

(35) Acting as a finder pursuant to 12 CFR 7.10032.

(36) Offering debt cancellation or debt suspension agreements.

(37) Acting as a transfer or fiscal agent.

(38) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent.

**DFI—Bkg 4.03 CONTROL AND INTEREST.** Subject to s. DFI—Bkg 4.04 and s. DFI—Bkg 4.05, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

**DFI—Bkg 4.04 APPLICATION.** A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

*NOTE:* A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Banking, 345 W. Washington, 4<sup>th</sup> Floor, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 261-7578.

**DFI—Bkg 4.05 CONDITIONS AND REQUIREMENTS.** (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—Bkg 4.04.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under s. DFI—Bkg 4.06.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

**DFI—Bkg 4.06 CAPITAL DEDUCTION.** The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

**DFI—Bkg 4.07 DISCLOSURE.** Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—Bkg 4.06.

**DFI—Bkg 4.08 SAFEGUARDS FOR THE FINANCIAL INSTITUTION.** A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk; and

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution.

**DFI—Bkg 4.09 AFFILIATE REQUIREMENTS.** The financial institution shall comply with the requirements of 12 USC 371c.

**DFI—Bkg 4.10 PRESERVATION OF EXISTING SUBSIDIARIES.** Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before "(revisor inserts date)", and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as superseding the authority for financial institutions to conduct operations through subsidiaries under s. DFI—Bkg 3.04.

**DFI—Bkg 4.11 EXAMINATION AND SUPERVISION.** Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

**DFI—Bkg 4.12 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY.** At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

PROPOSED RULE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SB 19. Statutory authority: Ss. 214.715(1), 214.03(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings banks to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings banks will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the parity provisions of s. 214.03(1) and (2), Stats., and the subsidiary provisions of s. 214.49, Stats. and DFI—SB 15. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state savings banks to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings banks to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, ss. 214.03(1) and (2) authorize the division to authorize state-chartered savings banks to undertake any activity, exercise any power or offer any financially related product or service that any other provider of financial products or services may undertake, exercise or provide. National banks are authorized under s. 121(d) of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an authorization permitted national banks under federal law or regulation, and is, therefore, permissible for state-chartered savings banks under s. 214.03(1) and (2).

Furthermore, the activities, powers, products and services that may be undertaken, exercised or offered by a state-chartered savings bank are limited to those activities, powers, products and services specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity, power, product or service that a provider of financial services or products may undertake, exercise or offer within the meaning of ss. 214.03(1) and (2), and is, therefore, an activity, power, product or service that may be undertaken, exercised or offered by state-chartered savings banks as specified by rule of the division under ss. 214.03(1) and (2).

Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: CHAPTER DFI—SB 19 is created to read:

## **CHAPTER DFI—SB 19**

### **FINANCIAL SUBSIDIARIES**

**DFI—SB 19.01 DEFINITIONS.** In this chapter:

- (1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.
- (2) "Company" has the meaning set forth in s. 221.0901, Stats.
- (3) "Control" has the meaning set forth in s. 221.0901, Stats.
- (4) "Division" means the division of savings institutions.
- (5) "Financial institution" means a state savings bank chartered under ch. 214, Stats.
- (6) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.
- (7) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).
- (8) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.
- (9) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

**DFI—SB 19.02 FINANCIAL ACTIVITY.** For the purposes of this chapter, the following activities shall be considered to be financial in nature:

- (1) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.
- (2) Engaging as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, or defects in title, or providing annuities as agent or broker.

(3) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(4) Underwriting, dealing in, or making a market in securities.

(5) Extending credit and servicing loans, including making, acquiring, brokering, or servicing loans or other extensions of credit (such as factoring, issuing letters of credit, and accepting drafts) for the financial subsidiary's account or for the account of others.

(6) Engaging in any of the following activities related to extending credit:

(a) Appraising real estate and personal property.

(b) Arranging commercial and real estate equity financing.

(c) Providing check guaranty services.

(d) Providing collection agency services.

(e) Providing credit bureau services.

(f) Engaging in asset management, servicing, and collection activities.

(g) Acquiring a debt in default.

(h) Servicing real estate settlements.

(7) Operating nonbank depository institutions, including owning, controlling, or operating an industrial bank or a savings association.

(8) Engaging in trust company functions, including activities of a fiduciary, agency, or custodial nature.

(9) Providing financial and investment advisory services, including any of the following:

(a) Serving as investment adviser to a company registered under the Investment Company Act.

(b) Furnishing general economic information and advice.

(c) Providing advice in connection with mergers, acquisitions, and other similar transactions, and conducting financial feasibility studies.

(d) Providing information, statistical forecasting, and advice concerning any transaction in foreign exchange or derivatives.

(e) Providing educational courses to consumers on individual financial management matters.

(f) Providing tax planning and tax preparation services to any person.

**(10)** Providing agency transactional services for customer investment, including any of the following:

(a) Providing securities brokerage services.

(b) Acting as riskless-principal in secondary market transactions.

(c) Acting as agent for private placement of securities.

(d) Acting as a futures commission merchant.

**(11)** Engaging in investment transactions as principal, including any of the following:

(a) Underwriting and dealing in bank-eligible securities.

(b) Engaging as principal in foreign exchange and derivative instruments.

(c) Buying and selling bullion.

**(12)** Providing management consulting and counseling on any matter to unaffiliated depository institutions and on financial matters to any other company, and providing employee benefits counseling and career counseling services for employees in the financial industry.

**(13)** Providing support services, including any of the following:

(a) Providing courier services between financial institutions.

(b) Printing and selling MICR-encoded items.

(c) In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens.

**(14)** Engaging in community development activities.

**(15)** Issuing money orders, savings bonds, and traveler's checks.

**(16)** Providing administrative and other services to mutual funds.

**(17)** Owning shares of a securities exchange.

- (18) Acting as a certification authority for digital signatures.
- (19) Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business.
- (20) Providing check cashing and wire transmission services.
- (21) Engaging in real estate title abstracting.
- (22) Operating a travel agency.
- (23) Organizing, sponsoring, and managing a mutual fund.
- (24) Providing insurance, providing and issuing annuities, and acting as principal, agent, or broker for purposes of providing insurance or annuities.
- (25) Engaging in merchant banking activities.
- (26) Engaging through an insurance company affiliate in insurance company investment activities.
- (27) Providing services to or for the bank or its affiliates, including accounting, auditing appraising, advertising and public relations, and financial advice and consulting.
- (28) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates.
- (29) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling.
- (30) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings.
- (31) Underwriting credit related insurance to the extent permitted under 15 USC 6712.
- (32) Leasing of real or personal property, and acting as an agent or adviser in leases for others.
- (33) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services.



(34) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A "quota share agreement" is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer.

(35) Acting as a finder pursuant to 12 CFR 7.10032.

(36) Offering debt cancellation or debt suspension agreements.

(37) Acting as a transfer or fiscal agent.

(38) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent.

**DFI—SB 19.03 CONTROL AND INTEREST.** Subject to s. DFI—SB 19.04 and s. DFI—SB 19.05, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

**DFI—SB 19.04 APPLICATION.** A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

*NOTE:* A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Savings Institutions, 345 W. Washington, 4<sup>th</sup> Floor, P.O. Box 8306, Madison, WI 53708-8306, tel. (608) 261-2300.

**DFI—SB 19.05 CONDITIONS AND REQUIREMENTS.** (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—SB 19.04.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under ch. DFI—SB 19.06.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

**DFI—SB 19.06 CAPITAL DEDUCTION.** The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

**DFI—SB 19.07 DISCLOSURE.** Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner provided in s. DFI—SB 19.06.

**DFI—SB 19.08 SAFEGUARDS FOR THE FINANCIAL INSTITUTION.** A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk;

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution; and

**DFI—SB 19.09 AFFILIATE REQUIREMENTS.** The financial institution shall comply with the requirements of 12 USC 371c.

**DFI—SB 19.10 PRESERVATION OF EXISTING SUBSIDIARIES.** Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before "(revisor inserts date)", and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as

superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SB 15.

**DFI—SB 19.11 EXAMINATION AND SUPERVISION.** Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

**DFI—SB 19.12 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY.** At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.

PROPOSED RULE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SAVINGS INSTITUTIONS

Analysis: To create ch. DFI—SL 21. Statutory authority: Ss. 215.03(1), 215.135(1) and (2), and 227.11(2), Stats. The proposed rule would allow state-chartered savings and loans to control or hold an interest in financial subsidiaries that would engage in activities that are financial in nature or incidental to a financial activity. The objective of the rule is to ensure that state-chartered savings and loans will not be at a competitive disadvantage to other financial institutions that have received similar authority under the Gramm-Leach-Bliley Act of 1999 (“Act”). National banks are permitted under the Act to control or hold an interest in financial subsidiaries to engage in certain activities that are financial in nature or incidental to a financial activity. These financial activities are broader than the additional authority provisions of s. 215.135(1) and (2), Stats., and the subsidiary provisions of s. 215.13(26), Stats. and DFI—SL 15. Lastly, the proposed rule is consistent with s. 121(d) of the Act which permits insured state savings and loans to control or hold an interest in a financial subsidiary subject to safety and soundness firewalls. The proposed rule would be the implementing provision under state law which may be necessary for state-chartered savings and loans to exercise this new authority. Under the proposed rule, a financial institution may apply to the division to control or hold an interest in a financial subsidiary to engage in financial activities. The financial institution must meet certain conditions and requirements, and additional provisions regarding capital deduction, disclosure, safeguarding policy and procedures, and affiliate requirements apply. The division shall examine and supervise each financial subsidiary. Prior to disposition of a financial subsidiary, the financial institution shall inform the division.

Additionally, ss. 215.135(1) and (2) authorize the division to authorize state-chartered savings and loans to undertake any activity, exercise any power or offer any financially related product or service that any other provider of financial products or services may undertake, exercise or provide. National banks are authorized under s. 121(d) of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an authorization permitted national banks under federal law or regulation, and is, therefore, permissible for state-chartered savings and loans under s. 215.135(1) and (2).

Furthermore, the activities, powers, products and services that may be undertaken, exercised or offered by a state-chartered savings and loans are limited to those activities, powers, products and services specified by rule of the division. National banks are granted the authority under s. 121 of the Act and 12 C.F.R. s. 5.34 to conduct financial activities through financial subsidiaries. The authority of national banks to conduct financial activities through financial subsidiaries is an activity, power, product or service that a provider of financial services or products may undertake, exercise or offer within the meaning of ss. 215.135(1) and (2), and is, therefore, an activity, power, product or service that may be undertaken, exercised or offered by state-chartered savings and loans as specified by rule of the division under ss. 215.135(1) and (2).

Agency person to be contacted for substantive questions and responsible for agency's internal process: John A. Gervasi, Administrator, Division of Savings Institutions, tel. 261-2300.

SECTION 1: CHAPTER DFI—SL 21 is created to read:

## **CHAPTER DFI—SL 21**

### **FINANCIAL SUBSIDIARIES**

**DFI—SL 21.01 DEFINITIONS.** In this chapter:

- (1) "Affiliate" has the meaning set forth in s. 221.0901, Stats.
- (2) "Company" has the meaning set forth in s. 221.0901, Stats.
- (3) "Control" has the meaning set forth in s. 221.0901, Stats.
- (4) "Division" means the division of savings institutions.
- (5) "Financial institution" means a state savings and loan chartered under ch. 215, Stats.
- (6) "Financial subsidiary" means any company that is controlled by one or more insured depository institutions other than a subsidiary that a financial institution is authorized to control under other applicable law, or a subsidiary that engages solely in activities that a financial institution is permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by the financial institution.
- (7) "Insured depository institution" has the meaning set forth in 12 USC 1813(c)(2).
- (8) "Subsidiary" has the meaning set forth in s. 221.0901, Stats.
- (9) "Well capitalized" has the meaning set forth in 12 USC 1831o(b)(1)(A).

**DFI—SL 21.02 FINANCIAL ACTIVITY.** For the purposes of this chapter, the following activities shall be considered to be financial in nature:

- (1) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.
- (2) Engaging as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, or defects in title, or providing annuities as agent or broker.

(3) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(4) Underwriting, dealing in, or making a market in securities.

(5) Extending credit and servicing loans, including making, acquiring, brokering, or servicing loans or other extensions of credit (such as factoring, issuing letters of credit, and accepting drafts) for the financial subsidiary's account or for the account of others.

(6) Engaging in any of the following activities related to extending credit:

(a) Appraising real estate and personal property.

(b) Arranging commercial and real estate equity financing.

(c) Providing check guaranty services.

(d) Providing collection agency services.

(e) Providing credit bureau services.

(f) Engaging in asset management, servicing, and collection activities.

(g) Acquiring a debt in default.

(h) Servicing real estate settlements.

(7) Operating nonbank depository institutions, including owning, controlling, or operating an industrial bank or a savings association.

(8) Engaging in trust company functions, including activities of a fiduciary, agency, or custodial nature.

(9) Providing financial and investment advisory services, including any of the following:

(a) Serving as investment adviser to a company registered under the Investment Company Act.

(b) Furnishing general economic information and advice.

(c) Providing advice in connection with mergers, acquisitions, and other similar transactions, and conducting financial feasibility studies.

(d) Providing information, statistical forecasting, and advice concerning any transaction in foreign exchange or derivatives.

(e) Providing educational courses to consumers on individual financial management matters.

(f) Providing tax planning and tax preparation services to any person.

**(10)** Providing agency transactional services for customer investment, including any of the following:

(a) Providing securities brokerage services.

(b) Acting as riskless-principal in secondary market transactions.

(c) Acting as agent for private placement of securities.

(d) Acting as a futures commission merchant.

**(11)** Engaging in investment transactions as principal, including any of the following:

(a) Underwriting and dealing in bank-eligible securities.

(b) Engaging as principal in foreign exchange and derivative instruments.

(c) Buying and selling bullion.

**(12)** Providing management consulting and counseling on any matter to unaffiliated depository institutions and on financial matters to any other company, and providing employee benefits counseling and career counseling services for employees in the financial industry.

**(13)** Providing support services, including any of the following:

(a) Providing courier services between financial institutions.

(b) Printing and selling MICR-encoded items.

(c) In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens.

**(14)** Engaging in community development activities.

**(15)** Issuing money orders, savings bonds, and traveler's checks.

**(16)** Providing administrative and other services to mutual funds.

**(17)** Owning shares of a securities exchange.

- (18) Acting as a certification authority for digital signatures.
- (19) Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business.
- (20) Providing check cashing and wire transmission services.
- (21) Engaging in real estate title abstracting.
- (22) Operating a travel agency.
- (23) Organizing, sponsoring, and managing a mutual fund.
- (24) Providing insurance, providing and issuing annuities, and acting as principal, agent, or broker for purposes of providing insurance or annuities.
- (25) Engaging in merchant banking activities.
- (26) Engaging through an insurance company affiliate in insurance company investment activities.
- (27) Providing services to or for the bank or its affiliates, including accounting, auditing appraising, advertising and public relations, and financial advice and consulting.
- (28) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates.
- (29) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling.
- (30) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings.
- (31) Underwriting credit related insurance to the extent permitted under 15 USC 6712.
- (32) Leasing of real or personal property, and acting as an agent or adviser in leases for others.
- (33) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services.



(34) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A "quota share agreement" is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer.

(35) Acting as a finder pursuant to 12 CFR 7.10032.

(36) Offering debt cancellation or debt suspension agreements.

(37) Acting as a transfer or fiscal agent.

(38) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent.

**DFI—SL 21.03 CONTROL AND INTEREST.** Subject to s. DFI—SL 21.04 and s. DFI—SL 21.05, a financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities.

**DFI—SL 21.04 APPLICATION.** A financial institution desiring to control or hold an interest in a financial subsidiary shall apply to the division on forms prescribed by the division and shall pay the fee to be prescribed by the division. An application submitted to the division shall either be approved or disapproved by the division in writing within 30 days after its submission to the division. The division and the financial institution may mutually agree to extend the period in which the division makes a decision on the application for an additional period of 30 days.

*NOTE:* A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Savings Institutions, 345 W. Washington, 4<sup>th</sup> Floor, P.O. Box 8306, Madison, WI 53708-8306, tel. (608) 261-2300.

**DFI—SL 21.05 CONDITIONS AND REQUIREMENTS.** (1) A financial institution may control a financial subsidiary or hold an interest in a financial subsidiary to engage in financial activities only if the financial subsidiary engages in financial activities or activities in which the financial institution is permitted to engage under other applicable law. The financial subsidiary may also engage in any other activity approved by rule of the division. However, the financial subsidiary may not engage in any activity as a principal that is not permissible for a financial subsidiary of a national bank as a principal unless the activity is authorized by the Federal Deposit Insurance Corporation pursuant to 12 USC 1831a.

(2) Prior to acquiring control of, or an interest in a financial subsidiary, a financial institution is required to receive the prior approval of the division under s. DFI—Bkg 21.04.

(3) The financial institution and each insured depository institution affiliate of the financial institution must be well capitalized, after the capital deduction required under ch. DFI—SL 21.06.

(4) The financial institution must meet any requirements of 12 USC 1831w applicable to the financial institution.

(5) The division may establish additional limits or requirements on financial institutions and financial subsidiaries if the division determines that the limits or requirements are necessary for the protection of depositors, members, investors or the public.

(6) For any period during which a financial institution fails to meet these requirements, the division may by order limit or restrict the activities of the financial subsidiary or require the divestiture of the financial institution's interest in the financial subsidiary.

**DFI—SL 21.06 CAPITAL DEDUCTION.** The aggregate amount of the outstanding equity investment, including retained earnings, of a financial institution in all financial subsidiaries controlled by the financial institution shall be deducted from the assets and tangible equity of the financial institution as determined by the division, and the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the financial institution.

**DFI—SL 21.07 DISCLOSURE.** Any published financial statement of a financial institution that controls a financial subsidiary shall separately present financial information for the financial institution in the manner proved in s. DFI—SL 21.06.

**DFI—SL 21.08 SAFEGUARDS FOR THE FINANCIAL INSTITUTION.** A financial institution that establishes or maintains a financial subsidiary shall ensure the following:

(1) The procedures of the financial institution for identifying and managing financial and operational risk within the financial institution and the financial subsidiary adequately protect the financial institution from such risk; and

(2) The financial institution has, for the protection of the financial institution, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the financial institution and the financial subsidiaries of the financial institution.

**DFI—SL 21.09 AFFILIATE REQUIREMENTS.** The financial institution shall comply with the requirements of 12 USC 371c.

**DFI—SL 21.10 PRESERVATION OF EXISTING SUBSIDIARIES.** Notwithstanding the provisions of this chapter, a financial institution may retain control of a subsidiary or retain an interest in a subsidiary that the financial institution lawfully controlled or acquired before "(revisor inserts date)", and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date. Furthermore, no provision of this chapter shall be construed as

superseding the authority for financial institutions to conduct operations through subsidiaries under ch. DFI—SL 15.

**DFI—SL 21.11 EXAMINATION AND SUPERVISION.** Each financial subsidiary shall be subject to examination and supervision by the division in the same manner and to the extent as the financial institution.

**DFI—SL 21.12 REPORT OF DISPOSITION OF FINANCIAL SUBSIDIARY.** At least thirty days prior to disposition of a financial subsidiary, the financial institution shall inform the division by letter of the terms of the transaction.



AUG 17 2000

**State of Wisconsin**  
*Department of Financial Institutions*

Tommy G. Thompson, **Governor**

John F. Kundert, **Secretary**

August 17, 2000

Senator Jon Erpenbach  
Room 20 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Dear Senator Erpenbach:

Thank you for your letter dated August 16, 2000 regarding Clearinghouse Rule 00-045.

I have enclosed with this letter drafts of the rules incorporating the technical corrections you recommended in your letter. Thank you for suggesting those corrections.

In regard to your proposed modifications to the rules, the privacy provisions contained in Sections 502 and 503 of the Gramm-Leach-Bliley Act of 1999 would apply to these subsidiaries. Therefore, these provisions would be redundant. Furthermore, until such privacy legislation is enacted in statute, it would be inappropriate for this agency to address this issue by administrative rule. Therefore, the department cannot agree to make these modifications.

I reiterate our offer and willingness to promulgate rules implementing privacy legislation as ultimately enacted by the legislature. We also look forward to the recommendations of the Governor's Blue Ribbon Task Force on privacy, of which you are a member.

Sincerely,

John F. Kundert  
Secretary

encls

cc: Senator Kim Plache, Senator Bob Jauch, Senator Scott Fitzgerald

*Office of the Secretary*

Mail: PO Box 8861 Madison, WI 53708-8861

Voice: (608) 264-7800

Fax: (608) 261-4DFI

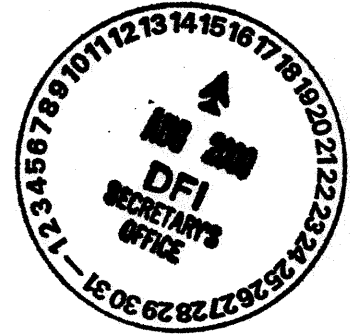
Courier: 345 W. Washington Ave. 5<sup>th</sup> Floor Madison, WI 53703

TTY: (608) 266-8818

Internet: [www.wdfi.org](http://www.wdfi.org)

# JON ERPENBACH

STATE SENATOR



August 16, 2000

Mr. Jack Kundert, Secretary  
Department of Financial Institutions  
345 West Washington Avenue, 5th Floor  
P.O. Box 8861  
Madison, WI 53708-8861

Dear Secretary Kundert:

I write in reference to Clearinghouse Rule 00-045, relating to financial subsidiaries, as referred to the Senate Committee on Privacy, Electronic Commerce and Financial Institutions. Recent revisions to the proposed rule, discussed at our meeting on August 3, 2000, have proven satisfactory; however, additional changes are necessary. In the interest of protecting individuals' privacy, I propose the following additions to the proposed rule:

1. Add the privacy provisions contained in SECTIONS 502 and 503 of the Graham-Leach-Bliley Act [P.L. 106-102], except as altered in item 2., below.
2. Alter SECTION 502 (b) (1) (B) of the Graham-Leach-Bliley Act to require a consumer to affirmatively consent (opt-in) to the disclosure of nonpublic personal information, rather than require the consumer to make use of the current opt-out clause.
3. Include the following prohibition, as amended to reflect its applicability to a financial subsidiary, as introduced in the proposed Universal Banking Bill:

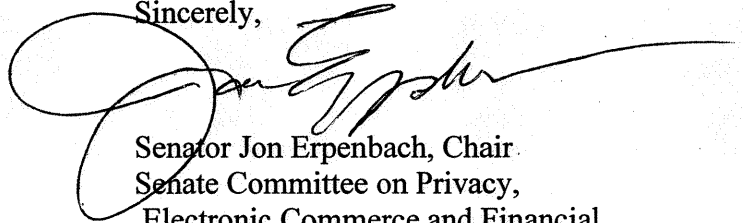
**EXERCISE OF LOAN POWERS; PROHIBITED CONSIDERATIONS.** In determining whether to make a loan or extension of credit, no universal bank may consider any health information obtained from the records of an affiliate of the universal bank that is engaged in the business of insurance, unless the person to whom the health information relates consents. [See proposed s. 222.0403 (10), Stats., as contained in Assembly Substitute Amendment 1 to 1999 Senate Bill 274.]

In addition to the substantive additions mentioned above, there are several technical corrections in the revised rule which should be addressed. They are as follows:

1. SECTION 4.02 (9) (a)--cite the U.S. Code Section for the Investment Company Act.
2. SECTION 4.02 (13) (b)--spell out the acronym "MICR."
3. SECTION 4.02 (35)--the CFR cite referring to a bank as a finder is under 12 C.F.R. s. 7.1002, not s. 7.10032 as currently presented.
4. SECTION 4.02 (38)--spell out the acronym "OCC."

Thank you for your cooperation. I look forward to your response. Because of the time constraints of the current rule process, please contact my office by 5pm Thursday August 17<sup>th</sup>, regarding your intent.

Sincerely,



Senator Jon Erpenbach, Chair  
Senate Committee on Privacy,  
Electronic Commerce and Financial  
Institutions

cc Senator Kim Plache, Senator Bob Jauch, Senator Scott Fitzgerald