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Note: Chapter SEC 4 as it existed on December 31, 1977 was repealed and a new chapter SEC 4 was created effective January 1, 1978.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 initial license or 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. An application for initial license as an agent under this paragraph shall be deemed "filed" under s. 551.32 (1) (a), Stats., on the date when the application is designated ready for approval on the records of the central registration depository. An application for renewal of a license as an agent under this paragraph 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 (e) 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 secur-

ities 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.

(e) The Corporate Securities Limited 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 2 years prior to the date the application for license is filed in this state.

(b) The applicant has been licensed, within 2 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 sub. (3) (a) to (d) 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 2 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), 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) 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).

(9) For an agent to simultaneously represent in this state more than one broker-dealer or issuer pursuant to s. 551.31 (2) (b) 2., Stats., the following requirements shall be met, in addition to the regular agent licensing requirements:

(a) Each broker-dealer or issuer that the agent represents shall sign on a form designated by the commissioner in s. SEC 9.01 (1) (b), a written grant of permission to the agent to represent the other employers. The written grant of permission shall include the identity of all other securities employment affiliations of the agent and contain a listing of all restrictions on the agent's securities activities imposed by the agent's employers.

(b) The agent shall sign on the form under par. (a), an acknowledgement and verification of the information required under that paragraph.

(c) The manually signed original of the form under par. (a) shall be filed with the commissioner together with a written application, which may be in letter form, on behalf of the agent to simultaneously represent more than one broker-dealer or issuer. The commissioner shall approve the application in writing prior to the agent's transacting securities business while simultaneously representing more than one broker-dealer or issuer.

(d) Written disclosure shall be provided regarding the agent's simultaneous representation of more than one broker-dealer or issuer, including the information in par. (a), to each securities customer of the agent not later than the date of receipt of the confirmation for the first securities

transaction for the account of the customer by the agent after dual licensing is approved by the commissioner.

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; am. (2) (b), Register, December, 1986, No. 372, eff. 1-1-87; am. (3) (intro.) and cr. (3) (e) and (9), Register, December, 1988, No. 396, eff. 1-1-89, except (9), eff. 2-1-89.

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 at its principal office 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, and containing evidence, including representative copies, of the responses made by the broker-dealer to the complaint. 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 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 adress 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.

(s) 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 the security purchased by a customer of the broker-dealer.

(2) Every licensed broker-dealer shall preserve at its principal office or under the direct supervision and control of the principal office 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 one 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 par. (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,

Register, December, 1989, No. 408

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; am. (2), Register, December, 1986, No. 372, eff. 1-1-87; am. (1) (intro.) and cr. (1) (s), Register, December, 1987, No. 384, eff. 1-1-88; am. (1) (j), Register, December, 1989, No. 408, eff. 1-1-90.

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) relating to customer securities transactions, 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 securities holding 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;

(3) Records required under this section that are maintained on an electronic data system in lieu of a hard copy shall be reproducible in printed form immediately upon request by the commissioner. Upon termination of employment with a broker-dealer, an agent's records so maintained shall be transferred immediately to printed or other form accessible to the broker-dealer for the broker-dealer's permanent records.

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; cr. (3), Register, December, 1988, No. 396, eff. 1-1-89; am. (1), Register, December, 1989, No. 408, eff. 1-1-90.

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-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 com-plaint 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 notify the commissioner in writing within 10 days from the first date that the person who is the designated supervisor under s. SEC 4.05 (6) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the commissioner in writing a substituted designated supervisor within the 45 day period provided under SEC 4.05 (6).

(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 indebted-ness 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.

(8) Each broker-dealer shall file with the commissioner a copy of any subordination agreement relating to the broker-dealer, within 10 days after the agreement has been entered, unless prior thereto the broker-dealer has filed a copy of the agreement with a national securities exchange or association of which it is a member.

(9) Each broker-dealer shall notify the commissioner in writing at least 14 days prior to either opening or closing in this state any "branch office" as defined in s. SEC 1.02 (7). The notification shall include such information as the commissioner may request.

(10) Each broker-dealer shall file annually with the commissioner not later than November 30, a report identifying each of its branch offices located in this state on Form BDBrO(WI) designated by the commissioner in s. SEC 9.01 (1) (b).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (3), Register, December, 1979, No. 288, eff. 1-1-80; am. (4), (5), (8) and (9), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and (7), cr. (1) (b), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a), Register, December, 1983, No. 336, eff. 1-1-84; r. and recr. (1) (a), renum. (1) (b) to be (1) (c), cr. (1) (b) and am. (9), Register, December, 1984, No. 348, eff. 1-1-85; cr. (10), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. (3), Register, December, 1989, No. 408, eff. 1-1-90.

SEC 4.05 Rules of conduct. (1)(a) Except as provided in pars. (b) and (c), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth the information prescribed in rule 10b-10 of the securities and exchange act of 1934 and whether the transaction was unsolicited.

(b) A broker-dealer engaged solely in the offer and sale of securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940 is not required to give or send a written confirmation under par. (a), provided that the issuer gives or sends a written confirmation directly to the customer for the transaction.

(c) A broker-dealer engaged solely in the offer and sale of interests in direct participation programs is not required to give or send a written confirmation under par. (a), provided that a customer subscribing to purchase an interest in a direct participation program is provided immediately upon subscription with a copy of the subscription agreement entered into and the issuer gives or sends a written confirmation directly to the customer for the transaction.

(2) Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall include the designation, by name or title, of a number of supervisory employees reasonable in relation to the number of its licensed agents, offices and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every branch office.

(3) A broker-dealer shall not enter any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under ch. 551, Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

(4) No broker-dealer shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, that would cause its net capital or its aggregate indebtedness to violate s. SEC 4.02 (1) or (2), without prior written approval of the commissioner.

(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information form prescribed under s. SEC 4.03 (1) (k), not later than 20 days after the customer's account is first established on the books and records of the broker-dealer. A copy of any material amendment to a customer's contract, agreement or customer information form shall be provided to the customer within 20 days from the date of the material amendment.

(6) Every licensed broker-dealer shall employ at its principal office at least one person designated in writing to the commissioner to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01 (5), provided that if a licensed broker-dealer is not in compliance with the requirements of this paragraph, it has 45 days from the first date of noncompliance to meet the requirements of this paragraph.

(7) Every broker-dealer whose principal office is located in this state, other than a broker-dealer engaged solely in the offer and sale of either interests in direct participation programs or securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, shall have at least one licensed person employed on a full-time basis at its principal office.

(8) No broker-dealer may associate with a bank, savings institution, trust company, savings and loan association or credit union by contract, agreement or other means for the purpose of that entity publishing or circulating advertising promoting the services offered by the broker-dealer or assisting or providing information to persons to establish an account with the broker-dealer unless:

(a) The promotional or account-establishing functions are performed by persons licensed as securities agents representing the broker-dealer; or

(b) The promotional or account-establishing functions are performed by persons who are supervised by one of at least 2 persons at the bank, savings institution, trust company, savings and loan association or credit union who are officers, branch or assistant branch managers or other employes occupying a similar office or performing similar functions at each location where promotional or account-opening functions are performed, and are licensed as securities agents representing the broker-dealer.

(9) Each broker-dealer which by contract, agreement or other means provides securities services on the premises of a financial institution that is not licensed as a broker-dealer shall:

(a) Perform the securities services within a specific area on the premises of the financial institution designated by agreement between the broker-dealer and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the securities services;

(b) Prominently display the identity of the licensed broker-dealer in the area on the premises of the financial institution designated under par. (a);

(c) Prominently disclose the identity of the licensed broker-dealer in all advertising, correspondence and securities records relating to the broker-dealer's securities services provided on the premises of the financial institution; and

(d) Establish and file with the commissioner written supervisory procedures and a system for applying the procedures. The procedures and system shall comply with sub. (2) and shall be designed to accomplish certain supervisory functions, including but not limited to, the following:

1. Prevention and detection of violations of ch. 551, Stats., and any applicable rules and orders thereunder;

2. Establishment of a system under which the broker-dealer approves prior to use copies of all advertising used by the financial insititution relating to the securities services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.41 and 551.53, Stats.; and

3. Establishment of a system for prompt and proper execution and settlement of securities transaction orders, the safekeeping of customer funds and securities and the maintenance of books and records.

(e) Disclose to persons having securities services performed for their account on the premises of a financial institution that the securities transactions are not covered by applicable deposit insurance of the financial institution but may be covered by securities transaction insurance of the broker-dealer performing the securities services. The disclosure may be provided to those persons by means of, without limitation, letters to those persons, securities transaction order confirmations or monthly securities account statements.

(10) (a) Except as provided in par. (b), each licensed broker-dealer engaged in a general securities business that ceases to do business at a principal or branch office located in Wisconsin shall mail to each Wisconsin customer with an account at the office at least 14 days before the cessation of business at the office a written notification that shall contain the following information:

1. The date on which the office will cease to do business;

2. A description of the procedure a customer may follow to maintain the customer's account with the broker-dealer, transfer the account to another broker-dealer, or have securities and funds held by the broker-dealer delivered to the customer;

3. The name and telephone number of a person representing the broker-dealer who may be contacted without expense to the customer to answer questions regarding items in subd. 2; and

4. Any additional information necessary under the circumstances to clarify the information prescribed in this paragraph.

(b) The notification requirement under par. (a) is not applicable to the cessation of business at an office where the cessation is caused by illness or death of all licensed agents at that office, if the cessation of business at the office does not occur for a period exceeding 14 days.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (8), (intro.), Register, September, 1978, No. 273, eff. 10-1-78; r. (5), renum. (6) to (8) to be (4) to (6) and am. (5), (6) (intro.), (a) and (b), cr. (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (6) (intro.)

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and r. (9), Register, December, 1981, No. 312, eff. 1-1-82; renum. (6) to be SEC 4.035, renum. (7) and (8) to be (6) and (7) and am. (6), Register, December, 1982, No. 324, eff. 1-1-83; emerg. cr. (8), eff. 4-15-83; cr. (8), Register, August, 1983, No. 332, eff. 9-1-83; am. (1) (a), r. and recr. (1) (b), cr. (1) (c), (9) and (10), Register, December, 1984, No. 348, eff. 1-1-85; am. (7), Register, December, 1985, No. 360, eff. 1-1-86; am. (5), Register, December, 1987, No. 384, eff. 1-1-88; am. (6), Register, December, 1989, No. 408, eff. 1-1-90.

SEC 4.06 Prohibited business practices. (1) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by a broker-dealer under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified herein:

(a) Causing any unreasonable delay in the transmitting of customer orders for execution, the delivery of securities purchased by any of its customers, the payment upon request of free credit balances reflecting completed transactions of any of its customers or the transfer of a customer's account securities positions and balances to another broker-dealer;

(b) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) Executing a transaction for the account of a customer upon instructions from a 3rd party without first having obtained written 3rd party authorization from the customer;

(f) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

(g) Extending, arranging for, or participating in arranging for credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board;

(h) Executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;

(i) Failing to segregate customers' free securities or securities in safekeeping;

(j) Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the U.S. securities and exchange commission;

(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, broker-dealer or agent 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;

(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) Failing to accurately describe or disclose in advertising or other materials used in connection with the promotion or transaction of securities business in this state, the identity of an agent's employing broker-dealer or issuer or the nature of the agent's securities services offered. For purposes of this paragraph, "other materials" include, but are not limited to, business cards, business stationery and display signs.

(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; am. (1) (t), Register, December, 1986, No. 372, eff. 1-1-87; am. (1) (a), r. and recr. (2) (g), Register, December, 1988, No. 396, eff. 1-1-89.

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 withdrawal, and its withdrawal is not effective until permitted in writing by the commissioner.

(2) An application for withdrawal from the status of a licensed agent shall be filed by the broker-dealer or issuer which the agent represents within 15 days of the termination of the agent's employment on Form U-5 prescribed in s. SEC 9.01 (1), together with any additional information required by the commissioner.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (2), Register, December, 1979, No. 288, eff. 1-1-80; am. (2), Register, December, 1982, No. 324, eff. 1-1-83; am. (2), Register, December, 1984, No. 348, eff. 1-1-85.

SEC 4.085 Temporary agent transfer. For purposes of agent license applications filed pursuant to s. 551.32 (1), Stats., and agent license withdrawal applications filed pursuant to s. 551.34 (6), Stats., the commissioner may issue temporary agent licenses and terminate agent licenses in accordance with temporary agent transfer procedures under the central registration depository of the national association of securities dealers, as developed under contract with the north american securities administrators association. The license of an agent transferring from one licensed broker-dealer to another is not effective unless the requirements under the temporary agent transfer procedure are met by the agent, the broker-dealers involved in the transfer, and the central registration depository.

History: Cr. Register, December, 1984, No. 348, eff. 1-1-85.

SEC 4.09 Denial, suspension, revocation and censure. Any order denying, suspending or revoking the license of a broker-dealer or agent or censuring a licensee may include such other sanctions as the commissioner finds appropriate.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; renum. (1) and am., r. (2), Register, December, 1981, No. 312, eff. 1-1-82.

SEC 4.10 Bank agency transactions. (1) A bank, savings institution or trust company not licensed as a broker-dealer may execute orders for the purchase or sale of securities as agent for the purchaser or seller thereof, in transactions not in violation of ch. 551, Stats., if the bank, savings institution or trust company:

(a) Does not hold itself out generally to the public, as that phrase is defined in sub. (4), as a securities broker;

(b) Has no association, agreement or contract with any broker-dealer requiring or permitting the bank, savings institution or trust company to promote the services of the broker-dealer or assist or provide information to persons to establish an account with the broker-dealer in exchange for any commission, profit or other remuneration directly or indirectly from the broker-dealer or from the customer unless:

1. The promotional or account-establishing functions are performed by persons licensed as securities agents representing the broker-dealer; or

2. The promotional or account-establishing functions are performed by persons who are supervised by one of at least 2 persons at the bank, savings institution or trust company who are officers, branch or assistant branch managers or other employes occupying a similar office or performing similar functions at each location where promotional or account-opening functions are performed, and are licensed as securities agents representing the broker-dealer;

(c) Has no direct interest in the sale or distribution of the securities purchased or sold, receives no commission, profit or other compensation from any source other than the purchaser or seller, and delivers to the customer its own written confirmation of the order which clearly itemizes its commission, profit or other compensation; and

(d) In connection with purchases of securities from or through broker-dealers, discloses to the broker-dealer whether the purchase is for its own account, or for the account of a customer for whom it is acting as trustee, or for the account of a customer for whom it is acting as agent and whether the customer is a person specified under s. 551.23 (8), Stats.

(2) The bank, savings institution, or trust company shall make, keep current and preserve for a period of not less than 3 years, adequate records of purchases and sales of securities by it as agent for its customers, including copies of its own confirmations delivered to its customers and copies of con-firmations received from broker-dealers in connection with the transactions and records confirming any customer is a person specified under s. 551.23 (8), Stats.

(3) Nothing in this section prevents a bank, savings institution or trust company from acting as depository, custodian, exchange agent, escrow agent, transfer agent, registrar, agent administering dividend reinvestment plans or in any similar capacity in the ordinary course of business.

(4) In this section, the phrase "hold itself out generally to the public" includes, but is not limited to:

(a) Publication or circulation of advertising that offers or describes securities services available at or through the bank, savings institution or trust company, except for advertising relating to securities transaction execution services provided in accordance with s. SEC 4.05 (9); or

(b) Executing securities transactions as agent for the account of others except on an isolated basis incidental to the performance of banking functions for those accounts, or except in transactions involving securities exempted under s. 551.22 (9), Stats., or involving securities exempted under s. 551.22 (1), Stats., (other than revenue obligations payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (b), (2) and (3), Register, December, 1980, No. 300, eff. 1-1-81; emerg. am. (1) (intro.), renum. (1) (a) and (b) to be (1) (c) and (d), cr. (1) (a) and (b) and (4), eff. 4-15-83; renum. (1) (a) and (b) to be (1) (c) and (d), cr. (1) (a) and (b) and (4), Register, August, 1983, No. 332, eff. 9-1-83; am. (4) (a), Register, December, 1984, No. 348, eff. 1-1-85.

SEC 4.11 Brokered certificates of deposit. A broker-dealer offering and selling to persons in Wisconsin federally insured certificates of deposit issued by and on behalf of financial institutions whose securities are exempt under s. 551.22 (3), (4), or (5), Stats., or are exempted by Order issued under s. 551.23 (18), Stats., shall comply with all of the following:

(1) The advertising materials published or circulated in this state relating to the certificate of deposit securities shall comply with all of the following:

(a) The disclosure standards contained in 12 CFR 526.2 relating to, among other things, interest or dividend rates, percentage yields, deposit duration and minimum investment amount requirements.

(b) Disclose any early withdrawal penalty.

(c) Disclose in conjunction with any reference to a secondary resale market for the certificates of deposit, that the resale price may be less than the face value of the certificate.

(d) Disclose in conjunction with any reference to specific rates of interest for certificates of deposit, the corresponding duration of the certificate, and the date as of which the advertised interest rate or rates are available.

(e) Disclose the existence of any supervisory, managing or similar agreement between an issuing financial institution and the federal savings and loan insurance corporation, the federal deposit insurance corporation or other federal or state agency, as well as the existence of any conservatorship, receivership or similar proceeding involving the issuing financial institution, whether under state or federal law.

(f) Contain the language "May be issued by out-of-state institutions" if the certificates of deposit may be issued by a financial institution whose principal office is not in Wisconsin.

(g) Disclose in any advertisement in which either the highest annual percentage rate stated for a specific duration certificate of deposit, or the only annual percentage rate stated is available for purchase through the broker-dealer from fewer than 3 institutions, each of which does not have its principal office in Wisconsin, the name and city and state location of each such financial institution.

(2) The broker-dealer shall deliver to each purchaser of a certificate of deposit not later than the date of the confirmation for the transaction, except as otherwise provided in par. (e), all of the following written information, which may be either contained on the confirmation or provided separately:

(a) The name of the financial institution that is the issuer of the certificate of deposit.

(b) The city and state location of the issuer of the certificate of deposit.

(c) The interest rate on, as well as the duration of, the certificate of deposit.

(d) The identity of the provider of the federal deposit insurance on the certificate of deposit.

(e) The disclosures required under sub. (1) (e) if any of the circumstances listed therein are applicable to the issuing financial institution. The disclosures shall be provided not later than the settlement date of the transaction, and shall be accompanied by disclosure by the broker-dealer of the address at which the purchaser may obtain the most recently published financial statements for the issuing financial institution.

(3) The broker-dealer shall furnish promptly to each purchaser of a certificate of deposit who requests a copy of the most recent annual finan-

cial statements for the issuer of the certificate of deposit, a copy of the financial statements or a written summary thereof.

History: Cr. Register, December, 1989, No. 408, eff. 1-1-90.