (d)]; and (v) using threats, intimidation or obscene language [par. (e)].

In a revision to this SECTION as a result of a comment letter received, these proposed rules were moved from the "Prohibited Business Practices" section SEC 4.06 of the Code to the Rules of Conduct section in SEC 4.05--which category corresponds with the NASDR's designation of their equivalent telemarketing rules as "Business Conduct" rules. Violation of any Rule of Conduct provision under SEC 4.05 would still provide a basis for this agency taking administrative action against the license of a broker-dealer or agent.

The Act specifically provided that the U.S. Securities & Exchange Commission ("SEC") could make its own rules regarding telemarketing practices. Securities self-regulatory organizations, including the National Association of Securities Dealers Regulation Inc. ("NASDR") and the New York Stock Exchange have moved toward creating their own rules, and the NASDR has filed for approval proposed rules with the U.S. Securities and Exchange Commission corresponding to pars. (a) to (c) of this SECTION.

SECTION 23. SEC 4.06(1)(c) is renumbered SEC 4.06(1)(c)1, and SEC 4.06(1)(c)2 is created to read:

SEC 4.06(1)(c)2. For purposes of making purchase recommendations to a customer with respect to direct participation program securities, the following investor financial income and net worth suitability standards do not preclude the use of any other information, including without limitation the criteria in subd. (1)(c)1., to establish suitability or lack of suitability in specific instances:

a. The customer has an annual gross income of at least $45,000 and a net worth of at least $45,000 exclusive of the customer's principal residence and its furnishings and personal use automobiles; or

b. The customer has a net worth of at least $150,000, exclusive of the customer's principal residence and its furnishings and personal use automobiles.

ANALYSIS: This SECTION creates a separate subsection of the broker-dealer prohibited business practice rule in SEC 4.06(1)(c) regarding customer suitability for purposes of the purchase of direct participation securities (such as limited partnership interests that typically are illiquid and have no trading market). As structured, the rule allows the investor financial income and net worth standards specified in the subsection to be looked to in establishing overall customer suitability for the transaction, but does not preclude the use of any other information to establish suitability, or lack thereof, in specific instances. The standards specified in the rule (annual income of $45,000 and net worth of $45,000, or alternatively a $150,000 net worth) are derived from those standards contained in current rule SEC 3.29 which, in turn, are based on various NASAA Registration Guidelines (for Real Estate Programs, Oil and Gas Programs and others) which contain the same $45,000/$45,000/$150,000 investor financial suitability standards.

As a result of a Legislative Council Rules Clearinghouse comment in Section 5a. of its Report relating to the agency's proposed rules, a cross-reference was added in the introductory portion of this rule to the administrative code provision in SEC 4.06(1)(c)1. which sets forth other customer suitability standards.

SECTION 24. SEC 4.06(1)(s) and (t) are amended to read:

SEC 4.06(1)(s) Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not

licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8)(a) to (f), Stats.;

(t) Recommending to a customer that the customer engage the services of an investment adviser, broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8)(a) to (f), Stats.

ANALYSIS: These rule amendments are necessary to correspond to identical statutory changes made to secs. 551.31(1m) and (3) in recently-enacted 1995 Wisconsin Act 356 in which special licensing considerations for broker-dealers, agents and investment advisers dealing with so-called "institutional investors" was limited to persons/accounts specified in paragraphs (a) to (f) in s. 551.23(8), Stats., (thus excluding "individual accredited investors" listed in 551.23(8)(g)).

SECTION 25. SEC 4.06(1)(u) is amended to read:

SEC 4.06(1)(u) Failing to accurately describe or disclose in advertising or other materials used in connection with the ~~promoting~~-promotion or ~~transacting~~-transaction of securities business in this state, the identity of the broker-dealer or the issuer. For purposes of this paragraph, "other materials" includes, but is not limited to, business cards, business stationery and display signs.

ANALYSIS: These amendments make technical language changes to make the terminology in this rule consistent with the language in existing rule SEC 4.06(2)(g).

SECTION 26. SEC 4.06(2)(a) is amended to read:

SEC 4.06(2)(a) Borrowing money or securities from, or lending money or securities to, a customer of the agent or the broker-dealer that employs the agent unless that customer is a financial institution or institutional investor designated in s. 551.23(8)(a) to (f), Stats.~~, or s. SEC 2.02(4)~~.

ANALYSIS: See the ANALYSIS to the SECTION amending SEC 4.06(1)(s) and (t).

SECTION 27. SEC 4.10(1)(d) and (2) are amended to read:

SEC 4.10(1)(d) In connection with purchases of securities from or through broker-dealers, discloses to the broker-dealer whether the purchase is for its own account, or for the account of a customer for whom it is acting as trustee, or for the account of a customer for whom it is acting as agent and whether the customer is a person specified under s. 551.23(8)(a) to (f), Stats.

(2) The bank, savings institution, or trust company shall make, keep current and preserve for a period of not less than 3 years, adequate records of purchases and sales of securities by it as agent for its customers, including copies of its own confirmations delivered to its customers and copies of confirmations received from broker-dealers in connection with the transactions and records confirming any customer is a person specified under s. 551.23(8)(a) to (f), Stats.

ANALYSIS: See the ANALYSIS to the SECTION amending SEC 4.06(1)(s) and (t).

SECTION 28. SEC 5.05(2)(a) and (3) are amended to read:

SEC 5.05(2)(a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of a client other than a person specified in s. 551.23(8)(a) to (f), Stats.~~, or by rule thereunder~~.

(3) Subsection (2)(a) shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in sub. (2)(b) includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. As used in sub. (2), "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than persons specified under s. 551.23(8)(a) to (f), Stats.

ANALYSIS: See the ANALYSIS to the SECTION amending SEC 4.06(1)(s) and (t).

SECTION 29. SEC 5.05(10) and (11) are created to read:

SEC 5.05(10) No investment adviser may associate with a bank, savings institution, trust company, savings and loan association or credit union by contract, agreement or other means for the purpose of that entity publishing or circulating advertising promoting the services offered by the investment adviser or assisting or providing information to persons to establish an advisory relationship with the investment adviser unless the promotional functions are performed by persons qualified as representatives of the investment adviser.

(11) Each investment adviser which by contract, agreement or other means provides investment advisory services on the premises of a financial institution that is not licensed as an investment adviser shall:

(a) Perform the investment advisory services within a specific area on the premises of the financial institution designated by agreement between the investment adviser and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the investment advisory services;

(b) Prominently display the identity of the licensed investment adviser in the area on the premises of the financial institution designated under par. (a);

(c) Disclose the identity of the licensed investment adviser in, without limitation because of enumeration, all advertising, correspondence, business cards, promotional materials and records relating to the investment adviser's services provided on the premises of the financial institution. Materials described in this paragraph may not display the financial institution's name or logotype in a manner that would mislead customers as to the financial institution's role in connection with the investment advisory services being offered by the investment adviser. For purposes of this paragraph, if the investment adviser's name is no less prominent in the materials than the name of the financial institution in the size, style or color of type or in the placement or by use of logotypes, the materials are presumed to be not misleading.

(d) Establish written supervisory procedures and a system for applying the procedures. The procedures shall comply with s. SEC 5.05(1) and shall be designed to accomplish certain supervisory functions, including but not limited to the following:

1. Prevention and detection of violations of ch. 551, Stats., and any applicable rules and orders under ch. 551, Stats.

2. Establishment of a system under which the investment adviser approves, prior to use, copies of all advertising used by the financial institution relating to the investment advisory services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.41 and 551.53, Stats.; and

3. Establishment of a system that ensures that all books and records required by rule or order under ch. 551, Stats., are properly maintained, and that precludes the investment adviser from taking or having custody of customer funds or securities as prohibited under s. 551.44, Stats.

(e) Disclose in writing prior to or at the time of entering into each investment advisory agreement that the investment advisory services are provided by the investment adviser and not by the financial institution, that non-deposit investment products are not guaranteed by the financial institution, are not deposits or other obligations of the financial institution, are not subject to any federal deposit insurance protection and involve risk, including possible loss of principal.

ANALYSIS: These proposed investment adviser rules are prompted by recent license application filings by a number of investment advisers who propose to conduct their regular advisory business on the premises of financial institutions in this state. As was the case a number of years ago when broker-dealers began transacting business on the premises of financial institutions, the staff sees this as a growing trend warranting rules for investment advisers for the protection of Wisconsin advisory clients that are equivalent to the rules in SEC 4.05(8) and (9) applicable to broker-dealers providing services on the premises of financial

institutions. In similar fashion to the broker-dealer rules, the purpose of these investment advisor rules is to ensure that actual or prospective advisory clients are not confused or misled to think that because the advisory activities may be conducted on the premises of the financial institution that the services themselves are provided by the financial institution rather than the investment adviser. Accordingly, rules paralleling the equivalent broker-dealer rules provide that: (1) all advertising and account-opening activities are performed by representatives of the investment adviser, not the financial institution [SEC 5.05(10)]; (2) the advisory services are to be performed within a specified area, and the identity of the investment adviser shall be prominently displayed [SEC 5.05(11)(a) and (b)]; (3) advertising, signage, business cards and correspondence of the investment adviser may not display the financial institution's name or logotype in a manner that would mislead customers [(11)(c)]; (4) specific supervisory procedures must be in place [(11)(d)]; and that (5) written disclosure be given to each customer that the advisory services are provided by the investment adviser and not by the financial institution [(11)(e)].

As a result of a Legislative Council Rules Clearinghouse comment in Section 5b. of its Report relating to the agency's proposed rules, the following clarification language is added to the ANALYSIS for this SECTION--namely, that while compliance with the rules in SEC 5.05(11) in this SECTION is the obligation only of the licensed investment adviser and not the financial institution, the rules [particularly in pars. (a), (c) and (e)] do set forth what can and cannot be done in the context of the business relationship in certain respects between the licensee and the financial institution. Thus the agency will look to the investment adviser licensee to convey to the financial institution the requirements of the rules and the licensee's obligations thereunder, to ensure that the requirements are met.

SECTION 30. SEC 5.05(12) is created to read:

SEC 5.05(12) No investment adviser, in connection with a telephone or electronic solicitation, shall:

(a) Fail to provide both the caller's identity and the identity of the investment adviser with whom the caller is affiliated, at the beginning of any telephone or electronic solicitation.

(b) Telephone any person in this state between the hours of 9:00 PM and 8:00 AM local time at the called person's location without the individual's prior consent.

(c) Telephone or electronically solicit any person in this state after that individual has requested that they not be telephoned.

(d) Make repeated telephone or electronic solicitations in an annoying, abusive or harassing manner, either individually or in concert with others.

(e) Use threats, intimidation or obscene language in connection with securities recommendations, transactions or other investment advisory activities.

ANALYSIS: This SECTION establishes equivalent rules under the Rules of Conduct provisions of the investment adviser Chapter as are proposed in a preceding SECTION for broker-dealers for purposes of addressing abusive telemarketing practices specified in FTC rules under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994. For details, see the ANALYSIS for the rules under SEC 4.05(12).

In an equivalent revision to this SECTION to that made to the corresponding rules in SEC 4.05(12) for broker-dealers in a preceding SECTION, the rules were moved from the "Prohibited Business Practices" section SEC 5.06 to the "Rules of Conduct" section in SEC 5.05.

SECTION 31. SEC 5.06(9) and (10) are amended to read:

SEC 5.06(9) Placing an order for a customer, or recommending that the customer place an order, to purchase or sell a security through a broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8)(a) to (f), Stats.

(10) Recommending to a customer that the customer engage the services of a broker-dealer, agent or investment adviser not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8)(a) to (f), Stats.

ANALYSIS: See the ANALYSIS to the SECTION amending SEC 4.06(1)(s) and (t).

SECTION 32. SEC 7.06(2) is amended to read:

SEC 7.06(2) Financial statements meeting the requirements of regulation S-X are deemed to satisfy the requirements of sub. (1)~~,-and-financial-statements-in-registration-statements-for-an-issuer-that-meets-the-requirements-in-s.-SEC-3.001(1),-(2)-or-(3)(a)-or-(b)-shall-not-be-subject-to-disclosure-adequacy-review-or-comment-by-the-commissioner~~.

ANALYSIS: This SECTION deletes the language added to this rule in the agency's 1995 rule revision cross-referencing subsections of SEC 3.001 because SEC 3.001, together with the related merit review rules in SEC 3.01 to 3.19, are being repealed in an earlier SECTION.

SECTION 33. SEC 9.01(1)(a)4 is repealed.

ANALYSIS: The repeal of this subdivision of the Forms Chapter of the securities law rules deletes the reference to the RS-FC form (for finance company sales reports) because the quarterly filing requirement in current rule SEC 3.28(1) for finance company registrants is repealed in a previous SECTION.

SECTION 34. SEC 9.01(1)(a)5 is renumbered SEC 9.01(1)(a)4.

ANALYSIS: This renumbering is necessary to continue uninterrupted the numbering sequence of the remaining subdivisions in SEC 9.01(1)(a) following the repeal of current SEC 9.01(1)(a)4 in the preceding SECTION.

SECTION 35. SEC 31.01(1) and (4) are repealed.

ANALYSIS: These rule subsections (which contain definitions for purposes of use of the franchise registration exemption formerly contained in s. 553.22, Stats.) are repealed because the exemption in s. 553.22, Stats., was repealed as part of the changes made to the Wisconsin Franchise Investment Law in 1995 Act 364, effective July 1, 1996. Several other franchise rule provisions in Chapters SEC 32, 33, 34 and 35 are repealed or amended in following SECTIONS where they contain a cross-reference to s. 553.22, Stats.

SECTION 36. SEC 31.01(2) and (3) and (5) to (9) are renumbered (1) and (2) and (4) to (8), respectively.

ANALYSIS: This renumbering is necessary to provide for sequential numbering of remaining subsections as a result of the repeal of SEC 31.01(1) and (4) in the preceding SECTION.

SECTION 37. SEC 32.01 is repealed.

ANALYSIS: This rule (which prescribes the information to be included with a filing for a "notice of exemption" under the franchise law) is repealed because: (1) the changes to the Wisconsin Franchise Law in 1995 Wisconsin Act 364 repealed the only statutory "exemption notice" provision (in s. 553.22, Stats.); and (2) the only "exemption notice" provision in the franchise rules (in SEC 32.05(1)(c)) is being repealed in a later SECTION of this rule revision.

SECTION 38. SEC 32.03 is amended to read:

SEC 32.03 MATERIAL EVENTS OR MATERIAL CHANGES AFFECTING EXEMPTED FRANCHISORS AND THEIR FRANCHISES. Franchisors whose franchises are exempted under s.~~553.22 or~~ 553.25, Stats.,

shall be required, as a condition of maintenance of the exemption, to notify the ~~commissioner~~ division in writing within 30 days after the happening of any material event or material change within the meaning of s. SEC 31.01~~(3)~~ (2), affecting the exempted franchises or the franchisor.

ANALYSIS: See the ANALYSIS to the SECTION repealing SEC 31.01(1) and (4).

SECTION 39. SEC 32.05(1)(c) is repealed.

ANALYSIS: This rule (which provides a parallel franchise registration exemption to the one formerly in s. 553.22, Stats., except that it is based on guarantees of performance by the parent corporation of the franchisor) is repealed because the statutory exemption in s. 553.22 was repealed as part of 1995 Wisconsin Act 364.

SECTION 40. SEC 32.05(1)(d) to (h) are renumbered SEC 32.05(1)(c) to (g).

ANALYSIS: This renumbering is necessary to provide for sequential numbering as a result of the repeal of SEC 32.05(1)(c) in the preceding SECTION.

SECTION 41. SEC 32.05(1)(i) is repealed.

ANALYSIS: This SECTION repeals the registration exemption rule in SEC 32.05(1)(i) (which had been necessary prior to the franchise law changes made by 1995 Wisconsin Act 364) enabling franchise registrants to make offers and sales during the 15-day period when an application to amend the registration was pending and subject to review under current rule SEC 32.07(2). Because the registration amendment procedure in SEC 32.07 is being revised in a following SECTION to provide for an effectiveness-upon-agency-receipt-of-filing/no review procedure equivalent to that provided for initial franchise registrations under new s. 553.26(3), Stats., as a result of 1995 Wisconsin Act 364, there is no need for the exemption in this rule because there no longer will be any time period during which an amendment filing is "pending."

SECTION 42. SEC 32.05(2) is repealed.

ANALYSIS: This franchise exemption-related rule (which references the authority provided to the Division in s. 553.28(1)) is repealed because that statutory section was amended in 1995 Wisconsin Act 364 to be applicable only in registration contexts.

SECTION 43. SEC 32.06(1) is renumbered SEC 32.06 and amended to read:

SEC 32.06 FORM OF ~~APPLICATION~~ REGISTRATION BY NOTIFICATION. ~~All applications for registration of an offer to sell or sale of~~ A notification to register a franchise, ~~all registration renewal statements and all applications to amend the registration statement~~ shall be filed ~~upon~~ using the cover page of the uniform franchise registration application adopted ~~in September, 1975 by the Midwest Securities Commissioners Association and adopted in April, 1980~~ on April 25, 1993 by the north american securities administrators association and containing the information and accompanied by the fee required in s. 553.26(1), Stats.

ANALYSIS: These amendments do the following: (1) change the terminology in the rule from "application" to "notification" to correspond with the statutory changes to terminology in s. 553.26, Stats., made by 1995 Wisconsin Act 364; (2) delete the references to registration of the "offer" and "sale" of a franchise because the franchise law amendments in 1995 Wisconsin Act 364 to the registration requirement in s. 553.21, Stats., provide that it is the franchise that is registered; (3) delete the reference to the franchise registration renewal process which was repealed in 1995 Wisconsin Act 364; (4) delete the reference in this rule to applications to amend a franchise registration statement because the amendment process is specifically covered by the recreated rule in SEC 32.07 in a following SECTION; (5) specify that the Form to be used for filing a franchise registration under s. 553.26(1), Stats., as amended by 1995 Wisconsin Act 364, is the cover page of the Uniform Franchise Registration Form which need contain only the information listed in

that statutory section (the name of the franchisor or subfranchisor, the name(s) under which they intend to do business, and their principal business address); (6) delete as unnecessary the language referring to the Midwest Securities Commissioner's Association which has only historical significance; (7) revise the date referring to the NASAA UFOC to correspond to the most recently amended version which was adopted by the NASAA membership, including Wisconsin, on April 25, 1993; and (8) renumber sub. (1) because the remaining subs. (2) and (3) of SEC 32.06 are repealed in the following SECTION.

SECTION 44. SEC 32.06(2) and (3) are repealed.

ANALYSIS: This SECTION does the following: (1) repeals sub. (2) (which refers to the NASAA Guidelines for Preparation of the Uniform Franchise Offering Circular) as no longer necessary because 1995 Wisconsin Act 364 references in s. 553.27(4), Stats., that the franchise offering circular may be in the form permitted under 16 CRD 436--and under that Federal Trade Commission regulation, the only form of franchise disclosure document that can be used after 1996 is the NASAA UFOC; and (2) repeals sub. (3) (which establishes a specific disclosure requirement if a franchise registrant's franchise contract or agreement is superseded by provisions of the Wisconsin Fair Dealership Law) because 1995 Wisconsin Act 364 provides in s. 553.27(4), Stats., that the disclosure document be as specified therein, thus precluding separate rule-mandated disclosure items not part of the specified disclosure documents.

SECTION 45. SEC 32.07 is repealed and recreated to read:

SEC 32.07 AMENDMENT TO REGISTRATION STATEMENT. (1) An application to amend a registration statement shall be filed using the cover page of the uniform franchise registration application adopted on April 25, 1993 by the north american securities administrators association containing the information required in s. 553.26(1), Stats., and shall be accompanied by a copy of the amended offering circular and the $200 filing fee prescribed in SEC 35.01(1).

(2) The amendment is effective upon receipt by the division of the materials and fee required under sub. (1).

ANALYSIS: This rule section which currently contains three subsections (relating to renewal and amendment of franchise registration statements) is repealed and recreated to do the following: (1) Repeal the current rule in sub. (1) setting forth the information and filing requirements for renewals because the statutory renewal process was repealed in 1995 Wisconsin Act 364. (2) Recreate the procedural rule for filing amendments in existing sub. (2) because the statutory amendment process in s. 551.31, Stats., is retained under 1995 Wisconsin Act 364. The recreated rule in sub. (1) uses equivalent language to that contained in amended SEC 32.06(1) to specify the form to be used for filing the amendment as well as requiring the amended offering circular and prescribed fee to be included with the form. This recreated rule for franchise amendments contains language in sub. (2) equivalent to that in new statutory section s. 553.26(3), Stats., applicable to initial franchise registration filings to provide that the amendment filing becomes effective upon receipt by the division of the required materials and fee. The rationale for such equivalent treatment is that where the initial registration filing becomes effective upon receipt of the application materials by the division, the amendment process should not be any different, and noting that the language in s. 553.31(2), Stats., gives the division the authority to provide for effectiveness of amendments as "the division determines." The existing rule in sub. (3) of SEC 32.07 is repealed because the extension-by-order procedure set forth therein is no longer necessary.

SECTION 46. SEC 32.08, 32.09, 32.10 and 32.11 are repealed.

ANALYSIS: These repeals are necessary as a result of provisions in 1995 Wisconsin Act 364 in the following respects: (1) the Act precludes the requirement in SEC 32.08 relating to filing periodic reports by registrants; (2) the Act repealed the registration review process thus warranting repeal of SEC 32.09 relating to procedures for staff requests for supplemental information in the registration process; (3) under the Act there is no longer a review process for

amendments filed by registrants, such that SEC 32.10 relating to filing "red-lined" amended pages to facilitate staff review is unnecessary; (4) the franchise registration provisions of the Act supersede the "signing of applications" rule in SEC 32.11.

SECTION 47. SEC 32.12(1), (3) and (5) are repealed, and SEC 32.12(2) and (4) are renumbered SEC 32.08(1) and (2) and amended to read:

SEC 32.08 ESCROW OF FRANCHISE FEES AND OTHER CONSIDERATION. (1) When an escrow ~~condition~~ is imposed ~~under sub. (1)~~ pursuant to s. 553.27(2), Stats., 100% of franchise fees and all other funds paid by the ~~franchisees or subfranchisors~~ franchisee or subfranchisor for any purpose shall, within 48 hours of the receipt of the funds, be placed with the ~~depositary until the commissioner takes further action pursuant to~~ escrow agent selected under sub. ~~(1)~~ (2). All checks shall be made payable to the ~~depositary~~ escrow agent.

(2) Funds subject to an escrow ~~condition~~ imposed ~~under sub. (1)~~ pursuant to s. 553.27(2), Stats., shall be placed in a separate trust account with a national bank located in Wisconsin ~~or~~, a Wisconsin bank or trust company, or any federally insured bank satisfactory to the division. A written consent of the ~~depositary~~ escrow agent to act in such capacity shall be filed with the ~~commissioner~~ division.

ANALYSIS: This SECTION revises the franchise fee escrow rule in current SEC 32.12 in the following respects: (1) repeals current sub. (1) as unnecessary because it merely restates the language of the statutory escrow provision in s. 553.27(2), Stats., which as amended by 1995 Wisconsin Act 364 necessitates both that the

franchisee purchasing the franchise requests the escrow, and that the division must make the findings set forth in s. 553.27(2), Stats.; (2) repeals sub. (3) of the current rule providing use of consecutively numbered receipts as unnecessary; (3) repeals as unnecessary sub. (5) of the current rule which refers to "such other information as the commissioner may require"; (4) renumbers SEC 32.12 to be SEC 32.08 for the purpose of maintaining sequential numbering following the repeal of SEC 32.08 to SEC 32.11 in the preceding SECTION; (5) amends the two subsections retained [current subs. (2) and (4), renumbered as (1) and (2)] by cross-referencing to the statutory escrow provision in s. 553.27(2), Stats., rather than to sub. (1) of the current rule; (6) amends each of the two retained rule subsections in renumbered (1) and (2) by deleting the term "condition" contained in the phrase "an escrow condition" because under revised s. 553.27(2), Stats., an escrow no longer can be a condition of registration of a franchise; and (7) amends each of the two retained rule subsections in renumbered (1) and (2) by substituting therein the more appropriate term "escrow agent" for "depositary."

As a result of public comment letters received, a clause has been added at the end of the first sentence of sub. (2) that expands the list of financial institutions that can act as an escrow agent under the rule. Under the added language, in addition to a Wisconsin-based bank or trust company, "any federally insured bank [in any state] satisfactory to the division" can be used. This modification will remedy the concern expressed by commentators that it is very difficult for out-of-state/non-Wisconsin based franchisors to get a bank in Wisconsin--with whom it has no prior banking relationship--to agree to establish an escrow account.

SECTION 48. SEC 32.13 is renumbered SEC 32.09 and is amended to read:

SEC 32.09 SURETY BOND IN LIEU OF ESCROW. In lieu of the imposition of an escrow condition under s. 553.27(2), Stats., and s. SEC ~~32.12~~ 32.08, a franchisor may post a surety bond in ~~such~~ an amount as shall be required by the ~~commissioner~~ division. The bond shall be issued by a corporate surety authorized to transact business in the state of Wisconsin, conditioned upon the completion by the franchisor of its

obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

ANALYSIS: The renumbering of, and the change to the citation cross-referenced in, this rule reflect action taken in prior SECTIONS to repeal ss. SEC 32.08 to SEC 32.11, and the renumbering of rule SEC 32.12 to become SEC 32.08.

SECTION 49. Chapter SEC 33 is repealed.

ANALYSIS: This SECTION repeals Chapter SEC 33 (which deals with denial, suspension or revocation of exemptions or registrations) because of the effect of 1995 Wisconsin Act 364 in the following respects: (1) because under the Act a franchise registration involves a no review/file-and-go process, the two subsections under SEC 33.01 relating to applications not completed within one year from the date of filing are unnecessary; (2) because the Act specifies in s. 553.28, Stats., the bases for revoking a franchise registration, the rules in SEC 33.02 and 33.03 relating to violations of specified federal and state laws affecting franchise operations are inapposite and unnecessary.

SECTION 50. SEC 34.01 is amended to read:

SEC 34.01 APPLICATION OF PROCEEDS. A seller of franchises exempt from registration under s. ~~553.22,~~ 553.23 or 553.25, Stats., or registered under s. 553.21, Stats., or any person who is an officer, director or controlling person of the seller is deemed to employ a "fraudulent and prohibited practice" within the meaning of s. 553.41, Stats., and a "false, fraudulent and deceptive practice" within the meaning of s. 553.58(1), Stats., if the person applies or authorizes or causes to be applied any material part of the proceeds from the sale of the franchises in any material way contrary to the purpose specified in advertising or oral

representations utilized in connection with the offer to sell or sale of the franchise or in the prospectus required to be utilized in connection with the offer to sell or sale of franchises registered under s. 553.21, Stats., and, in any event, for a purpose not reasonably related to the business of the franchisor, as described in the advertising, oral representations, prospectus or any contract related to the offer or sale of the franchise.

ANALYSIS: See the ANALYSIS to the SECTION repealing SEC 31.01(1) and (4).

SECTION 51. SEC 35.01(1)(b), (e), (f) and (h) are repealed.

ANALYSIS: These repeals to various fee-related rules are necessary as a result of enactment of 1995 Wisconsin Act 364 in the following respects: (1) because all notice-filing registration exemptions under the franchise law have been repealed, either by 1995 Wisconsin Act 364 or as part of this rule revision (as a result of the repeal of SEC 32.05(1)(c) in an earlier SECTION), the fee in sub. (1)(b) of this rule applicable to notice registration exemption filings is repealed; (2) the filing with the Division under s. 553.51(4), Stats., of a copy of a notice sent to a franchisee disclosing a violation of Ch. 553 is no longer subject to an "approval as to form" process by this Division, thus warranting the repeal of the $200 review fee in SEC 35.01(1)(e) for such notices; (3) because the Act repealed the registration renewal process, the fee in SEC 35.01(1)(f) is being repealed; (4) because the Act repealed the franchise registration exemption in s. 553.22, the related fee provision in SEC 35.01(1)(h) is being repealed.

SECTION 52. SEC 35.01(1)(c), (d) and (g) are renumbered 35.01(1)(b), (c) and (d), respectively.

ANALYSIS: This renumbering is necessary to provide for sequential numbering of remaining paragraphs as a result of the repeal of SEC 35.01(1)(b), (e), (f) and (h) in the preceding SECTION.

SECTION 53. SEC 35.01(2) is repealed and recreated to read:

SEC 35.01(2) Preparation of computer-generated lists:

(a) Preparation of a list from agency computer database .....$25 per 75 pages of printed report.

(b) Creation of a computer program for the purpose of preparing a report.....$20.

ANALYSIS: Because 1995 Wisconsin Act 364 repealed the franchise advertising filing and review provisions in s. 553.53, Stats., the related fee rule in SEC 35.01(2) is being repealed. This new fee rule on a different subject is being created as sub. (2) concerning writing programs and printing reports of franchise-related information from the Division's computer databases. These franchise law fee rules on this subject correspond to identical fee rules in SEC 7.01(9)(a) and (b) relating to the Division's securities law-related information in our computer databases.

SECTION 54. SEC 35.01(5) is repealed.

ANALYSIS: This SECTION repeals the delinquent filing fee rule in SEC 35.01(5) because there will no longer be any notice exemption filings requiring annual materials for purposes of par. (a) of the rule, and there will not be any examinations of filings under Chapters 32 or 33 for purposes of par. (b) of the rule.

SECTION 55. SEC 35.01(6) is renumbered SEC 35.01(5).

ANALYSIS: This renumbering is necessary to continue the numbering sequence of the subsections of SEC 35.01 resulting from the repeal of SEC 35.01(5) in the preceding SECTION.

SECTION 56. SEC 35.02 is repealed.

ANALYSIS: This rule (which specifies certain exclusions from the franchise advertising filing requirement in s. 553.53, Stats.) is repealed because that statutory advertising filing requirement was repealed in 1995 Wisconsin Act 364.

SECTION 57. SEC 35.05 is repealed.

ANALYSIS: This rule (which contains substantive requirements for the financial statements for franchise filings made under Chapter 553, Stats.) is being repealed as a result of 1995 Wisconsin Act 364 which precludes substantive review by the Division of franchise registration filings.

SECTION 58. Chapter SEC 37 is repealed:

ANALYSIS: This SECTION repeals the franchise rule Chapter SEC 37 relating to Forms for the reasons that: (1) because the form for filing a franchise registration or amendment application is prescribed in earlier SECTIONS amending SEC 32.06 and 32.07, respectively, to be the cover page only of the Uniform Franchise Registration Application, the reference in par. (1)(a) of this rule to the entire Application form is unnecessary and misleading; (2) the Uniform Consent to Service of Process is a "uniform" form available from numerous alternative sources; and (3) there are no "other" applications or notices for filing that can be made under Chapter 553, such that the discussion in sub. (2) of the rule about including information specified by statute or rule is inapplicable.

* * * * *

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

DATED this 11th day of November, 1996.

[SEAL]

PATRICIA D. STRUCK
Administrator
Division of Securities

REPORT PREPARED BY THE
DIVISION OF SECURITIES, DEPARTMENT OF FINANCIAL INSTITUTIONS
RELATING TO FINAL FORM OF AMENDMENTS TO
THE RULES OF THE DIVISION OF SECURITIES

(a) Statement Explaining Need for Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the Rules of the Division of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, and Chapter 553, Wis. Stats., the Wisconsin Franchise Investment Law.

The agency's annual rule revision process is conducted for the following purposes: (1) making changes to simplify and streamline the process by which securities and franchise issuers register offerings of their securities and franchises; (2) developing new securities registration exemptions or making modifications to existing securities registration exemptions to reflect new legal and interpretive issues under the federal and state securities laws; (3) adopting new rules or amending existing rules, relating to the securities broker-dealer, agent and investment adviser licensing requirements, procedures and sales practices to effectively regulate new licensing developments that have occurred in the securities industry and marketplace that require regulatory treatment; (4) making clarifications to any current securities or franchise rule provisions where language is vague or ambiguous.

The agency annual rule revision for 1996 is particularly important in view of recent major legislative changes to the Wisconsin Uniform Securities Law and the Wisconsin Franchise Investment Law as administered by this agency.

In legislation signed by the Governor as 1995 Wisconsin Act 356 and published on June 6, 1996, major revisions were made to the securities regulatory review and registration process conducted by the agency for the offer and sale of securities in Wisconsin. The legislation repealed the provisions in the Wisconsin Uniform Securities Law that provide the statutory authority to conduct a "merit review" of a securities registration offering. In particular, the legislation removed the ability of the agency to issue a stop order relating to a pending registration statement for a securities offering on the grounds that the issuance of the securities would be "unfair or inequitable" (the statutory basis for most of the specific "merit"/"fair and equitable" registration rules contained in Chapter SEC 3, Wis. Adm. Code). In view of the recently enacted securities law legislation, substantive repeals and modifications are being made to many rule provisions, particularly in Chapter SEC 3.

In additional recent legislation signed by Governor as 1995 Wisconsin Act 364 to become effective July 1, 1996, the current franchise registration process--which involves a disclosure adequacy review by the staff--is replaced with a registration-by-notification/no-staff-review filing process.

Because of the extensive changes made by the legislation to both the substantive and procedural requirements of the franchise law, extensive corresponding changes are being made to the current franchise rules in the various substantive and procedural areas.

The agency's 1996 rule revision contains 58 separate SECTIONS that make changes to: securities registration exemptions, securities registration procedures, substantive registration standards and disclosure requirements, securities broker-dealer, securities agent and securities investment adviser licensing requirements and procedures, franchise definitions, franchise registration exemptions, franchise registration procedures, substantive registration and disclosure requirements, franchise registration or exemption revocations and fraudulent practices, franchise fee-related provisions and franchise forms.

Each SECTION in the attached Final Order 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

-- As a result of public comment letters received, the agency has withdrawn the proposed rule in SEC 4.04(2)(b) in SECTION 18 of the public comment draft which would have required broker-dealers to file with the division copies of arbitration claims or actions relating to the broker-dealer's Wisconsin activities. The division's determination to withdraw the rule was made based on recent developments for enhancing national disciplinary and complaint reporting made electronically--including regarding arbitration actions or proceedings--through the Central Registration Depository ("CRD") as jointly negotiated by the North American Securities Administrators Association ("NASAA") and the National Association of Securities Dealers ("NASD").

Under the expanded reporting requirements of revised Question 22.I. for the CRD, broker-dealers will be required to report all pending arbitrations as well as arbitration awards against a broker-dealer or its partners or agents regardless of amount, and an anticipated feature of the CRD revisions/enhancements is an imaging capability that will enable state securities agency CRD users to "download" the underlying documentation relating to arbitration actions--including the statement of claim or equivalent pleading, and any award or other disposition. Such would obviate the need for a separate paper-document filing requirement. The division will make use of the enhanced CRD system and its additional electronic information capacities over the next 6 to 8 months and will revisit this issue in connection with the Division's annual rule revision next year.

-- As a result of a comment letter received, the proposed rules in SECTION 22 of the proposed final rules relating to abusive telemarketing activities by broker-dealers and agents were moved from the "Prohibited Business Practices" section SEC 4.06 of the Code to the Rules of Conduct section in SEC 4.05--which category corresponds with the NASDR's designation of their equivalent telemarketing rules as "business conduct" rules. Violations of any such Rule of Conduct provision would still provide a basis for this agency taking administrative action against the license of a broker-dealer or agent.

-- In a revision made to the proposed final rules in SECTION 30 (relating to abusive telemarketing activities by investment advisers) in equivalent fashion to the revisions made in SECTION 22 to the corresponding rules for broker-dealers, the rules were moved from the "Prohibited Business Practices" section SEC 5.06 to the "Rules of Conduct" section in SEC 5.05.

-- As a result of public comment letters received, a clause has been added at the end of the first sentence of sub. (2) of the franchise rule in SEC 32.08 (relating to the escrow of franchise fees) which expands the list of financial institutions that can act as an escrow agent under the rule.

Under the added language, in addition to a Wisconsin-based bank or trust company, "any federally insured bank [in any state] satisfactory to the division" can be used. This modification will remedy the concern expressed by commentators that it is very difficult for out-of-state/non-Wisconsin based franchisors to get a bank in Wisconsin--with whom it has no prior banking relationship--to agree to establish an escrow account.

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received

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

Comment Letters Received

-- Comment letter dated August 30, 1996 from Attorney Terry F. Peppard, Madison, Wisconsin.

-- Comment letter dated October 1, 1996 from the International Franchise Association, Washington, DC.

-- Comment letter dated October 2, 1996 from Intersecurities, Inc., Clearwater, Florida.

-- Comment letter dated October 2, 1996 from Attorney James Conohan, Madison, Wisconsin.

-- Comment letter dated October 3, 1996 from the Securities Industry Association, New York, New York.

(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., the treatment clause to SECTION 2 as well as the treatment clauses to SECTIONS 7, 8 and 9 are changed in the manner recommended. Also, the treatment clause for SECTION 4 is changed consistent with the changes recommended by the Rules Clearinghouse to SECTION 2.

-- Consistent with the Rules Clearinghouse comment in para. b. regarding SEC 2.01(6), the word "employee" is replaced by the word "employe." Also, the notation "s." is added to precede the two cross-references to other rules cited in the paragraph.

-- Consistent with the Rules Clearinghouse comment in para. d. regarding both SEC 4.06(3) and SEC 5.06(12), pars. (b), (c) and (d) of each subsection are revised to also refer to electronic solicitation. Also, in the ANALYSIS to SEC 4.06(3), the notation "sub." is added to precede the reference to "(3)(a) to (e)," and in the last sentence, the notation "paras" is replaced by "pars."

-- Consistent with the Rules Clearinghouse comment in para. e. regarding SEC 5.05(11), in paragraph (c), "to be" is inserted after "presumed"; in paragraph (d)1. "under ch. 551, Stats." is substituted for "thereunder"; in paragraph (d)2., commas are put around "prior to use"; in paragraph (d)3., "that ensures" is substituted for "to ensure", "under ch. 551, Stats.," is inserted after "order," and "precludes" is substituted for "will preclude."

-- Consistent with the Rules Clearinghouse comment in para. f. regarding SEC 9.01(1)(a), in the ANALYSIS, the phrase "amendment to" is replaced by "repeal of."

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

-- Consistent with the Rules Clearinghouse comment in para. a. regarding SEC 4.06(1)(c)2., a cross-reference was added in the introductory portion of that rule to the administrative code provision in SEC 4.06(1)(c)1. which sets forth other customer suitability standards.

-- Consistent with the Rules Clearinghouse comment in para. b. regarding SEC 5.05(11), language was added to the ANALYSIS to clarify that complying with the disclosure requirements under the rule is the obligation of the licensed investment adviser providing services on the premises of the financial institution, and is not the obligation of the financial institution.

(2) Rejection of recommendations and reasons therefor:

Under 2. Form, Style and Placement in Administrative Code

-- With respect to the Rules Clearinghouse comment in para. c. regarding SEC 3.03(4) and the capitalization of the names of the policies and guidelines listed in that rule, because the title/name of each of those policies and guidelines is a "proper name" and each is capitalized as set forth in its separate, respective current rule in SEC 3.01 to SEC 3.19, the names of such policies and guidelines in new rule SEC 3.03(4) are listed in their capitalized form.

The Rules Clearinghouse staff was contacted on this issue and they stated that they would not object to the capitalization of the policies listed in SEC 3.03(4) as proposed.

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

* * * *

1995 Session

LRB or Bill No./Adm. Rule No.

XX ORIGINAL ☐ UPDATED

FISCAL ESTIMATE ☐ CORRECTED ☐ SUPPLEMENTAL

Amendment No. if Applicable

DOA-2048 N(R10/94)

Subject: Proposed amendments to Rules of the Division of Securities under Chapters SEC 1 to 37, Wis. Adm. Code

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☒ Increase Existing Revenues

☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs - May be possible to Absorb Within Agency's Budget ☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected: ☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ Others ____ ☐ School Districts ☐ WTCS Districts

Fund Sources Affected: ☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This fiscal estimate relates to the annual revision by this agency of the Rules of the Division of Securities under the three statutes this agency administers (Chapter 551, the Wisconsin Uniform Securities Law, Chapter 552, the Wisconsin Corporate Take-Over Law, and Chapter 553, the Wisconsin Franchise Investment Law). The particular fiscal effects of the rules are as follows:

(1) No one-time revenue fluctuations.

(2) An estimated increase of $2000 in annual franchise registration fee revenue as a result of the repeal of the franchise registration exemption rule in SEC 32.05(1)(c). Because of the repeal, the approximately 10 franchisors who currently utilize the exemption and make an annual filing with a $200 filing fee, will instead have to make an annual registration filing which involves payment of a $400 fee. The $200 fee differential times the 10 annual filings results in the $2000 increased annual franchise registration fee revenue.

Note: The repeal of the substantive securities and franchise registration requirements contained in the 1996 Rule Revision does not have a fiscal effect because such rule changes result from, and are mandated by, the statutory repeal of the agency's substantive review authority for securities and franchise registrations and registration exemptions contained in 1995 Wisconsin Act 356 and 1995 Wisconsin Act 364--which legislation each had its own, separate fiscal estimate.

Long-Range Fiscal Implications

None beyond annual fiscal effects

Agency Preparer (Name & Phone No.)
Division of Securities/DFI
Randall E. Schumann /266-3414

Authorized Signature/Telephone No. 266-3432
Patricia D. Struck, Administrator
Division of Securities

Date 8-27-96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. | Amendment No.

Subject: Proposed amendments to Rules of the Division of Securities under Chapters SEC 1 to 37, Wis. Adm. Code

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None

II. Annualized Costs:	Annualized Fiscal Impact on State funds from: Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations - Other Costs	0	- 0
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	$ 0	$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS	2,000	- 0
SEG/SEG-S		-
TOTAL State Revenues	$ 2,000	$ - 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 0	$ 0
NET CHANGE IN REVENUES	+ $ 2,000	$ 0

Agency Prepared by: (Name & Phone No.)
Division of Securities/Dept of Financial Institutions
Randall E. Schumann/266-3414

Authorized Signature/Telephone No. 266-3432
Patricia D. Struck, Administrator
Division of Securities

Date
8-27-96

LCRC FORM 2

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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 **96–143**

AN ORDER to repeal SEC 2.02 (9) (L), 2.028 (1) (b), 3.001 to 3.19, 3.20, 3.29, 9.01 (1) (a) 4., 31.01 (1) and (4), 32.01, 32.05 (1) (c) and (i) and (2), 32.06 (2) and (3), 32.08 to 32.11, 32.12 (1), (3) and (5), 32.13, chapter SEC 33, 35.01 (1) (b), (e), (f) and (h) and (5), 35.02, 35.05 and chapter SEC 37; to renumber SEC 2.02 (9) (m) and (n), 2.027, 2.028 (1) (c), 3.21 to 3.28, 3.03 (4) and (5), 3.08 (2), 4.04 (2), 4.06 (1) (c), 9.01 (1) (a) 5., 31.01 (2), (3) and (5) to (9), 32.05 (1) (d) to (h), 32.06 (1), 32.12 (2) and (4) and 35.01 (1) (c), (d) and (g) and (6); to amend SEC 2.01 (6), 2.02 (5) (c) and (9) (f), 2.027 (1) (c), 3.03 (3), 4.04 (2) (a), 4.05 (5), 4.06 (1) (s), (t) and (u), 4.10 (1) (d) and (2), 5.05 (2) (a) and (3), 5.06 (9) and (10), 7.06 (2), 32.03, 32.06, 32.08 (1) and (2), 32.09 and 34.01; to repeal and recreate SEC 32.07 and 35.01 (2); and to create SEC 3.03 (4), 4.04 (2) (b), 4.06 (1) (c) 2. and (3), 5.05 (10) and (11) and 5.06 (12), relating to securities registration exemptions, securities registration procedures, substantive registration standards and disclosure requirements, securities broker–dealer, securities agent and securities investment adviser licensing requirements and procedures, franchise definitions, franchise registration exemptions, franchise registration procedures, substantive registration and disclosure requirements, franchise registration or exemption revocations and fraudulent practices, franchise fee–related provisions and franchise forms.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

08–26–96 RECEIVED BY LEGISLATIVE COUNCIL.

09–23–96 REPORT SENT TO AGENCY.

RS:DLS:jt;kjf

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 ☐ NO ☑

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

   Comment Attached YES ☑ NO ☐

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☑ NO ☐

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

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CLEARINGHOUSE RULE 96–143

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 Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The treatment clauses of the various SECTIONS of the rule need to be reviewed for more substantial compliance with the drafting format of the Legislative Reference Bureau. For example, the treatment clause in SECTION 2 should be revised to read:

> SECTION 2. SEC 2.01 (6) (intro.) is renumbered SEC 2.01 (6) and amended to read:
>
> SECTION 3. SEC 2.01 (6) (a) to (h) are repealed.

Although somewhat complicated, the treatment clauses in SECTIONS 7, 8 and 9 should be revised to read as follows:

> SECTION ___. SEC 2.027 (intro.) and (1) (intro.) and (a) are renumbered SEC 2.027 (intro.) and 1. (intro.) and (a).
>
> SECTION ___. SEC 2.027 (1) (b) is repealed.
>
> SECTION ___. SEC 2.027 (1) (c) and (2) to (8) are renumbered SEC 2.028 (1) (b) and (2) to (8).
>
> SECTION ___. SEC 2.028 is renumbered SEC 2.027, and SEC 2.027 (1) (c), as renumbered, is amended to read:

Again, the entire rule should be reviewed for these structural difficulties and the Clearinghouse should be consulted if assistance is necessary. [See also s. 1.04, Manual.]

b. In s. SEC 2.01 (6), the word "employee" should be replaced by the word "employe." This will make the rule language consistent with other provisions in ch. SEC 2 and in the statutes. Also, the notation "s." should precede all cross-references within the Administrative Code. The entire rule should be reviewed for this problem.

c. In s. SEC 3.03 (4), the names of the policies or guidelines should not be capitalized.

d. In SECTIONS 24 and 29, since the introductory clauses refer to "electronic solicitation" as well as telephone solicitation, pars. (b), (c) and (d) should also refer to electronic solicitation. For example, in par. (b), "Telephoning or electronically soliciting . . . ." Also, in the analysis to SECTION 24, the notation "sub." should precede the reference to "(3) (a) to (e)." Finally, in the last paragraph of the analysis, the notation "paras." should be replaced by the notation "pars."

e. In s. SEC 5.05 (11) (c), last line, insert "to be" after "presumed." In par. (d) 1., substitute "ch. 551, Stats." for "thereunder." In par. (d) 2., put commas around "prior to use." In par. (d) 3., substitute "that ensures" for "to ensure," insert "ch. 551, Stats.," after "order" and substitute "precludes" for "will preclude."

f. In the analysis to the repeal of s. SEC 9.01 (1) (a) 4., the phrase "amendment to" should be replaced by the phrase "repeal of."

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

a. Section SEC 4.06 (1) (c) 2. lists standards to be used in the determination of investors' suitability for the purpose of making purchase recommendations to a customer regarding direct participation program securities. However, the introduction to this list states that the standards do not preclude the use of any other information to establish suitability. Does this mean that a customer who meets either of the standards contained in this provision may nevertheless be determined as someone lacking suitability to participate in the investment? What other information may be used to determine suitability? Can an appropriate statutory or Administrative Code cross-reference be provided? If other suitability standards exist, they should be promulgated as administrative rules.

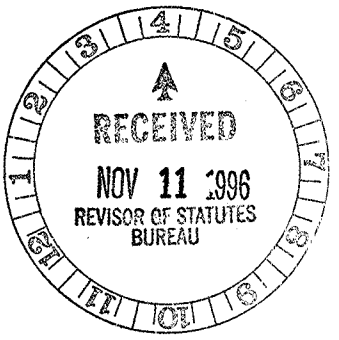
b. Section SEC 5.05 (11) (c) provides that an investment advisory providing services on the premises of a financial institution not licensed as an investment advisor must disclose the identity of the licensed investment advisor in various promotional materials. These materials may not display the financial institution's name or logo type in a manner that would mislead customers as to the financial institution's role in connection with the investment advisory services being offered by the investment advisor. Is this provision simply meant to be a truth-in-advertising statement or does it imply that there is an appropriate, and inappropriate, role that a financial institution may play in the provision of the services of a licensed investment advisor on the premises of the financial institution? Is the delineation of the financial institution's role meant to be expressed in s. SEC 5.05 (11) (a) and (e)?

State of Wisconsin

Department of Financial Institutions

Tommy G. Thompson, **Governor** Richard L. Dean, **Secretary**

November 11, 1996



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

Revisor of Statutes Bureau
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

Re: Filing of Certified Copies of Final Order
Adopting Rules/Clearinghouse Rule 96-143

Gentlemen and Mesdames:

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 signed and issued by this agency on November 11, 1996.

Also attached is a copy of the Report prepared by this agency relating to the final rules, together with a copy of a Fiscal Estimate relating to the rules, and a copy of the Wisconsin Legislative Council Rules Clearinghouse Report.

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

Very truly yours,

Randall E. Schumann
General Counsel

RES:jdc
enclosures
cc: Patricia D. Struck, Administrator
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