

Chapter SEC 4

LICENSING OF BROKER-DEALERS AND AGENTS

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Note: Chapter SEC 4 as it existed on December 31, 1977 was repealed and a new chapter SEC 4 was created effective January 1, 1978.

SEC 4.01 Licensing procedure. (1) Applications for initial and renewal licenses of broker-dealers and agents shall be filed with:

(a) The commissioner on forms prescribed by the commissioner in s. SEC 9.01 (1); or

(b) The central registration depository of the national association of securities dealers as developed under contract with the north american securities administrators association, on forms established for the central registration depository.

(2) (a) Except as provided in par. (b), an "application" for purposes of s. 551.32 (1) (b), Stats., means all information required by the form prescribed under sub. (1) together with any additional information required by the commissioner.

(b) An "application" for renewal of a license as securities agent for a broker-dealer registered with the national association of securities dealers, inc. consists of the payment of Wisconsin agent license renewal fees to the central registration depository of the national association of securities dealers as developed under contract with the north american securities administrators association. The application shall be deemed "filed" under s. 551.32 (1) (a), Stats., when the fee on deposit with the central registration depository has been allocated to the commissioner.

(3) Unless waived under sub. (4), each applicant for an initial license as a broker-dealer or agent is required to pass the Uniform Securities Agent State Law Examination with a grade of at least 70% and pass with a grade of at least 70% one of the general securities business examinations in par. (a), unless the applicant's proposed securities activities will be restricted, in which case the applicant is required to pass each examination in pars. (b) to (d) of this subsection that relates to the applicant's proposed securities activities:

(a) The Securities Exchange Commission Only/National Association of Securities Dealers Non-Member General Securities Examination or, in the case of applicants registered with the national association of securities dealers, inc., the General Securities Registered Representative Examination.

(b) The Investment Company Products/Variable Contracts Representative Examination.

(c) The Direct Participation Programs Representative Examination.

(d) The Municipal Securities Representative Examination.

(4) The examination requirement in sub. (3) is waived for any applicant who meets the criteria set forth in any one of the paragraphs in this subsection:

(a) The applicant has passed with a grade of at least 70% the examinations required to be passed by the applicant under sub. (3) within two years prior to the date the application for license is filed in this state.

(b) The applicant has been licensed, within two years prior to the date the application for license is filed in this state, as an agent or as a broker-dealer under the securities law of any other state that requires passing the uniform securities agent state law examination and, in the case of examinations required by pars. (a) to (d) in sub. (3), has been registered with the national association of securities dealers, inc., within two years prior to the date the application for license is filed to engage in the type of business for which the applicant is applying for license.

(c) The applicant has submitted an undertaking satisfactory to the commissioner setting forth how the applicant's activities will be limited in this state and, in the case of an agent seeking a limited license, how the agent will be adequately supervised.

(d) The applicant has been licensed under ch. 551, Stats., within two years prior to the date the application is filed as an agent or broker-dealer to engage in the type of business for which the applicant is applying for license.

(e) The applicant has received an order of the commissioner, issued under conditions as the commissioner may prescribe, waiving the requirement to take and pass one or more of the examinations in sub. (3).

(5) Prior to issuance of an initial license as a broker-dealer, at least one employe located at the principal office of the broker-dealer shall be designated in the license application to act in a supervisory capacity and be licensed as an agent for the broker-dealer. Each designated supervisor shall meet the examination requirement in sub. (3) and shall pass with a grade of at least 70% the examination in par. (a) of this subsection, unless the broker-dealer's proposed securities activities will be restricted, in which case the designated supervisor is required to pass each examination in pars. (b) to (d) of this subsection that relates to the broker-dealer's securities activities, unless the examination is waived under sub. (4):

(a) The General Securities Principal Examination.

(b) The Investment Company Products/Variable Contracts Principal Examination.

(c) The Direct Participation Programs Principal Examination.

(d) The Municipal Securities Principal Examination.

(6) Any application for license which is not completed or withdrawn within 6 months from the date it is initially received may be deemed materially incomplete, and the commissioner may issue an order denying the license.

(7) A license is effective under s. 551.32 (1) (c) 4., Stats., at the following times prior to the expiration of 30 days from the filing of the application:

(a) The date that the commissioner issues a license to an agent or broker-dealer;

(b) The date that approval of licensed status as an agent or broker-dealer is transmitted by the commissioner to the applicant through the central registration depository of the national association of securities dealers, inc.; or

(c) On January 1 for any renewal application filed during December of the preceding year with the central registration depository, unless the commissioner makes a written request for additional information relevant to the application prior to January 1.

(8) A securities agent license is effective to authorize the licensee to effectuate transactions only in the types of categories of securities that the licensee has been qualified to sell by passing the examinations specified in sub. (3).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) and (4) (b), r. (4) (c), renum. (4) (d) and (e) to be (4) (c) and (d), r. and recr. (5), renum. (7) to be SEC 4.05 (8), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and (3), Register, December, 1981, No. 312, eff. 1-1-82; am. (3), (5) and (6), r. (4) (a), renum. (4) (b) to (d) to be (4) (a) to (c), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a), renum. (2) to be (2) (a) and am., cr. (2) (b) and (7), r. and recr. (3), (4) and (5), Register, December, 1983, No. 336, eff. 1-1-84; cr. (8), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 4.02 Net capital requirements and aggregate indebtedness limitations. (1) Every broker-dealer, whether or not subject to rule 15c3-1 of the securities exchange act of 1934, shall maintain net capital in such minimum amounts as are designated in that rule for the activities to be engaged in by the broker-dealer in this state.

(2) The aggregate indebtedness of each broker-dealer to all other persons shall not exceed the levels prescribed under rule 15c3-1 of the securities exchange act of 1934.

(3) If a broker-dealer is an individual, the person shall segregate from personal capital an amount sufficient to satisfy the net capital requirement, and the amount so segregated shall be utilized solely for the business for which the broker-dealer is licensed.

(4) The commissioner may by order exempt any broker-dealer from the provisions of this section, either unconditionally or upon specified conditions, if by reason of the broker-dealer's membership on a national securities exchange or the special nature of its business and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, the provisions are not necessary in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) and (4), Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1983, No. 336, eff. 1-1-84.

SEC 4.03 Broker-dealers' records. (1) Every licensed broker-dealer shall prepare and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(b) Ledgers reflecting all asset, liability, income, expense and capital accounts.

(c) Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of the broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for the account and all other debits and credits to the account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;
2. Dividends and interest received;
3. Securities borrowed and securities loaned;
4. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in the collateral); and
5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates, all "long" or "short" positions (including securities in safekeeping) carried by the broker-dealer for its account or for the account of its customers or partners, and showing the location of all securities long and the offsetting position to all securities short, and in all cases the name or designation of the account in which each position is carried.

(f) A memorandum of each order (order ticket), and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instruction, any modification or cancellation thereof, the account for which entered, whether the transaction was unsolicited, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by the broker-dealer or any employee thereof, shall be so designated. The term "time of entry" shall mean the time when the broker-dealer transmits the order or instructions for execution, or, if it is not so transmitted, the time when it is received.

(g) A memorandum (order ticket) of each purchase and sale of securities for the account of the broker-dealer showing the price and, to the extent feasible, the time of execution.

(h) Copies of confirmations of all purchases and sales of securities, whether the confirmations are issued by the broker-dealer or the issuer of

the security involved, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of the broker-dealer.

(i) Copies of all communications, correspondence and other records relating to securities transactions with customers.

(j) A separate file containing all complaints made or submitted by customers to the broker-dealer or its agents relating to securities transactions. In this paragraph, "complaint" means any written or oral statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the broker-dealer in connection with the solicitation or execution of any securities transaction or the disposition of securities or funds of that customer that would constitute a violation of ch. 551, Stats., or any rule or order thereunder.

(k) A customer information form (new account information worksheet) for each customer. If recommendations are to be made to the customer, the form shall include information regarding the customer's annual income, net worth and investment objective or, if the customer refuses to provide the required information upon request, a notation to that effect.

(l) For each cash and margin account established and maintained with the broker-dealer, information setting forth the name and address of the beneficial owner of each account, and copies of all guarantees of accounts and all margin, lending and option agreements. In the case of joint, partnership and corporate accounts, the records required by this paragraph must be executed by persons authorized to transact business for the account.

(m) Copies of all powers of attorney and other evidence of the granting of any discretionary authority with respect to a customer's account.

(n) A record of the proof of money balances of all ledger accounts in the form of trial balances.

(o) All partnership articles or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of the broker-dealer.

(p) A separate file containing copies of all advertising, as defined in s. 551.02 (1), Stats., published or circulated, as defined in s. SEC 1.02 (1) (a) and (b), by the broker-dealer in the conduct of its securities business.

(q) A computation made quarterly (on a calendar year basis) of its net capital and ratio of its aggregate indebtedness to its net capital on Form X-17A-5 of the federal securities and exchange commission (FOCUS Report).

(r) A register relating to each offering participated in by the broker-dealer under the registration exemption provisions of s. 551.23 (10), (11) and (19), Stats., or made pursuant to an order of exemption issued under s. 551.23 (18), Stats., limiting the number of offers or sales permitted in Wisconsin, containing the following information; 1. As to offers made under s. 551.23 (11), Stats., or offers made pursuant to an order of exemption issued under s. 551.23 (18), Stats., that limits offers, the name and address of each offeree of the broker-dealer, the date the offer was

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made, the control number on any offering circular or other advertising material given to the offeree, the names of all persons making the offer, and the date of any sale as a result of the offer; and 2. As to offerings made under s. 551.23 (10) and (19), Stats., or made pursuant to an order of exemption issued under s. 551.23 (18), Stats., that limits sales, the name and address of each purchaser, the date the sale was made, the control number on any offering circular or other advertising material given to the purchaser and the names of all persons making the sale.

(2) Every licensed broker-dealer shall preserve for at least 6 years, the first 2 years in an easily accessible place, all records required under sub. (1) and under s. SEC 4.035 (2), except that records required under sub. (1) (k), (l) and (m) shall be preserved by the broker-dealer for at least 6 years after the closing of the account; and records required under sub. (1) (o) shall be preserved by the broker-dealer for at least 6 years after withdrawal or expiration of its license in this state. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record has been preserved for 1 year as required under this subsection, a microfilm copy may be substituted for the remainder of the required period. Compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records is deemed compliance with this subsection.

(3) Except as provided in par. (e), every branch office of a licensed broker-dealer, as defined in s. SEC 1.02 (7), shall prepare and keep current the following records:

(a) Copies of the records described in sub. (1) (f), (h), (i), (j), (k), and (p);

(b) Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities. This requirement may be satisfied by maintaining a unit filing system where the order ticket information (described in sub. (1)(f)) required in sub. (3) (a) is accumulated and segregated on a daily basis;

(c) Blotters (or other records of original entry) setting forth an itemized daily record of all receipts and deliveries of securities (including certificate numbers), and all receipts and disbursements of cash.

(d) Copies of customer monthly or other periodic statements that are issued by the broker-dealer, or are furnished to the broker-dealer by the issuer of a security purchased by a customer of the broker-dealer.

(e) Branch offices of broker-dealers engaged solely in the offer and sale of either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or the securities of direct participation program issuers, or both, shall prepare and keep current copies of those records described in subs. (1) (f), (i), (j), (k), and (3) (c).

(4) The records required in sub. (3) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than 3 years after the closing of the account. The record may be retained by computer if printed copy of the record can be prepared immediately upon request. In the event a record

has been preserved for one year as required under this subsection, a microfilm copy may be substituted for the remainder of the required period.

(5) This section does not require a licensed broker-dealer to make and keep such records of transactions cleared for the licensee by another broker-dealer as are customarily made and kept by the clearing broker-dealer.

(6) The commissioner may by order exempt any broker-dealer from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the commissioner finds the issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (intro) and cr. (3)(d), Register, September, 1978, No. 273, eff. 10-1-78; r. and recr. (1) (p), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (c), (d) 4., (e), (j), (k), (2), (3) (intro.), (a) and (b), (4) to (6), r. and recr. (1) (l), renum. (1) (m) to (p) to be (1) (n) to (q), (3) (c) and (d) to be (3) (d) and (e) and am., cr. (1) (r) and (3) (c), (1) (s) renum. from SEC 4.05 (9), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (r) and (4), Register, December, 1981, No. 312, eff. 1-1-82; r. (1) (s), am. (2), (3) (a) and (e), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (b) and (2), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (r), (2) and (4), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (r), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 4.035 Securities agent records. (1) Every licensed agent, except an agent who accepts only unsolicited orders for a discount brokerage firm, or an agent for a broker-dealer engaged solely in the offer and sale of either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or interests in direct participation programs, shall have and keep current the records in sub. (2) of this section relating to customer securities transaction, unless the commissioner by order exempts an agent from all or part of the requirements of this section. The record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the commissioner. The originals of the records are considered records of the broker-dealer. Every broker-dealer shall within 15 days following receipt of a written request provide photocopies of the agent's customer records as may be requested by an agent within 30 days from the date of termination of his or her employment with the broker-dealer.

(2) A securities holding record for each customer including the customer's name and account number, and a chronological listing of the names and amount of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price;

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; renum. from SEC 4.05 (6) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1983, No. 336, eff. 1-1-84; am. (2), Register, December, 1984, No. 348, eff. 1-1-85.

SEC 4.04 Reporting requirements. (1) (a) Except as provided in pars. (b) and (c), each broker-dealer shall file annually with the commissioner within 60 days from the end of its fiscal year a copy of its annual financial statement in the form specified in rule 17a-5 under the securities exchange act of 1934, accompanied by a computation of its net capital using the formula specified in rule 15c3-1 under the securities exchange act of 1934.

(b) The filing requirement in par. (a) is not applicable to any broker-dealer registered under the securities exchange act of 1934 if the broker-

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dealer is not delinquent in the filing of its annual financial statements with the U.S. securities and exchange commission under rule 17a-5 of the securities exchange act of 1934.

(c) The deadline established under par. (a) for a broker-dealer to file its annual financial statement shall be extended for an additional 30 days upon the broker-dealer filing with the commissioner before the deadline date, a written request for an additional 30 days to file its annual financial statement.

(2) Each broker-dealer shall file with the commissioner a copy of any complaint related to its business, transactions or operations in this state, naming the broker-dealer or any of its partners, officers or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the broker-dealer; a copy of any answer or reply thereto filed by the broker-dealer within 10 days of the date such is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) Each broker-dealer shall file with the commissioner within 30 days after the end of each month, a written report on Form RS-BD prescribed by the commissioner, listing with respect to that month all securities transactions involving the broker-dealer relating to initial distributions, secondary distributions and private placements. No reports are required to be filed for months during which the broker-dealer did not engage in transactions subject to this requirement.

(4) Each broker-dealer shall file with the commissioner a notice of transfer of control or change of name not less than 30 days prior to the date on which the transfer of control or change of name is to become effective, or such shorter period as the commissioner may permit.

(5) Except as provided in subs. (2), (4) and (9), all material changes in the information included in a broker-dealer's most recent application for license shall be set forth in an amendment to Form BD filed with the commissioner within 30 days after the change occurs.

(6) Every broker-dealer shall file with the commissioner the following reports concerning its net capital and aggregate indebtedness:

(a) Immediate telegraphic or written notice whenever the net capital of the broker-dealer is less than is required under s. SEC 4.02(1), specifying the respective amounts of its net capital and aggregate indebtedness on the date of the notice;

(b) A copy of every report or notice required to be filed by the broker-dealer pursuant to rule 17a-11 under the securities exchange act of 1934, contemporaneous with the date of filing with the U.S. securities and exchange commission.

(7) Each broker-dealer shall give immediate written notice to the commissioner of the theft or disappearance of any Wisconsin customers' securities or funds that are in the custody or control of any of its offices, whether within or outside this state, stating all material facts known to it concerning the theft or disappearance.

(k) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

(l) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down;

(m) Entering into a transaction for its own account with a customer in which a commission is charged;

(n) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(o) Executing orders for the purchase by a customer of securities not registered under s. 551.25 or 551.26, Stats., unless the securities are exempted under s. 551.22, Stats., or the transaction is exempted under s. 551.23, Stats;

(p) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(q) Violating any rule of any securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

(r) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(s) Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8), Stats;

(t) Recommending to a customer that the customer engage the services of an investment adviser that is not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23(8), Stats.;

(2) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified in this subsection:

(a) Borrowing money or securities from, or lending money or securities to, a customer;

(b) Acting as a custodian for money, securities or an executed stock power of a customer;

(c) Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

(d) Effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the agent represents;

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(e) Sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;

(f) Dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; and

(g) Using advertising describing or relating to the agent's securities business unless the advertising clearly identifies the name of the agent's employing broker-dealer or issuer.

(h) Misrepresenting the services of a licensed investment adviser on whose behalf the agent is soliciting business or accounts.

(i) Engaging in any of the practices specified in sub. (1) (b), (c), (d), (e), (f), (g), (h), (o), (p), (q), (r) and (t).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. (1) (u), Register, September, 1978, No. 273, eff. 10-1-78; am. (2) (g), Register, December, 1979, No. 288, eff. 1-1-80; renum. (1) (e) to (u) to be (1) (f) to (v) and am. (1) (f), (p) and (q), cr. (1) (e) and (2) (g), am. (2) (intro.), (a), (d) and (h), Register, December, 1980, No. 300, eff. 1-1-81; r. (1) (u) and am. (2) (h), Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (h), renum. (2) (h) to be (2) (i) and cr. (2) (h), Register, December, 1982, No. 324, eff. 1-1-83; am. (2) (e), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (a), Register, December, 1984, No. 348, eff. 1-1-85.

SEC 4.07 License period. (1) (a) The license of any broker-dealer expires at midnight December 31 following the date of issuance of the license.

(b) The license of an agent for a broker-dealer expires at midnight on December 31 following the date of issuance of the license.

(c) The license of an agent representing an issuer expires on July 31 following the date of the issuance of the license, or upon the termination of the offering for which the agent was licensed, whichever first occurs.

(d) The commissioner may by order limit the period of, or specify an earlier expiration date for, any license.

(2) The license of an agent is not effective during any period when the broker-dealer which the agent represents is not licensed or when the securities of the issuer which the agent represents are not subject to an effective registration statement or an effective exemption, or upon termination of the offering.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1983, No. 336, eff. 1-1-84; am. (2), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (a) and (b), r. (1) (c), renum. (1) (d) and (e) to be (1) (c) and (d), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 4.08 Withdrawal of licenses. (1) An application for withdrawal from the status of a licensed broker-dealer under s. 551.34(6), Stats., shall be filed by the licensee on Form BDW(WI) prescribed by the commissioner, and shall include a report on the status of all customer accounts of the licensee in this state and any additional information the commissioner may require. If the licensee has any open customer accounts in this state, the settlement of those accounts is a condition of its