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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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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 00-045

AN ORDER to create chapters DFI-Bkg 4, DFI-SB 19 and DFI-SL 21, relating to financial subsidiaries.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

02-28-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-27-00 REPORT SENT TO AGENCY.

RS:RJC:rv

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 00-045

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 September 1998.]

I. Statutory Authority

Section 221.0322, Stats., provides that a bank, directly or through a subsidiary of the bank, may undertake any activity, exercise any power or offer any financially related product or service in Wisconsin that any other provider of financial products or services may undertake, exercise or provide or that the Division of Banking finds to be financially related. These activities, powers, products and services are limited to those *specified by rule* of the Division of Banking. The intent of the statutory provision is to afford an opportunity to the Legislature, through the process of legislative review of proposed administrative rules, to evaluate specific grants of authority to state-chartered banks. Section DFI-Bkg 4.04 (1) provides in part that a financial institution may control a financial subsidiary, or hold an interest in a financial subsidiary, to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The term "financial activity" is defined in s. DFI-Bkg 4.01 (3) to mean any activity defined to be financial in nature or incidental to a financial activity for bank holding companies under federal law and any activity determined by the federal Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks. The rule appears to be an attempt to authorize state-chartered banks to assume federal powers on a wholesale basis without any attempt to enumerate specific powers. If this is the intent of the rule provision, the department should explain its statutory authority for the rule in view of: (a) the intent of s. 221.0322, Stats., to require a specification of expanded powers through the rule-making process; and (b) the provisions of 1999 Assembly Bill 563 which were

drafted to eliminate the specific rule-making requirement in this area. [The comments in this report also apply to the creation of chs. DFI-SB 19 and DFI-SL 21.]

2. Form, Style and Placement in Administrative Code

a. The creation of ch. DFI-Bkg 4 should all be contained in one section of the rule with a treatment clause that reads substantially as follows: "Chapter DFI-Bkg 4 is created to read:".

b. The definitions in s. DFI-Bkg 4.01 (1) should be relocated into their own separately numbered subsections and placed in alphabetical order in relation to the other definitions in subs. (2) to (7). In other words, the definition of "subsidiary" should follow the definition of "insured depository institution."

c. In s. DFI-Bkg 4.08, the word "must" should be replaced by the word "shall."

d. Section DFI-Bkg 4.09 refers to an action being completed "before the effective date of this chapter." First, the rule has no effective date provision. When is it to be effective? Second, by inserting the phrase "(revisor inserts date)" after the above-quoted phrase, the revisor will insert the actual date of effectiveness in the rule and readers will be able to know the applicable date.

e. With respect to the note to the rule, it should be included in one of the numbered sections of the rule. Ideally, it would be located immediately following the provision of the rule that refers to a form. [See the text of the Manual for examples of notes.]

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

a. Section DFI-Bkg 4.03 refers to a fee "prescribed by the division." Where is this fee prescribed?

b. Section DFI-Bkg 4.04 (2) refers to "prior approval of the division." Is this the approval under s. DFI-Bkg 4.03? The rule should be clarified.

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

a. In s. DFI-Bkg 4.01 (5), the first occurrence of the word "institution" should be replaced by the word "institutions."

b. Section DFI-Bkg 4.03 refers to parties mutually agreeing to "extend the application period." Is it the application period that is extended or the period in which the division makes a decision on the application? The rule may need to be clarified.

c. Section DFI-Bkg 4.04 (2) should be rewritten to read: "Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division."

d. The parenthetical material in s. DFI-Bkg 4.04 (3) should be deleted, or if it is important for the substance of the rule, the parenthetical notations should be deleted.

e. Section DFI-Bkg 4.07 (3) seems to be redundant.

f. In s. DFI-Bkg 4.09, the phrase "the provisions of" should be inserted after the word "Notwithstanding."

g. Section DFI-Bkg 4.11 requires that the division receive prior notice of disposition of a financial subsidiary. How "prior" must the notice be? Does the division have any authority to affect the transaction?



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, Governor

Chief, Secretary

February 28, 2000

David J. Stute
Director, Legislative Council
One East Main Street, Suite 401
P.O. Box 2536
Madison, WI 53701-2536



RE: Review of proposed rules

Dear Director:

Pursuant to s. 227.15(1), Stats., analyses and proposed rules creating chs. DFI—Bkg 4, DFI—SB 19 and DFI—SL 21; notes regarding form; and fiscal estimates are hereby submitted for your review. The proposed rules are attached in hard copy and in disk format for your convenience.

If you have any questions regarding ch. DFI—Bkg 4, please do not hesitate to contact me at 266-0451 as the agency person to be contacted if there are substantive questions on the rule and responsible for the agency's internal processing of the rule. If you have any questions regarding chs. DFI—SB 19 or DFI—SL 21, please do not hesitate to contact John A. Gervasi at 261-2300 as the agency person to be contacted if there are substantive questions on the rules and responsible for the agency's internal processing of the rules.

Sincerely,

Michael J. Mach
Administrator

encls



PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING

Analysis: To create ch. DFI—Bkg 4. Statutory authority: Ss. 220.02(2), 221.0322(2) and 227.11(2). The proposed rule would allow state-chartered banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than “the business of banking or incidental to the business of banking activities” currently permitted for subsidiaries of state-chartered banks under s. DFI-Bkg. 3.04. Furthermore, state-chartered banks are permitted by s. 221.0322(1), Stats., to undertake any activity, exercise any power, or offer any financially-related product or service in the state that any other provider of financial products or services may undertake, exercise or provide, or that the division finds to be financially related. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency’s internal process: Michael J. Mach, Administrator, Division of Banking, tel. 266-0451.

SECTION 1: “(title)” CHAPTER DFI—Bkg 4 is created to read:

CHAPTER DFI—Bkg 4

FINANCIAL SUBSIDIARIES

SECTION 2: DFI—Bkg 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10 and 4.11 are created to read:

DFI—Bkg 4.01 DEFINITIONS. In this chapter:

(1) “Affiliate,” “company,” “control,” and “subsidiary” have the meanings set forth in s. 221.0901, Stats.

Handwritten notes:
Mach
266-0451

(2) "Division" means the division of banking.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B). } artl
bootst

(4) "Financial institution" means a state bank chartered under ch. 221, Stats.

(5) "Financial subsidiary" ^{AS} means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution. }

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—Bkg 4.02 CONTROL AND INTEREST. Subject to s. DFI—Bkg 4.03 and ~~and~~ ^{or} DFI—Bkg 4.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—Bkg 4.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days. } form

DFI—Bkg 4.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a. } artl

(2) The financial institution must receive the ~~prior~~ ^{prior controlling or} approval of the division ~~to control or hold~~ ^{or hold} an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under s. DFI—Bkg 4.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—Bkg 4.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—Bkg 4.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—Bkg 4.05.

DFI—Bkg 4.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—Bkg 4.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—Bkg 4.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding ^{the provision of} this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under s. DFI—Bkg 3.04.

DFI—Bkg 4.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—Bkg 4.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

↓
sale?
transfer?

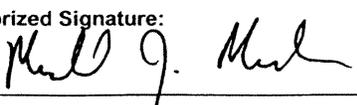
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how much—
what can
division do?

NOTE

Reference to an application form is included in DFI—Bkg 4.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

Department of Financial Institutions
Division of Banking,
345 W. Washington, 4th Floor
P.O. Box 7876
Madison, WI 53707-7876
tel. (608) 261-7578

} 10/1/01

1999 Session		LRB Number
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		
Subject <p style="text-align: center;">Financial Subsidiaries</p>		Amendment No. if Applicable
		Administrative Rule Number
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Chapter 20 Appropriations
Assumptions Used in Arriving at Fiscal Estimate <p>The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of \$500. Current staff will review the applications. There are 267 state-chartered banks. It is estimated that approximately 125 state-chartered banks may establish financial subsidiaries over the next five year, or that the division will receive 25 application a year for each of the next five years. Fiscal effect for the first year is \$12,500.</p>		
Long-Range Fiscal Implications As indicated above, it is estimated that the division will receive 25 applications a year for each of the next five years, with a fiscal effect of \$12,500 per year.		
Prepared by: <p style="text-align: center;">Michael J. Mach</p>	Telephone No. <p style="text-align: center;">6-0451</p>	Agency <p style="text-align: center;">DFI</p>
Authorized Signature: 	Telephone No. <p style="text-align: center;">6-0451</p>	Date <p style="text-align: center;">2/28/00</p>

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SB 19. Statutory authority: Ss. 214.715(1), 214.03(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the parity provisions of s. 214.03(1) and (2), Stats., and the subsidiary provisions of s. 214.49, Stats. and DFI—SB 15. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state savings banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency’s internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: “(title)” CHAPTER DFI—SB 19 is created to read:

CHAPTER DFI—SB 19

FINANCIAL SUBSIDIARIES

SECTION 2: DFI—SB 19.01, 19.02, 19.03, 19.04, 19.05, 19.06, 19.07, 19.08, 19.09, 19.10 and 19.11 are created to read:

DFI—SB 19.01 DEFINITIONS. In this chapter:

(1) “Affiliate,” “company,” “control,” and “subsidiary” have the meanings set forth in s. 221.0901, Stats.

(2) “Division” means the division of savings institutions.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(4) "Financial institution" means a state savings bank chartered under ch. 214, Stats.

(5) "Financial subsidiary" means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SB 19.02 CONTROL AND INTEREST. Subject to s. DFI—SB 19.03 and s. DFI—SB 19.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SB 19.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days.

DFI—SB 19.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) The financial institution must receive the prior approval of the division to control or hold an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under ch. DFI—SB 19.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SB 19.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SB 19.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SB 19.05.

DFI—SB 19.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—SB 19.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—SB 19.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SB 15.

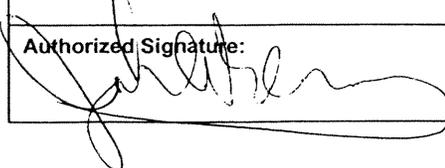
DFI—SB 19.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SB 19.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

NOTE

Reference to an application form is included in DFI—SB 19.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

Department of Financial Institutions
Division of Savings Institutions,
345 W. Washington, 4th Floor
P.O. Box 8306
Madison, WI 53708-8306
tel. (608) 261-2300

1999 Session		LRB Number
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		
Subject Financial Subsidiaries		Amendment No. if Applicable
		Administrative Rule Number
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Chapter 20 Appropriations
Assumptions Used in Arriving at Fiscal Estimate <p>The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of \$500. Current staff will review the applications. There are 21 state-chartered savings banks. If all state-chartered savings banks establish a financial subsidiary, the fiscal effect would be \$10,500.</p>		
Long-Range Fiscal Implications None		
Prepared by: John Gervasi	Telephone No. 1-2300	Agency DFI
Authorized Signature: 	Telephone No. 1-2300	Date 2/28/00

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SL 21. Statutory authority: Ss. 215.03(1), 215.135(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the additional authority provisions of s. 215.135(1) and (2), Stats., and the subsidiary provisions of s. 215.13(26), Stats. and DFI—SL 15. Lastly, the proposed rule is consistent with Section 121(d) of the Act which permits insured state savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings and loans to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division. Agency person to be contacted for substantive questions and responsible for agency’s internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: “(title)” CHAPTER DFI—SL 21 is created to read:

CHAPTER DFI—SL 21

FINANCIAL SUBSIDIARIES

SECTION 2: DFI—SL 21.01, 21.02, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.09, 21.10 and 21.11 are created to read:

DFI—SL 21.01 DEFINITIONS. In this chapter:

(1) “Affiliate,” “company,” “control,” and “subsidiary” have the meanings set forth in s. 221.0901, Stats.

(2) “Division” means the division of savings institutions.

(3) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(4) "Financial institution" means a state savings and loan chartered under ch. 215, Stats.

(5) "Financial subsidiary" means any company that is controlled by one or more insured depository institution other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(6) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(7) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SL 21.02 CONTROL AND INTEREST. Subject to s. DFI—SL 21.03 and s. DFI—SL 21.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SL 21.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the application period for an additional period of 30 days.

DFI—SL 21.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) The financial institution must receive the prior approval of the division to control or hold an interest in a financial subsidiary.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized (after the capital deduction required under ch. DFI—SL 21.05)).

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SL 21.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SL 21.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SL 21.05.

DFI—SL 21.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

(3) The financial institution is in compliance with this requirement.

DFI—SL 21.08 AFFILIATE REQUIREMENTS. The financial institution must comply with the requirements of 12 USC 371c.

DFI—SL 21.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before the effective date of this chapter, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SL 15.

DFI—SL 21.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SL 21.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. Prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

NOTE

Reference to an application form is included in DFI—SL 21.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

Department of Financial Institutions
Division of Banking,
345 W. Washington, 4th Floor
P.O. Box 8306
Madison, WI 53708-8306
tel. (608) 261-2300

JUN 23 2000

CORRESPONDENCE / MEMORANDUM

STATE OF WISCONSIN
Department of Financial Institutions
Division of Banking

DATE: June 19, 2000

TO: Senator Fred Risser
President
Wisconsin State Senate

Representative Scott Jensen
Speaker
Wisconsin State Assembly

FROM: Michael J. Mach
Administrator
Division of Banking

SUBJECT: Notice regarding CR 00-045

Pursuant to s. 227.19 (2), Stats., notice is hereby given that CR 00-045 (proposed rules DFI—Bkg 4, DFI—SB 19 and DFI—SL 21) is in final draft form. Pursuant to s. 227.19 (3), Stats., the following documentation accompanies this notice: proposed rule, analysis of proposed rule, reference to applicable form, fiscal estimate, recommendations of legislative council staff, and an analysis. If you have any questions regarding this matter or the enclosed, please do not hesitate to contact me at tel. 266-0451.

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING

Analysis: To create ch. DFI—Bkg 4. Statutory authority: Ss. 220.02(2), 220.04(8), 221.0322(2) and 227.11(2). The proposed rule would allow state-chartered banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than “the business of banking or incidental to the business of banking activities” currently permitted for subsidiaries of state-chartered banks under s. DFI-Bkg. 3.04. Furthermore, state-chartered banks are permitted by s. 221.0322(1), Stats., to undertake any activity, exercise any power, or offer any financially-related product or service in the state that any other provider of financial products or services may undertake, exercise or provide, or that the division finds to be financially related. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, ss. 220.04(8) and 221.0322 authorize the division, with the approval of the banking review board, to authorize state banks to exercise any right, power or privilege permitted national banks under federal law or regulation. National banks are granted the right, power and privilege under s. 121(d) of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is a right, power or privilege permitted national banks under federal law or regulation, and is, therefore, permissible for state banks under s. 220.04(8).

Furthermore, the activities and powers that may be undertaken or exercised by a bank are limited to those activities and powers specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity and a power that a provider of financial services or products may undertake or exercise within the meaning of s. 221.0322, and is, therefore, an activity and a power that may be undertaken or exercised by banks as specified by rule of the division under s. 221.0322.

Agency person to be contacted for substantive questions and responsible for agency's internal process: Michael J. Mach, Administrator, Division of Banking, tel. 266-0451.

SECTION 1: CHAPTER DFI—Bkg 4 is created to read:

CHAPTER DFI—Bkg 4

FINANCIAL SUBSIDIARIES

DFI—Bkg 4.01 DEFINITIONS. In this chapter:

(1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.

(2) "Company" has the meaning set forth in s. 221.0901, Stats.

(3) "Control" has the meaning set forth in s. 221.0901, Stats.

(4) "Division" means the division of banking.

(5) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).

(6) "Financial institution" means a state bank chartered under ch. 221, Stats.

(7) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.

(8) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).

(9) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.

(10) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—Bkg 4.02 CONTROL AND INTEREST. Subject to s. DFI—Bkg 4.03 and s. DFI—Bkg 4.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—Bkg 4.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either

be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

NOTE: A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Banking, 345 W. Washington, 4th Floor, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 261-7578.

DFI—Bkg 4.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—Bkg 4.03.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under s. DFI—Bkg 4.05.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—Bkg 4.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—Bkg 4.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—Bkg 4.05.

DFI—Bkg 4.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk; and

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution.

DFI—Bkg 4.08 AFFILIATE REQUIREMENTS. The financial institution shall comply with the requirements of 12 USC 371c.

DFI—Bkg 4.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before “(revisor inserts date)”, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under s. DFI—Bkg 3.04.

DFI—Bkg 4.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—Bkg 4.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SB 19. Statutory authority: Ss. 214.715(1), 214.03(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the parity provisions of s. 214.03(1) and (2), Stats., and the subsidiary provisions of s. 214.49, Stats. and DFI—SB 15. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state savings banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, ss. 214.03(1) and (2) authorize the division to authorize state-chartered savings banks to undertake any activity, exercise any power or offer any financially related product or service that any other provider of financial products or services may undertake, exercise or provide. National banks are authorized under s. 121(d) of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an authorization permitted national banks under federal law or regulation, and is, therefore, permissible for state-chartered savings banks under s. 214.03(1) and (2).

Furthermore, the activities, powers, products and services that may be undertaken, exercised or offered by a state-chartered savings bank are limited to those activities, powers, products and services specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity, power, product or service that a provider of financial services or products may undertake, exercise or offer within the meaning of ss. 214.03(1) and (2), and is, therefore, an activity, power, product or service that may be undertaken, exercised or offered by state-chartered savings banks as specified by rule of the division under ss. 214.03(1) and (2).

Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: CHAPTER DFI—SB 19 is created to read:

CHAPTER DFI—SB 19
FINANCIAL SUBSIDIARIES

DFI—SB 19.01 DEFINITIONS. In this chapter:

- (1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.
- (2) "Company" has the meaning set forth in s. 221.0901, Stats.
- (3) "Control" has the meaning set forth in s. 221.0901, Stats.
- (4) "Division" means the division of savings institutions.
- (5) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).
- (6) "Financial institution" means a state savings bank chartered under ch. 214, Stats.
- (7) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.
- (8) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).
- (9) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.
- (10) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SB 19.02 CONTROL AND INTEREST. Subject to s. DFI—SB 19.03 and s. DFI—SB 19.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SB 19.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either

be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

NOTE: A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Savings Institutions, 345 W. Washington, 4th Floor, P.O. Box 8306, Madison, WI 53708-8306, tel. (608) 261-2300.

DFI—SB 19.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—SB 19.03.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under ch. DFI—SB 19.05.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SB 19.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SB 19.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SB 19.05.

DFI—SB 19.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

DFI—SB 19.08 AFFILIATE REQUIREMENTS. The financial institution shall comply with the requirements of 12 USC 371c.

DFI—SB 19.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before “(revisor inserts date)”, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SB 15.

DFI—SB 19.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SB 19.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SL 21. Statutory authority: Ss. 215.03(1), 215.135(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the additional authority provisions of s. 215.135(1) and (2), Stats., and the subsidiary provisions of s. 215.13(26), Stats. and DFI—SL 15. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings and loans to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, ss. 215.135(1) and (2) authorize the division to authorize state-chartered savings and loans to undertake any activity, exercise any power or offer any financially related product or service that any other provider of financial products or services may undertake, exercise or provide. National banks are authorized under s. 121(d) of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an authorization permitted national banks under federal law or regulation, and is, therefore, permissible for state-chartered savings and loans under s. 215.135(1) and (2).

Furthermore, the activities, powers, products and services that may be undertaken, exercised or offered by a state-chartered savings and loans are limited to those activities, powers, products and services specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity, power, product or service that a provider of financial services or products may undertake, exercise or offer within the meaning of ss. 215.135(1) and (2), and is, therefore, an activity, power, product or service that may be undertaken, exercised or offered by state-chartered savings and loans as specified by rule of the division under ss. 215.135(1) and (2).

Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: CHAPTER DFI—SL 21 is created to read:

CHAPTER DFI—SL 21
FINANCIAL SUBSIDIARIES

DFI—SL 21.01 DEFINITIONS. In this chapter:

- (1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.
- (2) "Company" has the meaning set forth in s. 221.0901, Stats.
- (3) "Control" has the meaning set forth in s. 221.0901, Stats.
- (4) "Division" means the division of savings institutions.
- (5) "Financial activity" means any activity defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4), and any activity determined by the Secretary of the Treasury to be financial in nature or incidental to a financial activity for financial subsidiaries of national banks in accordance with 12 USC 24a(b)(1)(B).
- (6) "Financial institution" means a state savings and loan chartered under ch. 215, Stats.
- (7) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.
- (8) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).
- (9) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.
- (10) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—SL 21.02 CONTROL AND INTEREST. Subject to s. DFI—SL 21.03 and s. DFI—SL 21.04, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

DFI—SL 21.03 APPLICATION. A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either

be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

NOTE: A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Savings Institutions, 345 W. Washington, 4th Floor, P.O. Box 8306, Madison, WI 53708-8306, tel. (608) 261-2300.

DFI—SL 21.04 CONDITIONS AND REQUIREMENTS. (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—Bkg 21.03.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under ch. DFI—SL 21.05.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

DFI—SL 21.05 CAPITAL DEDUCTION. The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

DFI—SL 21.06 DISCLOSURE. Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SL 21.05.

DFI—SL 21.07 SAFEGUARDS FOR THE FINANCIAL INSTITUTION. A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

DFI—SL 21.08 AFFILIATE REQUIREMENTS. The financial institution shall comply with the requirements of 12 USC 371c.

DFI—SL 21.09 PRESERVATION OF EXISTING SUBSIDIARIES. Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before “(revisor inserts date)”, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SL 15.

DFI—SL 21.10 EXAMINATION AND SUPERVISION. Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

DFI—SL 21.11 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY. At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

NOTE

Reference to an application form is included in DFI—Bkg 4.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

Department of Financial Institutions
Division of Banking,
345 W. Washington, 4th Floor
P.O. Box 7876
Madison, WI 53707-7876
tel. (608) 261-7578

NOTE

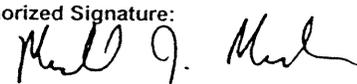
Reference to an application form is included in DFI—SB 19.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

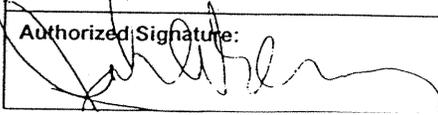
Department of Financial Institutions
Division of Savings Institutions,
345 W. Washington, 4th Floor
P.O. Box 8306
Madison, WI 53708-8306
tel. (608) 261-2300

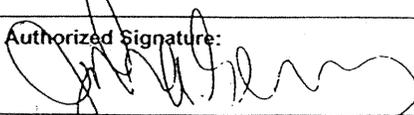
NOTE

Reference to an application form is included in DFI—SL 21.03. Under s. 227.14 (3), Stats., an agency shall include a reference to the form in a note to the proposed rule and shall attach a description of how a copy may be obtained. Pursuant to s. 227.14 (3), a copy of this application form may be obtained at the following:

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P.O. Box 8306
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tel. (608) 261-2300

1999 Session		LRB Number
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		Amendment No. if Applicable
Subject Financial Subsidiaries		Administrative Rule Number
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Chapter 20 Appropriations
Assumptions Used in Arriving at Fiscal Estimate <p>The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of \$500. Current staff will review the applications. There are 267 state-chartered banks. It is estimated that approximately 125 state-chartered banks may establish financial subsidiaries over the next five year, or that the division will receive 25 application a year for each of the next five years. Fiscal effect for the first year is \$12,500.</p>		
Long-Range Fiscal Implications As indicated above, it is estimated that the division will receive 25 applications a year for each of the next five years, with a fiscal effect of \$12,500 per year.		
Prepared by: Michael J. Mach	Telephone No. 6-0451	Agency DFI
Authorized Signature: 	Telephone No. 6-0451	Date 2/28/00

1999 Session		LRB Number
FISCAL ESTIMATE DOA-2048 N(R06/99)		Bill Number
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		Amendment No. if Applicable
Subject Financial Subsidiaries		Administrative Rule Number
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.		
<input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input checked="" type="checkbox"/> No local government costs		
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Chapter 20 Appropriations
Assumptions Used in Arriving at Fiscal Estimate <p>The proposed rule provides that a financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the division has established a fee of \$500. Current staff will review the applications. There are 21 state-chartered savings banks. If all state-chartered savings banks establish a financial subsidiary, the fiscal effect would be \$10,500.</p>		
Long-Range Fiscal Implications None		
Prepared by: John Gervasi	Telephone No. 1-2300	Agency DFI
Authorized Signature: 	Telephone No. 1-2300	Date 2/28/00

FISCAL ESTIMATE DOA-2048 N(R06/99)		1999 Session		LRB Number	
<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> CORRECTED		<input type="checkbox"/> UPDATED <input type="checkbox"/> SUPPLEMENTAL		Bill Number	
Subject Financial Subsidiaries				Amendment No. if Applicable	
				Administrative Rule Number	
Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.					
<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Create New Appropriation			<input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues		
			<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs		
Local: <input checked="" type="checkbox"/> No local government costs					
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts	
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory			
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S			Affected Chapter 20 Appropriations		
Assumptions Used in Arriving at Fiscal Estimate <p>The proposed rule provides that a financial instituion desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms presecrbed by the division and shall pay the fee prescribed by the division. For similar types of applications, such as branch applications, the divisison has established a fee of \$500. Current staff will review the applications. There are 9 state-chartered savings and loans. If all state-chartered savings and loans establish a financial subsidiary, the fiscal effect would be \$4,500.</p>					
Long-Range Fiscal Implications None					
Prepared by: John Gervasi		Telephone No. 1-2300		Agency DFI	
Authorized Signature: 		Telephone No. 1-2300		Date 2/28/00	

DATE: June 19, 2000

TO: Senator Fred Risser
President
Wisconsin State Senate

Representative Scott Jensen
Speaker
Wisconsin State Assembly

FROM: Michael J. Mach
Administrator
Division of Banking

SUBJECT: Report on CR 00-045

This report is submitted pursuant to s. 227.19, Stats., regarding CR 00-045 (proposed rules chs. DFI—Bkg 4, DFI—SB 19 and DFI—SL 21).

1. STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE

The proposed rule would allow state-chartered banks, savings banks, and savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered banks, savings banks, and savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 ("Act"). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than what is currently permitted under applicable statute or code provisions, and would also be consistent with any current parity provisions. The proposed rule is consistent with Section 121(d) of the Act which permits insured state banks, savings banks, and savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered banks, savings banks, and savings and loans to exercise this new authority.

2. MODIFICATIONS MADE AS A RESULT OF TESTIMONY RECEIVED AT THE PUBLIC HEARING

No modifications were made as a result of testimony received at the public hearing.

3. PERSONS APPEARING OR REGISTERING FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARING

The following person appeared at the hearing and spoke in favor: John Knight (Wisconsin Bankers Association).

The following persons registered at the hearing in favor but did not speak: Kurt Bauer (Wisconsin Bankers Association), Brooke Billick (Marshall & Ilsley Trust Co.), Mark Timmerman (Anchor Bank SSB) and Daryll Lund (Community Bankers of WI).

4. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS

Legislative Council recommendations regarding statutory authority were that the department provide additional explanation regarding statutory authority. The analyses for the proposed rules include additional information on statutory authority.

Legislative Council recommendations regarding form, style and placement in administrative code; adequacy of references to related statutes, rule and forms; and clarity, grammar, punctuation and use of plain language were accepted in whole.

5. FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to s. 227.19(3m), a final regulatory flexibility analysis is not required.

AUG 14 2000



State of Wisconsin
Department of Financial Institutions

Tommy G. Thompson, Governor

John Kundert, Secretary

August 10, 2000

Senator Jon B. Erpenbach
Chairperson, Committee on Privacy,
Electronic Commerce and Financial Institutions
Room 20 South
Wisconsin State Capitol
Madison, WI 53707-7882

Representative Suzanne Jeskewitz
Chairperson, Committee on Financial Institutions
Room 109 West
State Capitol
Madison, WI 53708-8952

Dear Senator Erpenbach and Representative Jeskewitz:

Enclosed for the Senate Committee on Privacy, Electronic Commerce and Financial Institutions, and the Assembly Committee on Financial Institutions are modifications to proposed rules Ch. DFI—Bkg 4, Ch. DFI—SB 19 and Ch. DFI—SL 21 (CR 00-045) relating to financial subsidiaries.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Mach".

Michael J. Mach
Administrator

encls



Division of Banking

345 W. Washington Ave. 4th Floor PO Box 7876 Madison WI 53707-7876 • (608) 261-7578 • Fax: (608) 267-6889 • www.wdfi.org

PROPOSED RULE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING

Analysis: To create ch. DFI—Bkg 4. Statutory authority: Ss. 220.02(2), 221.0322(2) and 227.11(2). The proposed rule would allow state-chartered banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 ("Act"). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than "the business of banking or incidental to the business of banking activities" currently permitted for subsidiaries of state-chartered banks under s. DFI-Bkg. 3.04. Furthermore, state-chartered banks are permitted by s. 221.0322(1), Stats., to undertake any activity, exercise any power, or offer any financially-related product or service in the state that any other provider of financial products or services may undertake, exercise or provide, or that the division finds to be financially related. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, the activities and powers that may be undertaken or exercised by a bank are limited to those activities and powers specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity and a power that a provider of financial services or products may undertake or exercise within the meaning of s. 221.0322, and is, therefore, an activity and a power that may be undertaken or exercised by banks as specified by rule of the division under s. 221.0322.

Agency person to be contacted for substantive questions and responsible for agency's internal process: Michael J. Mach, Administrator, Division of Banking, tel. 266-0451.

SECTION 1: CHAPTER DFI—Bkg 4 is created to read:

CHAPTER DFI—Bkg 4

FINANCIAL SUBSIDIARIES

DFI—Bkg 4.01 DEFINITIONS. In this chapter:

- (1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.
- (2) "Company" has the meaning set forth in s. 221.0901, Stats.
- (3) "Control" has the meaning set forth in s. 221.0901, Stats.
- (4) "Division" means the division of banking.
- (5) "Financial institution" means a state bank chartered under ch. 221, Stats.
- (6) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.
- (7) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).
- (8) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.
- (9) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

DFI—Bkg 4.02 FINANCIAL ACTIVITY. For the purposes of this chapter, the following activities shall be considered to be financial in nature:

- (1) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.
- (2) Engaging as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, or defects in title, or providing annuities as agent or broker.
- (3) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.
- (4) Underwriting, dealing in, or making a market in securities.
- (5) Extending credit and servicing loans, including making, acquiring, brokering, or servicing loans or other extensions of credit (such as factoring, issuing letters of credit, and accepting drafts) for the financial subsidiary's account or for the account of others.

(6) Engaging in any of the following activities related to extending credit:

- (a) Appraising real estate and personal property.
- (b) Arranging commercial and real estate equity financing.
- (c) Providing check guaranty services.
- (d) Providing collection agency services.
- (e) Providing credit bureau services.
- (f) Engaging in asset management, servicing, and collection activities.
- (g) Acquiring a debt in default.
- (h) Servicing real estate settlements.

(7) Operating nonbank depository institutions, including owning, controlling, or operating an industrial bank or a savings association.

(8) Engaging in trust company functions, including activities of a fiduciary, agency, or custodial nature.

(9) Providing financial and investment advisory services, including any of the following:

- (a) Serving as investment adviser to a company registered under the Investment Company Act.
- (b) Furnishing general economic information and advice.
- (c) Providing advice in connection with mergers, acquisitions, and other similar transactions, and conducting financial feasibility studies.
- (d) Providing information, statistical forecasting, and advice concerning any transaction in foreign exchange or derivatives.
- (e) Providing educational courses to consumers on individual financial management matters.
- (f) Providing tax planning and tax preparation services to any person.

(10) Providing agency transactional services for customer investment, including any of the following:

- (a) Providing securities brokerage services.

(b) Acting as riskless-principal in secondary market transactions.

(c) Acting as agent for private placement of securities.

(d) Acting as a futures commission merchant.

(11) Engaging in investment transactions as principal, including any of the following:

(a) Underwriting and dealing in bank-eligible securities.

(b) Engaging as principal in foreign exchange and derivative instruments.

(c) Buying and selling bullion.

(12) Providing management consulting and counseling on any matter to unaffiliated depository institutions and on financial matters to any other company, and providing employee benefits counseling and career counseling services for employees in the financial industry.

(13) Providing support services, including any of the following:

(a) Providing courier services between financial institutions.

(b) Printing and selling MICR-encoded items.

(c) In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens.

(14) Engaging in community development activities.

(15) Issuing money orders, savings bonds, and traveler's checks.

(16) Providing administrative and other services to mutual funds.

(17) Owning shares of a securities exchange.

(18) Acting as a certification authority for digital signatures.

(19) Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business.

(20) Providing check cashing and wire transmission services.

(21) Engaging in real estate title abstracting.

- (22) Operating a travel agency.
- (23) Organizing, sponsoring, and managing a mutual fund.
- (24) Providing insurance, providing and issuing annuities, and acting as principal, agent, or broker for purposes of providing insurance or annuities.
- (25) Engaging in merchant banking activities.
- (26) Engaging through an insurance company affiliate in insurance company investment activities.
- (27) Providing services to or for the bank or its affiliates, including accounting, auditing appraising, advertising and public relations, and financial advice and consulting.
- (28) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates.
- (29) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling.
- (30) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings.
- (31) Underwriting credit related insurance to the extent permitted under 15 USC 6712.
- (32) Leasing of real or personal property, and acting as an agent or adviser in leases for others.
- (33) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services.
- (34) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A "quota share agreement" is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer.