



Senator Dale Schultz
Room # 18 South
State Capitol
Madison, WI 53707-7882

**Senate Committee on Agriculture, Financial Institutions
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882
(608) 266-0703

Senator Dale W. Schultz, Chairman

Monday, August 18, 2003

Senator Dale Schultz
Room # 18 South
State Capitol
Madison, WI 53707-7882

The following clearinghouse rule was referred to the Senate Committee on Agriculture Financial Institutions and Insurance. The thirty-day review period began on August 13th, 2003.

Clearinghouse Rule 03-069, To repeal DFI-Sec 2.02(4)(a)6 and (4)(b); to renumber DFI-Sec 2.02(4)(a)1, 2, 3, 4, 5, and 7; and to amend DFI-Sec 8.03, 8.06 and 8.07; relating to securities registration exemptions and administrative procedure—contested case rules.

A hard copy of the rule is attached. The text is also available online in the FOLIO Clearinghouse Rules infobase.

The last business day for action on this rule is **Friday September 12th, 2003.**

If you have concerns or questions related to this rule, please contact John in my office (6-0703) with any questions, or to request the committee hold a hearing on this rule.

Thank you.

Senator Dale Schultz
Chairman



State of Wisconsin
Department of Financial Institutions

Scott McCallum, **Governor**

John F. Kundert, **Secretary**

August 12, 2003

The Honorable Alan Lasee, President
Wisconsin State Senate
Attn: Donna Doyle
c/o Office of Senate Journals and Records
17 West Main St., Ste. 401
Madison, WI 53702

The Honorable John Gard
Speaker of the Assembly
Attn: Ken Stigler
c/o Office of Assembly Records
17 West Main St., Ste. 208
Madison, WI 53702

Re: Clearinghouse Rule 03-069 Administrative Rule-Making Notice and Report to
Legislative Standing Committees Under secs. 227.19(2) and (3), Wis. Stats.

Gentlemen:

The Division of Securities of the Department of Financial Institutions hereby submits for filing with the Wisconsin Legislature pursuant to the administrative rule-making requirements of secs. 227.19(2) and (3), Wis. Stats., copies in triplicate of the Notice and Report required thereunder consisting of:

- (1) Proposed administrative rules in proposed final form as specified in sec. 227.14(1), Wis. Stats., relating to the Division's Annual Rules Revision for 2003.
- (2) A Report as prescribed in sec. 227.19(3), Wis. Stats.
- (3) A fiscal estimate for the proposed rules.
- (4) A copy of the Clearinghouse Report of the Wisconsin Legislative Council relating to the Public Comment Draft form of the proposed rules.

If you have any comments or questions regarding the above, please telephone me at 266-3414.

Very truly yours,

Randall E. Schumann
Legal Counsel for the Division

Attachments

cc: Revisor of Statutes Bureau
Joint Committee for Review of Administrative Rules
Patricia D. Struck, Administrator, Division of Securities
Mark Schlei, DFI Deputy General Counsel

Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768
Voice: (608) 266-1064

Fax: (608) 256-1259

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703
TTY: (608) 266-8818
Internet: www.wdfi.org

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

To repeal DFI-Sec 2.02(4)(b); to renumber DFI-Sec 2.02(4)(a)1, 2, 3, 4, 5, 6 and 7; and to amend DFI-Sec 8.03, 8.06 and 8.07; relating to securities registration exemptions and administrative procedure—contested case rules.

Pursuant to sections 551.63(1) and (2), and 551.23(8)(g), Wis. Stats., the Division of Securities of the Department of Financial Institutions amends, adopts and repeals rules interpreting those sections as follows:

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF SECURITIES

YEAR 2003 ANNUAL RULES REVISION

SECTION 1. DFI-Sec 2.02(4)(b) is repealed.

ANALYSIS: The repeal in this SECTION is necessary to reflect the legislative repeal and recreation contained in 2001 Wisconsin Act 44 (which became effective October 1, 2002) that "federalized" Wisconsin's "individual accredited investor" securities registration exemption in section 551.23(8)(g). The specific rule subsections contained in DFI-Sec 2.02(4)(b) [which is being repealed] set forth the tests contained in subsections (4), (5) and (6) of the federal accredited investor definitional rule 230.501(a) for individuals to qualify for purposes of the Wisconsin exemption in sec. 551.23(8)(g), of the Wisconsin Securities Law [by meeting specified annual income or net worth requirements, or being an officer, director, or general partner of the issuer]. Because the 2002 legislative change to 551.23(8)(g) and the related definition in 551.02(1g) incorporated the entire list of persons and entities contained in federal rule 230.501(a), the Wisconsin rule listing certain individual person-related subsections of the federal rule is unnecessary.

SECTION 2. DFI-Sec 2.02(4)(a) 1, 2, 3, 4, 5, 6 and 7 are renumbered DFI-Sec

2.02(4) (intro.), (a), (b), (c), (d), (e), (f) and (g).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal of DFI-Sec 2.02(4)(b) in the preceding SECTION.

SECTION 3. DFI-Sec 8.03 is amended to read:

DFI-Sec 8.03 Appearances and defaults. Each party shall appear at the hearing and any prehearing conference either in person or by a duly authorized representative. If any party, without good cause, fails to file an answer as provided in s. DFI-Sec 8.02, or fails to appear at a hearing or prehearing conference of which the party has notice, such failure may be deemed a default and the hearing examiner may thereupon make a decision, enter an order, or otherwise dispose of the case.

Note: See the Dane County, Wisconsin, Circuit Court decision *Lee R. Krahenbuhl, DDS v. Wisconsin Department of Regulation and Licensing* (Memorandum Decision, February 26, 2003, Case No. 02-CV. 1148, Dane County) which held that only an attorney authorized to practice law in Wisconsin may participate in a contested case administrative hearing, action or proceeding. A copy of the decision may be obtained from the division of securities, department of financial institutions.

ANALYSIS: The Note added to this rule (dealing with appearances at hearings and prehearing conferences) is for the purpose of providing notice (to legal counsel not licensed to practice law in Wisconsin who look to represent a named party in a Division Order or Notice of Hearing) of a recent Dane County, Wisconsin Circuit Court decision. Under the decision in the *Krahenbuhl* case cited in the Note, only an attorney authorized to practice law in Wisconsin may participate in a contested case administrative hearing, action or proceeding.

SECTION 4. DFI-Sec 8.06 is amended to read:

DFI-Sec 8.06 Service of orders. A copy of every order issued without a hearing shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or a legal representative the party's attorney of record .

ANALYSIS: The amendments to this rule regarding service of Division administrative orders provide that certified mail service can be made to a named party's attorney of record. Such amendments conform the rule to the Chapter 227 Administrative Procedure provision in sec. 227.48(1), Wis. Stats., dealing with service of administrative decisions which permits service by mail to a named party's attorney of record.

SECTION 5. DFI-Sec 8.07 is amended to read:

DFI-Sec 8.07 Effectiveness of orders or other documents, notice. Every order or other document is effective when signed. Mailing of any order or document under this chapter to the last known address of any person, or personal service, constitutes notice thereof to the person, provided that if the person is a corporation, service by certified mail to the corporation's registered agent at the registered agent's last known address also constitutes notice to the corporation.

ANALYSIS: The amendment to this rule (relating to effectuating service of summarily-issued Division administrative orders on named parties) provides that if the named party is a corporation, notice to such named party/corporation also may be achieved via certified mail sent to the corporation's registered agent at the registered agent's last known address.

* * * * *

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

DATED at Madison Wisconsin, this ____ day of _____, 2003.

[SEAL]

PATRICIA D. STRUCK
Administrator
Division of Securities

**REPORT PREPARED BY THE
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES
RELATING TO PROPOSED FINAL FORM OF YEAR 2003 AMENDMENTS TO
THE RULES OF THE DIVISION OF SECURITIES**

(a) Statement Explaining Need for Rules

The rulemaking procedures under Chapter 227 of the Wisconsin Statutes are being implemented for the purpose of effectuating the Division's annual review of the Rules of the Division of Securities. The Division's annual rule revision process for 2003 is conducted for the following purposes: (1) making a necessary repeal of an administrative rule that had been adopted under, and was applicable to, the former "individual accredited investor" securities registration exemption in 551.23(8)(g), Wis. Stats., (which was repealed and re-created effective October 1, 2002); and (2) amending several of the existing Administrative Procedure-contested case rules in Chapter DFI-Sec 8, Rules of the Division of Securities, dealing with effectuating service and providing notice of administrative orders on named parties, as well as appearances at administrative proceedings by representatives of named parties.

A summary of the rule revisions follows:

1. Making a necessary repeal of administrative rule DFI-Sec 2.02(4)(b) that had been adopted under, and was applicable to, the former "individual accredited investor" securities registration exemption in 551.23(8)(g), Wis. Stats., (which was repealed and re-created in 2001 Wisconsin Act 44 that became effective October 1, 2002) to now conform totally to the federal definition of "accredited investor" under Rule 501(a) of Regulation D of the Securities Act of 1933.
2. The existing rule in DFI-Sec 8.03 relating to appearances at administrative proceedings by representatives of named parties needs to be supplemented by a Note to reflect a recent Wisconsin court determination that precludes persons not licensed as attorneys in Wisconsin from representing named parties in contested case administrative proceedings before Wisconsin state agencies.
3. The existing rule in DFI-Sec 8.06 relating to effecting service by the Division of administrative orders on named parties needs to be amended to provide that if the named party is represented by legal counsel, service can be accomplished by serving legal counsel representing the named party.
4. The existing rule in DFI-Sec 8.07 relating to effectuating service of summarily-issued Division administrative orders on named parties needs to be amended to provide that if a named party is a corporation, service via certified mail can be accomplished either by sending to the corporation directly at its last known address, or by sending to the corporation's registered agent at its last known address, or by doing both.

* * * * *

(b) Explanation of Modifications Made as a Result of the Public Hearing and Comment Process

- As a result of the public hearing and comment process, the proposed repeal of rule DFI-Sec 2.02(4)(a)6 in Section 1 of the Public Comment Draft was deleted. The Division had proposed repealing that rule--which included for purposes of the definition of "financial institution or institutional investor" under sec. 551.23(8)(f), cross-references to four categories of so-called "entity accredited investors" listed in section 230.501(a)(1), (2), (3), or (7) under Regulation D of the Securities Act of 1933. A comment letter pointed out that the repeal of rule DFI-Sec 2.02(4)(a)6 would have unintended consequences for purposes of the licensing exemption in sec. 551.31(1)(a), Wis. Stats., [as well as for the licensing exemptions in secs.551.31(2), (3), (3m), (4), and (4m)] such that if the rule were eliminated, broker-dealers, investment advisers and their representatives who conduct business exclusively with entity accredited investors in Wisconsin would no longer be able to qualify for the exemption from broker-dealer licensure because such activities would be made pursuant to section 551.23(8)(g) [rather than under (8)(f) as required for purposes of the licensing exemptions cited above].

* * * * *

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

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

* * * * *

Comment Letters Received

- A comment letter dated July 17, 2003, was received July 18, 2003 from Attorney Ellen Lieberman from the law firm Debevoise & Plimpton, New York, New York.

* * * * *

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

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

- Consistent with the Rules Clearinghouse comment, in the statement of statutory authority, the citation to section 551.23(8)(f), Wis. Stats., is changed to section 551.23(8)(g), Wis. Stats. .

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

- Consistent with the Rules Clearinghouse comment in paragraph a. regarding DFI-Sec 8.03, the citation to the *Krahenbuhl* case, together with a summary of the holding in that case, and a statement that a copy of the decision can be obtained from the Department of Financial Institutions, was placed in a Note following after the rule.
- Consistent with the Rules Clearinghouse comment in paragraph b. regarding DFI-Sec 8.03, the middle initial of the individual named in the title of the *Krahenbuhl* case was corrected.

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

Consistent with the Rules Clearinghouse Comment regarding DFI-Sec 8.07, the language “that if any person...” was changed to “that if the person”

* * * * *

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

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Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DFI-Sec Chs 2 & 8

Subject
 Division of Securities 2003 Annual Rules Revision

Fiscal Effect

State: No State Fiscal Effect

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

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.144(1)(g)

Assumptions Used in Arriving at Fiscal Estimate

This fiscal estimate relates to the Year 2003 Annual Revision of the Rules of the Division of Securities under the Wisconsin Uniform Securities Law. The proposed rule revisions do not have any fiscal effects, in that they involve no one-time revenue fluctuations, no annualized fiscal effects, and no long-range fiscal implications. Nor do the rules involve any local costs.

Long-Range Fiscal Implications

None.

Prepared By: Randall Schumann	Telephone No. 266-3414	Agency DFI-Division of Securities
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

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 03-069

AN ORDER to repeal DFI-Sec 2.02 (4) (a) 6. and (4) (b); to renumber DFI-Sec 2.02 (4) (a) 1., 2., 3., 4., 5. and 7.; and to amend DFI-Sec 8.03, 8.06 and 8.07, relating to securities registration exemptions and administrative procedure-contested case rules.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

07-07-2003 RECEIVED BY LEGISLATIVE COUNCIL.

07-24-2003 REPORT SENT TO AGENCY.

RS:NZ



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-069

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

In the statement of statutory authority, it appears that the citation to s. 551.23 (8) (f), Stats., should be changed to s. 551.23 (8) (g), Stats.

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

a. In s. DFI-Sec. 8.03, the citation to the *Krahenbuhl* case should be placed in a note. To the extent that a party is subject to a supreme court rule, that party will also be subject to the cases interpreting that rule. Since the citation only serves to provide notice of a case, it is more appropriately placed in a note. If the agency includes the reference to the *Krahenbuhl* case in a note, it would be helpful to summarize the holding and state that a copy of the case can be obtained from the Department of Financial Institutions. Without a summary, a person is not going to be able to know what the holding of the case is, and it is not easy to find a copy of a circuit court opinion.

b. In s. DFI-Sec. 8.03, the citation should be “Lee R. Krahenbuhl, DDS v. Wisconsin Department of Regulation and Licensing” not “Lee v. Krahenbuhl, DDS v. Wisconsin Department of Regulation and Licensing”.

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

In s. DFI-Sec. 8.07, “...that if any person...” should be changed to “...that if the person....”