State of Wisconsin
Department of Financial Institutions

Jim Doyle, **Governor**

Lorrie Keating Heinemann, **Secretary**

S7-03-03

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February 5, 2004

Jonathan Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Dear Mr. Katz:

As Secretary of the Wisconsin Department of Financial Institutions ("DFI"), which includes the Division of Securities, I would like to take this opportunity to respond to the Commission's request for comments on matters relating to the Commission's new rules on compliance programs of investment companies and investment advisers. DFI, as a member of the North American Securities Administrators Association ("NASAA"), fully supports the position and recommendations set forth in NASAA's comment letter on this subject. To that end, we would like to provide the following comments.

In its adopting release, the Commission recognizes that a fund's chief compliance officer will often be employed by the fund's investment adviser--which, while providing a better understanding of all fund and adviser operations, also potentially creates actual or perceived conflicts of interest. Because the chief compliance officer will be performing functions for (and be paid for) both roles by the investment adviser, the employee may be discouraged from making complete and forthright disclosure of the fund's compliance failures to the fund's directors. DFI does not object to a single individual acting in both capacities. However, we are concerned that investors would be best served by adequate disclosures when this situation occurs. We believe that Part II of Form ADV is the appropriate means for disclosure of all of the compliance officer's affiliations, duties and compensation. Consequently, DFI would support amending Part II of Form ADV to require disclosure that the investment adviser's compliance officer also functions as chief compliance officer of one or more investment companies, regardless of whether the funds are proprietary to the adviser or not.

Equally important is disclosure by an open-end investment company that its chief compliance officer is also an employee of its investment adviser and is compensated by the investment adviser for both fund and investment adviser duties. DFI believes the Commission should specifically require that open-end investment companies make a prominent disclosure of the compliance officer's dual roles in fund prospectuses to ensure that existing and potential investors receive that disclosure.

The Commission also requested comment regarding whether the definition of "material compliance matters" that must be reported to fund Boards by chief compliance officers addresses concerns that fund Boards need to receive the compliance information required to meaningfully

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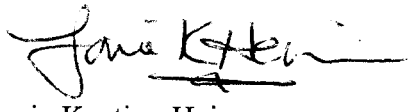
oversee fund compliance. The text of Rule 38a-1(e)(2) defines the term "material compliance matter" to mean those compliance matters--including violations of the federal securities laws or compliance policies and procedures by the fund or its service providers, as well as weaknesses in the design or implementation of those policies and procedures—"about which the fund's board reasonably needs to know in order to oversee fund compliance." [*See* footnote 100 Final Rule: Compliance Programs of Investment Companies and Investment Advisers, 17 CFR Parts 270 and 275, Releases No. IA-2204; IC-26299; File No. S7-03-03.]

Because NSMIA retained state anti-fraud jurisdiction for the states in both fund and investment adviser regulatory matters, and in keeping with the Sarbanes-Oxley provisions providing the Commission with authority to pursue violations based on state actions, DFI suggests that the definition be modified to include violations of state securities laws as well as violations of SRO rules. Adding this provision to the definition will ensure that fund Boards are aware of all significant securities violations. Further, DFI recommends that the Commission expand the definition of "material compliance matter" to include pending investigations by federal and state regulators, as well as investigations by self-regulatory organizations. DFI believes that ensuring a Board's ability to react to compliance issues that would be brought to light by this expanded definition would give the fund Board an early warning of real or potential problems with the operations of the fund prior to an any actual enforcement action.

Sincerely,



Lorrie Keating Heinemann
Secretary