Chapter DFI−SB 3

SURETY BONDS; CONFLICTS OF INTEREST; LIQUIDITY; AND APPRAISAL POLICIES

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Note: Chapter SB 3 was renumbered ch. DFI−SB 3 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1997, No. 503.

Subchapter I — Surety Bonds

DFI−SB 3.01 Bonds required; form and amount. **(1)** BOND REQUIRED. Each savings bank shall maintain fidelity bond coverage. Except as provided in s. DFI−SB 3.02, the bond shall cover each director, officer, employee and agent who has control over or access to cash, securities, or other property of the savings bank.

(2) AMOUNT. The amount of coverage to be required for each savings bank shall be determined by management, based on its assessment of the level that would be safe and sound in view of the savings bank's potential exposure to risk. The determination shall be approved by the savings bank's board of directors. Each savings bank may maintain bond coverage in addition to that provided by the insurance underwriter industry's standard forms, through the use of endorsements, riders, or other forms of supplemental coverage, if, in the judgment of the board of directors, additional coverage is warranted.

(3) BOARD OF DIRECTORS' DECISION. The board of directors of each savings bank shall formally approve the savings bank's bond coverage. In deciding whether to approve the bond coverage, the board shall review the adequacy of the standard coverage and the need for supplemental coverage. Documentation of the board's approval shall be included as a part of the minutes of the meeting at which the board approves coverage. Additionally, the board of directors shall review the savings bank's bond coverage at least annually to assess the continuing adequacy of coverage.

Note: This section interprets or implements s. 214.34, Stats.

Note: This section parallels 12 CFR 563.190 under which the federal office of thrift supervision requires bonds and prescribes their form and amount for savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DFI−SB 3.02 Bonds for agents. In lieu of the bond required by s. DFI−SB 3.01, for agents appointed by a savings bank, a fidelity bond may be provided in an amount at least twice the average monthly collections of each agent if the agent is required to settle with the savings bank at least monthly and if the bond is approved by the board of directors of the savings bank. No bond is required for any agent that is a financial institution insured by the FDIC.

Note: This section interprets or implements s. 214.34, Stats.

Note: This section parallels 12 CFR 563.191 adopted by the federal office of thrift supervision for savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter II — Conflicts of Interest

DFI−SB 3.03 Conflicts of interest prohibited. **(1)** POLICY. The division has a paramount interest in the prevention and elimination of practices and conditions which may adversely affect the interests of members in savings banks, the soundness of savings banks, the provision of economical home financing and other credit for residents of this state, and the accomplishment of the other purposes of ch. 214, Stats. and rules adopted under it.

(2) FIDUCIARY RESPONSIBILITIES. Among the practices and conditions which shall be avoided or eliminated are conflicts between the accomplishment of the purposes of ch. 214, Stats., and the personal financial interests of directors, officers, employees and other affiliated persons of savings banks. Conflicts of this type are considered to be inherently unsafe and unsound practices and conditions. The division accordingly holds that each director, officer, employee or other affiliated person of a savings bank has a fundamental duty to avoid placing himself or herself in a position which may create a conflict of interest or the appearance of a conflict of interest.

(3) CONFLICTS PROHIBITED. The division recognizes that it is impossible to define every practice or condition which falls within the broad concept of objectionable conflicts of interest. The division has, nevertheless, adopted ss. DFI−SB 3.04 to 3.07 to limit or prohibit certain types of conflicts of interest to implement the purposes of ch. 214, Stats. However, the fact that the division has not specifically limited or prohibited other conflicts of interest should not be interpreted as tacit approval of them. The division will continue to examine those conflict of interest situations which are not specifically limited or prohibited under the statutes and rules and will take appropriate action to prevent, circumscribe or eliminate those situations.

Note: This section interprets or implements ss. 214.335 and 214.345, Stats.

Note: This section parallels 12 CFR 563.200, an OTS regulation applying to savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DFI−SB 3.04 Corporate opportunities. Directors and officers of a savings bank and other persons having the power or authority to direct the management of the savings bank stand in a fiduciary relationship to the institution and its accountholders or shareholders or both. Out of this relationship arises, among other things, the duty of protecting the interests of the savings bank. It is a breach of this duty for such a person to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the savings bank or a service corporation and when the opportunity is of present or potential practical advantage to the savings bank. If a person so appropriates such an opportunity, the savings bank or service corporation may claim the benefit of the transaction or business and the person exposes himself or herself to liability. In determining whether an opportunity is of present or potential practical advantage to a savings bank, the division shall consider, among other things, the financial, managerial, and technical resources of the savings bank and its service corporation, and the reasonable ability of the savings bank directly or through a service corporation to acquire those resources.

Note: This section interprets or implements ss. 214.335 and 214.345, Stats.

Note: This section parallels 12 CFR 563.201, an OTS regulation applying to savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DFI−SB 3.05 Directors, officers and employees. (1) COMPOSITION OF BOARD OF DIRECTORS. (a) *Requirement.* The composition of a savings bank's board of directors is limited as follows:

1. A majority of the directors may not be salaried officers or employees of the savings bank or of any subsidiary or, except in the case of a savings bank having 50% or more of any class of voting shares owned by a holding company.

2. Members of the same immediate family may not constitute a majority of a board of directors.

3. No 2 or more directors may be attorneys practicing with or employed by the same law firm.

(b) *Prospective application.* If a savings bank's board of directors does not conform with par. (a) on February 1, 1994, the service of any person serving on the board of directors on that date, including service through re−election and re−appointment, may not be interrupted.

(2) OTHER EMPLOYMENT. No savings bank or subsidiary may permit any salaried officer or employee to work during the hours of his or her employment by the savings bank or subsidiary for any affiliated person of the savings bank unless the affiliated person compensates the savings bank or subsidiary for the time during which the officer or employee is engaged in the work.

Note: This section interprets or implements ss. 214.335, 214.342 and 214.345, Stats.

Note: This section parallels 12 CFR 563.33, an OTS regulation applying to savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

DFI−SB 3.06 Restrictions on loans, other investments, and property transactions involving affiliated persons. (1) RESTRICTIONS ON LOANS AND OTHER TRANSACTIONS WITH AFFILIATED PERSONS. (a) No savings bank or subsidiary may, either directly or indirectly, make a loan to any person affiliated with the savings bank under s. 214.01 (2), Stats., or purchase such a loan, except for loans in the ordinary course of business of the savings bank or subsidiary which do not involve more than the normal risk of collectibility or present other unfavorable features, and which do not exceed the loan amount which would be available to members of the general public of similar credit status applying for loans, of the following types:

1. Loans secured by the principal residence of a person affiliated.

2. Loans secured by deposit accounts maintained by the person affiliated at the savings bank.

3. Loans for constructing, adding to, improving, altering, repairing, equipping, or furnishing the principal residence of the person affiliated.

4. Loans in the form of overdraft protection for NOW accounts.

5. Loans for payment of educational expenses, consumer loans, and extension of consumer credit in connection with credit cards.

(b) A loan described in par. (a) shall be approved in advance by a resolution after full disclosure by at least a majority, with no director having an interest in the transaction voting, of the entire board of directors of the savings bank. Full disclosure includes a statement of whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to members of the general public.

(c) A savings bank may not make loans under par. (b) at an interest rate below its current cost of funds, including all savings accounts and borrowings except that for a loan secured by a deposit account, the interest rate shall be at least 1% above the rate of return on the deposit account, and the resolution required by par. (b) must set forth:n

1. The savings bank's current cost of funds, including the elements of its computation.

2. A justification of the more favorable rate, if the loan is to an affiliated person other than a salaried officer or employee of the savings bank or its subsidiary.

(d) With respect to a loan under par. (b) to a salaried officer or employee of the savings bank or its subsidiary, the approval requirement of par. (c) will be satisfied if the loan conforms with a blanket−preapproval resolution of the board specifying the terms on which loans may be made to all officers or employees, or a class of officers or employees, and the loan documents set forth the savings bank's current cost of funds, including the elements of its computation. A savings bank may not use a blanket−preapproval resolution to make loans under par. (a) 3. to an affiliate in excess of $100,000 in the aggregate.

(e) A savings bank may extend credit for commercial purposes to an affiliated person which may not exceed an aggregate of $100,000 except that the maximum for a director who is not employed by the savings bank may be the greater of $100,000 or 10% of the savings bank's net worth but not greater than $2,500,000. This extension of credit shall not involve more than the normal risk of collectibility or present other unfavorable features, and shall be at terms, amount, and interest rate substantially the same as those prevailing at the same time for comparable loans made to members of the general public of similar credit status. A savings bank shall comply with par. (d) with respect to any extensions of commercial credit exceeding an aggregate amount of $10,000. A savings bank shall, at the time of approval by the board of directors, notify the division of the transaction and all other outstanding extensions of commercial credit to the affiliated person.

(f) No savings bank or subsidiary may invest, either directly or indirectly, in the stock, bonds, notes, or other securities of any affiliate of the savings bank.

(g) No savings bank or subsidiary may, directly or indirectly, purchase securities under a repurchase agreement from any affiliate of the savings bank.

(2) PROHIBITIONS ON LOAN TRANSACTIONS WITH THIRD PERSONS. No savings bank or subsidiary may, either directly or indirectly:

(a) Make any loan to, or purchase other than through a secondary market such as the federal home loan mortgage corporation, any loan made to any third party on the security of real property purchased from any affiliate of the savings bank, unless the property was a single−family dwelling owned and occupied by the affiliated person as his or her principal residence;

(b) Make a loan to, or purchase a loan made to, any third party secured by real property with respect to which any affiliate of the savings bank holds a security interest;

(c) Accept the stock, bonds, notes, or other securities of any affiliate of the savings bank as security for a loan to any third party made or purchased by the savings bank or subsidiary;

(d) Maintain a compensating balance with respect to a loan made by any third party to any affiliate of the savings bank; or

(e) Enter into any guarantee arrangement or make any take−out commitment with respect to a loan made by any third party to any affiliate of the savings bank.

(3) WAIVER. The restrictions in subs. (1) and (2) may be waived in supervisory cases if the division determines that the terms of the transaction in question are fair to, and in the best interests of, the savings bank or subsidiary. A "supervisory case" includes a merger instituted for compelling reasons of safety and soundness of a savings bank, and action taken pursuant to, or in order to obviate the necessity of, proceedings by the division under subch. XI of ch. 214, Stats.

(4) RESTRICTIONS. No savings bank or subsidiary may, directly or indirectly, purchase or lease from, jointly own with or sell or lease to an affiliate of the savings bank any interest in real or personal property unless the transaction is determined by a majority of the savings bank's board of directors to be fair to, and in the best interest of, the savings bank or subsidiary.

(5) CONDITIONS. Transactions permitted under sub. (4) shall:

(a) Be supported by an independent appraisal not prepared by an affiliate, affiliated person, or employee of the savings bank or subsidiary; and,

(b) Be approved in advance by a resolution indicating that the terms of the transactions are fair to, and in the best interests of, the savings bank or subsidiary. The resolution shall be adopted with full disclosure by at least a majority of the entire board of directors with no director having an interest in the transaction voting on the resolution of the savings bank or subsidiary or alternatively by a majority of the total votes eligible to be cast by the voting members of the savings bank at a meeting called for the purpose, with no votes cast by proxies not solicited for the purpose. In this subsection, "full disclosure" includes the affiliated person's source of financing for the real property involved in the transaction, including whether the savings bank or any subsidiary has a deposit relationship with any financial institution or holding company affiliate thereof providing the financing.

Note: This rule parallels 12 CFR 563.43, an OTS regulation applying to savings and loan associations.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1) (e), Register, October, 1996, No. 490, eff. 11−1−96.

DFI−SB 3.07 Annual reports on interests and involvements in business ventures. (1) DEFINITIONS. In this section:

(a) "Business venture" means any partnership, joint venture, corporation or similar entity, but does not include any non−profit, religious, charitable or fraternal organization or a corporation in which the savings bank has been authorized to invest by the division.

(b) "Employee" means a person who is any of the following:

1. Employed by a savings bank and is directly involved in approving loans made by the savings bank or determining the terms or conditions under which any specific loan is made.

2. Employed by a savings bank and is directly involved in approving transactions, or in determining the terms or conditions of transactions entered into by the savings bank.

(c) "Officer" means the president, a vice president, the treasurer, the secretary and any other officer which the board designates by resolution, but does not include any assistant officer.

(d) "Reportable interest" means an interest in debt or equity of a business venture other than an interest:

1. In debt of a business venture of not more than $10,000 or 5% of the assets of the business venture, whichever is greater; or

2. Of 5% or less of the stock of a corporation; or

3. Of 5% or less in a limited partnership.

(2) REPORTING REQUIREMENTS. At least once each year the board of directors of each savings bank shall obtain from each of the savings bank's officers, directors and employees, other than persons serving solely as advisory directors, a sworn statement containing the information required by sub. (3). Each officer, director, and employee, other than persons serving solely as an advisory director, shall provide such a statement and shall disclose any new reportable interest to the board within one month after its acquisition.

(3) INTEREST TO BE DISCLOSED. The statement required by sub. (2) shall identify for each director, officer and employee and his or her spouse and persons treated as dependents under section 151 (c) of the federal internal revenue code:

(a) Their reportable interests; and

(b) Each position they hold as a director, officer or salaried employee of a business venture.

(4) VALUATION OF REPORTABLE INTERESTS. In determining whether an interest is reportable under sub. (3):

(a) The value of unlisted securities traded in the over−the−counter market is the average of the bid and asked price.

(b) The value of securities for which no market information is readily available is:

1. For common stock or equivalent securities, net worth divided by the number of outstanding voting shares times the number of shares held.

2. For preferred stock, redemption price, or par or stated value if not redeemable.

3. For debt securities, the unpaid balance.

4. For an interest in the capital of a partnership, the net worth of the partnership multiplied by the percentage of interest held.

(5) NATURE OF DISCLOSURE. Statements required under sub. (2) shall disclose the existence of any reportable interest, but are not required to disclose its specific value.

Note: This section interprets or implements s. 214.345 (2), Stats.

Note: This rule is patterned after former s. S−L 9.04, effective from 1978 to 1989.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter III — Liquidity

DFI−SB 3.08 Liquidity requirement. (1) The division shall establish, by periodic written notice to all savings banks, the minimum liquidity ratio that savings banks shall maintain. The ratio shall be between 4% and 15%. At least 50% of the minimum liquid assets shall consist of primary liquid assets. The division may require a savings bank to maintain a higher ratio if the division determines that the nature of the savings bank's operations requires a higher liquidity ratio.

(2) The liquidity ratio of a savings bank for a month shall be calculated as follows:

(a) Add the savings bank's daily net withdrawable deposit accounts and its outstanding borrowings due in one year or less for the previous month.

(b) Divide the amount in par. (a) by the total number of days in the previous month.

(c) Divide the savings bank's average daily total of liquid assets for the month for which the liquidity ratio is being calculated by the amount in par. (b).

(3) A liquid asset shall be either cash or an obligation authorized for investment by a savings bank. Liquid assets do not include equity investments, loans except marketable corporate debt instruments which are rated in one of the 4 highest ratings by a nationally recognized rating service, and loan receivables.

(4) In this section,"primary liquid assets" include the following unencumbered obligations:

(a) U.S. government and U.S. government agency obligations.

(b) Obligations issued by this state or a political subdivision, including a school district, in this state.

(c) Deposits in FDIC−insured financial institutions that equal or exceed the minimum capital requirements for savings banks.

(d) Cash, cash equivalent receivables, and settlements due from the U.S. or an agency of the U.S.

(e) Accrued interest receivable on any item in par. (a), (b), (c), (f), (g) or (h).

(f) Commercial paper of the 2 highest investment grades having a maturity of 270 days or less.

(g) Bankers acceptances having a maturity of 270 days or less of federally insured U.S. banks.

(h) Shares in open−end investment funds if at least 99% of the securities held by the fund would otherwise qualify as primary liquid assets under this section if held directly by the savings bank.

(i) Marketable corporate debt instruments which are rated in one of the 4 highest ratings by a nationally recognized rating service. In this par., marketable corporate debt instruments shall have a remaining maturity of no more than 36 months.

(5) Other liquid assets which are not "primary liquid assets" include the following unencumbered obligations:

(a) Mortgage backed securities which are readily salable in the securities market.

(b) Mortgage derivative securities with a projected maturity of less than 4 years which are readily salable in the securities market.

(c) Securities issued by other states and political subdivisions in other states.

(d) Other securities authorized by the division as investments and for which a secondary resale market exists, including authorized mutual fund investments.

(e) Accrued interest receivable on any item in pars. (a) to (d).

(6) To qualify as a liquid asset, a security shall be current with respect to payment of scheduled principal or interest or both and shall be an authorized investment for a savings bank.

(7) In this section:

(a) A savings bank's designation of an investment under financial accounting standards board statement number 115 does not effect its liquid asset classification.

(b) The value of an investment included in liquid assets shall be accounted for under generally accepted accounting principles and financial accounting standards board statement number 115.

(c) Assets and liabilities of a wholly owned investment operating subsidiary shall be treated on a consolidated reporting basis with those of the parent savings bank.

Note: A copy of the document captioned "Accounting for Certain Investments in Debt and Equity Securities" (May 1993), known as "Statement of Financial Accounting Standards No. 115" is available at the office of the division, the secretary of state and the legislative reference bureau. A copy may be obtained on request.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr., Register, March, 1996, No. 483, eff. 4−1−96; am. (4) (e), Register, October, 1996, No. 490, eff. 11−1−96; am. (3), cr., (4) (i), Register, November, 1997, No. 503, eff. 12−1−97.

Subchapter IV — Appraisal Policies and Practices

DFI−SB 3.09 Duty of institution. Each savings bank shall establish appraisal policies and practices that set standards for appraisers and appraisals used by the savings bank. These standards must comply with the "Uniform Standards of Professional Appraisal Practice" or any other standards deemed appropriate by the division.

Note: A copy of the document captioned "Uniform Standards of Professional Appraisal Practice" is available at the office of the division, the secretary of state and the legislative reference bureau. A copy may be obtained by writing The Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., N.W., Suite 900, Washington, D.C. 20005. The document is also set out as Appendix I to ch. SPS 86, Wis. Adm. Code.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.