

STATE OF WISCONSIN

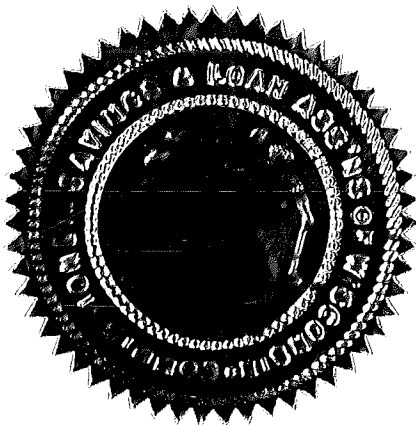
OFFICE OF COMMISSIONER OF SAVINGS AND LOAN

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) SS ORDER NO. 105
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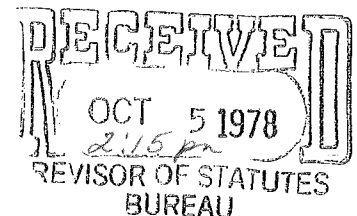
I, R. J. McMahon, Commissioner of Savings and Loan and custodian of the official records of the Office of Commissioner of Savings and Loan, do hereby certify that the annexed Order No. 105 was duly adopted by this office on October 2, 1978.

I further certify that the copy of the Order annexed hereto has been compared by me with the original on file in this office and that the same is a true copy thereof, and the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of this office in the City of Madison this 2nd day of October, 1978.



R. J. McMahon
 R. J. McMahon, Commissioner



ORDER OF THE
OFFICE OF THE COMMISSIONER OF SAVINGS AND LOAN ADOPTING RULES

Order No. 105

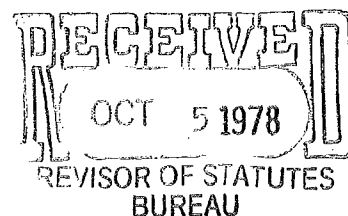
WHEREAS, in accordance with section 227.021 of the Wisconsin Statutes official notice of a hearing on the rules embodied in this order was published in the Wisconsin administrative register of July, 1978; and

WHEREAS, pursuant to that notice a public hearing was held on August 17, 1978, at which a draft of the attached rule was the topic of discussion; and

WHEREAS, on August 17, 1978, a final draft of the rule was approved by the commissioner of savings and loan and the savings and loan review board; and

WHEREAS, on August 28, 1978, members of the appropriate standing committees were duly notified of the proposed rules in accordance with section 227.018 of the Wisconsin Statutes, and within the more than 30 days that have since intervened no legislative committee has asked to meet with this office to review the draft;

Now, Therefore, pursuant to authority vested in the Office of the Commissioner of Savings and Loan under sections 215.02(7) and 215.21(17)(b)2 of the Wisconsin Statutes, as affected by chapter 140, laws of 1977, the Office of the Commissioner of Savings and Loan hereby adopts rules as follows:



OFFICE OF THE COMMISSIONER OF SAVINGS AND LOAN

A RULE to create chapter S-L 9 of the administrative code, relating to prohibiting certain loans and requiring certain disclosures.

Analysis by the Office of the Commissioner of Savings and Loan

This rule requires certain disclosures and imposes certain lending restrictions intended to minimize the possibility of conflicts between the best interests of state chartered savings and loan associations and key association personnel.

The rule prohibits a state chartered savings and loan association from lending more than a total of \$25,000 to a "business venture" in which any of its directors, principal officers, or employes having a decision-making role in the lending process, or any of their spouses or legal dependents, have a "reportable interest". A business venture is defined to include any business entity other than a corporation in which the association has been authorized to invest by the commissioner (e.g., a service corporation). Non-profit, religious, charitable or fraternal organizations are also excluded. Except for an interest in a corporation whose stock is publicly traded on a recognized stock exchange or a limited partnership interest representing a share of 5% or less, any interest having a value of \$10,000 or more is "reportable".

Under the rule an association may lend \$25,000 or less to such a business venture, but only if: 1) the officer, director or employe who has the reportable interest or whose spouse or legal dependent has the reportable interest is not involved in approving the loan or determining the terms or conditions under which it is made; and 2) the loan is individually considered by the association's board of directors and is formally approved by the board before there is any commitment to make the loan.

The rule also requires directors, principal officers, and employes who have a decisionmaking role in the lending process to disclose their reportable interests and those of their spouses and legal dependents to the association's board of directors at least once a year. Newly-acquired reportable interests must be disclosed within a month after their acquisition. Disclosures need indicate only the reportable interest existence, not its specific value. Annual disclosures must also identify outside business ventures that employ the officer, director or employe, or a member of his or her immediate family.

Section 215.21 (17)(b)1 of the statutes (as affected by chapter 140, laws 1977) prohibits an association from lending to a business venture that employs an officer, director or employe of the association, unless the association has first obtained the written approval of the commissioner. This rule extends that prohibition to include loans to a business venture that employ the spouse or legal dependent of an association director, principal officer or employe having a decisionmaking role in the lending process. But at the same time, the rule provides the commissioner's written permission to

lend to a business venture employing an officer or director of the association or an association employe having a decisionmaking role in the lending process, or the spouse or legal dependent of such an officer, director or employe, as long as: 1) the officer, director or employe who is employed by the business venture or whose spouse or legal dependent is employed by the business venture does not participate in approving the loan or determining its terms or conditions; and 2) the loan is individually considered by the association's board of directors and is formally approved by the board before there is any commitment to make the loan. By its narrow definition of "employe" the regulation eliminates the need for an association to obtain the commissioner's approval before lending to a business venture that may happen to employ an association employe who has no decisionmaking role in the lending process.

Chapter S-L 9 of the administrative code is created to read:

CHAPTER S-L 9

PROHIBITED LOANS

S-L 9.01 STATEMENT OF POLICY. (1) Except for loans that are specifically permitted to be made to association personnel and can be considered a reasonable fringe benefit of employment, the public interest is not best served when savings and loan funds that might otherwise be available for loans to the general public are used to benefit association insiders.

(2) The commissioner recognizes that it is virtually impossible to anticipate all situations in which the best interests of association insiders might conflict with those of the general public or might adversely affect the soundness of the association's loan underwriting. However, it is the purpose of this chapter and section 215.21 (17) of the statutes to identify transactions likely to result in such situations and to prohibit them outright or require specific action on the part of the association's board of directors before they are permitted to occur. Each association is expected to remain alert to other situations that may affect the soundness or objectivity of its lending program, and to make a reasonable effort to avoid them.

(3) Insured associations are also subject to federal insurance regulations pertaining to insider loans. This chapter should be read in connection with those regulations.

COMMENT: This introductory statement of policy is included only for the purpose of putting the chapter into perspective and giving readers a better understanding of its "spirit".

S-L 9.02 DEFINITIONS. In this chapter and section 215.21 (17)(b) of the statutes:

(1) "Association" means a savings and loan association chartered by this state.

(2) "Business venture" means any partnership, joint venture, corporation or similar entity, but does not include any nonprofit, religious, charitable or fraternal organization or a corporation in which the association has been authorized to invest by the commissioner.

(3) "Commissioner" means the commissioner of savings and loan or his or her authorized representative.

(4) "Director" means a person who is a member of a board of directors, but does not include a nonvoting advisory director or director emeritus.

COMMENT: Nonvoting advisory directors and nonvoting directors emeritus are deliberately excluded from the definition of a director. However, advisory directors and directors emeritus are subject to this chapter if they exercise discretion in granting loans or determining the conditions under which individual loans are made, in which case they fall within the definition of "employee" found in subsection (5) below.

(5) "Employee" means a person who is employed by an association and is directly involved in approving loans made by the association or determining the terms or conditions under which any specific loan is made.

COMMENT: Clerical personnel and other persons who are employed by an association but are not in a position to exercise discretion in approving applications or determining the terms or conditions to which a particular loan is subject are deliberately excluded from this narrow definition.

(6) "Legal dependent" means a person treated as a dependent for federal income tax purposes.

(7) "Officer" means a president, vice president or secretary, but does not include any assistant officer.

COMMENT: This definition is deliberately narrow. Assistant officers and other association officers excluded from this definition are subject to this chapter only if they exercise discretion in granting loans or determining the conditions under which individual loans are made, in which case they would fall within the definition of "employee" found in subsection (5) above.

(8) "Reportable interest" means an interest that is required to be disclosed under section S-L 9.04 (2)(a) of this chapter.

(9) "Statutes" mean the Wisconsin statutes.

S-L 9.03 RESTRICTIONS ON LOANS TO BUSINESS VENTURES IN WHICH ASSOCIATION PERSONNEL OR MEMBERS OF THEIR IMMEDIATE FAMILY HAVE AN INTEREST. (1) BUSINESS VENTURES IN WHICH THERE IS A REPORTABLE INTEREST. An association may make a loan to a business venture in which an officer, director or employe of the association, or the spouse or legal dependent of such an officer, director or employe, has a reportable interest only if:

(a) The aggregate of the loan and the outstanding balance of all of the association's existing loans to that business venture will not exceed \$25,000;

(b) The officer, director or employe who has the reportable interest or whose spouse or legal dependent has the reportable interest does not in any way participate in approving the loan or determining

the specific terms or conditions under which it is made; and

(c) The loan is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan.

(2) BUSINESS VENTURES EMPLOYING ASSOCIATION PERSONNEL. (a) An association may make a loan to a business venture employing an officer, director or employe of the association, or the spouse or legal dependent of such an officer, director or employe, without further approval from the commissioner only if:

1. The officer, director or employe of the association who is employed by the business venture or whose spouse or legal dependent is employed by the business venture does not in any way participate in approving the loan or determining the specific terms or conditions under which it is made; and

2. The loan is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan.

(b) For purposes of this subsection, any person who receives compensation from a business venture for services rendered as an officer, director or salaried employe of that venture is deemed to be employed by that business venture.

S-L 9.04 REPORTS ON INTERESTS AND INVOLVEMENTS IN BUSINESS VENTURES. (1) REPORTING REQUIREMENTS. At least once each year the board of directors of each association shall obtain from each of the association's officers, directors and employes a sworn statement con-

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taining the information required under subsection (2). Each officer, each director, and each employe of an association shall provide the association with such a statement and shall disclose any new reportable interest to the board within one month after its acquisition.

(2) INTERESTS TO BE DISCLOSED. The report shall identify the following interests or positions currently held by the officer, director or employe or his or her spouse or legal dependent:

(a) Every interest of \$10,000 or more in the debt or equity of a business venture, excluding:

1. Any interest in a corporation traded on a recognized stock exchange.

2. Any limited partnership interest representing a share of 5% or less.

COMMENT: Two common forms of investment that are not considered likely to have any significant influence on the action of association personnel are specifically excluded from treatment as a "reportable interest", regardless of the value of the holding.

(b) Every position as an officer, director or salaried employe of a business venture.

(3) VALUATION OF REPORTABLE INTERESTS. For purposes of determining whether an interest is reportable under this section:

(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. In the case of common stock or equivalent securities, net worth divided by the number of outstanding voting shares times the number of shares held.

2. In the case of preferred stock, redemption price, or par or stated value if not redeemable.

3. In the case of debt securities, the unpaid balance.

4. In the case of an interest in the capital of a partnership, the net worth of the partnership times the percentage of interest held.

(4) NATURE OF DISCLOSURE. Reports required under this section need only disclose the existence of any reportable interest, and need not disclose its specific value.

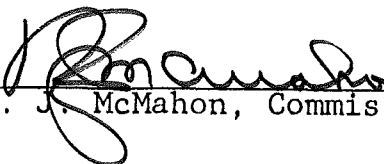
COMMENT: The disclosure requirements of this section are patterned after (but somewhat less comprehensive than) the disclosures that the state ethics board requires of public officials.

(End)

The rule contained in this order shall take effect on the first day of the month following its publication in the Wisconsin administrative register.

Dated: October, 1978

OFFICE OF THE COMMISSIONER OF SAVINGS AND LOAN



R. J. McMahon, Commissioner