

**Committee Name:**

**Senate Committee – Privacy, Electronic Commerce and Financial Institutions  
(SC-PECFI)**

**Appointments**

01hr\_SC-PECFI\_Appoint\_pt00

**Clearinghouse Rules**

**01hr\_SC-PECFI\_CRule\_02-041**

**Committee Hearings**

01hr\_SC-PECFI\_CH\_pt00

**Committee Reports**

01hr\_SC-PECFI\_CR\_pt00

**Executive Sessions**

01hr\_SC-PECFI\_ES\_pt00

**Hearing Records**

01hr\_ab0000

01hr\_sb0000

**Misc.**

01hr\_SC-PECFI\_Misc\_pt01

**Record of Committee Proceedings**

01hr\_SC-PECFI\_RCP\_pt00

*Jon Erpenbach*

# JON ERPENBACH

STATE SENATOR

**TO: Senate Privacy, Electronic Commerce and Financial Institutions Committee**  
**FR: Senator Jon Erpenbach, Chair**  
**DT: May 30, 2002**  
**RE: Clearinghouse Rule 02-041 relating to bank sales of certificates of deposit of third-party banks**

Attached is Clearinghouse Rule 02-041 relating to bank sales of certificates of deposit of third-party banks. If you would like to hold a hearing or meeting on the rule please contact my office by June 27, 2002. Thank you.



State of Wisconsin  
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

May 22, 2002

✓ The Honorable Fred Risser, President  
Wisconsin State Senate  
Attn: Donna Doyle  
c/o Office of Senate Journal and Records  
119 Martin Luther King Blvd, Ste. 501  
Madison, WI 53702

The Honorable Scott Jensen  
Speaker of the Assembly  
Attn: Ken Stigler  
c/o Office of Assembly Records  
1 E. Main St., Ste. 402  
Madison, WI 53702

Re: Clearinghouse Rule 02-041/Administrative Rule-Making Notice and Report to  
Legislative Standing Committees Under secs. 227.19(2) and (3), Wis. Stats.

Gentlemen:

The Division of Securities of the Department of Financial Institutions hereby submits for filing with the Wisconsin Legislature pursuant to the administrative rule-making requirements of secs. 227.19(2) and (3), Wis. Stats., copies in triplicate of the Notice and Report required thereunder consisting of:

- (1) Proposed administrative rules in proposed final form as specified in sec. 227.14(1), Wis. Stats.
- (2) A Report as prescribed in sec. 227.19(3), Wis. Stats.
- (3) A fiscal estimate for the proposed rules.
- (4) A copy of the Clearinghouse Report of the Wisconsin Legislative Council relating to the public comment draft form of the proposed rules.

If you have any comments or questions regarding the above, please telephone me at 266-3414.

Very truly yours,

Randall E. Schumann  
Legal Counsel for the Division

Attachments

cc: Revisor of Statutes Bureau  
Joint Committee for Review of Administrative Rules  
Patricia D. Struck, Administrator, Division of Securities  
Mark Schlei, DFI Deputy General Counsel



Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768  
Voice: (608) 266-1064

Fax: (608) 256-1259

Courier: 345 W. Washington Ave. 4<sup>th</sup> Floor Madison, WI 53703  
TTY: (608) 266-8818  
Internet: www.wdfi.org

**PROPOSED ORDER OF THE  
DIVISION OF SECURITIES  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
STATE OF WISCONSIN  
ADOPTING RULES**

To renumber DFI-Sec 4.10(1) to (4); and to create DFI-Sec 4.10(2); relating to bank sales of certificates of deposit of third-party banks.

Pursuant to sections 551.63(2), 551.02(3)(c), and 551.31(5), Wis. Stats., the Division of Securities of the Department of Financial Institutions adopts rules interpreting those sections as follows:

**Text of Proposed Final Rules**

**Section 1. DFI-Sec 4.10(1) to (4) are renumbered DFI-Sec 4.10(1)(a) to (d)**

**Section 2. DFI-Sec 4.10(2) is created to read:**

**DFI-Sec 4.10(2)** A bank, savings institution or trust company not licensed as a broker-dealer may take applications, assist in account opening, and execute orders for the purchase or sale of federally insured certificates of deposit in principal amounts not to exceed \$100,000 per purchaser, issued by and on behalf of a third party bank, savings institution or trust company whose securities are exempt under s. 551.22 (3), Stats., 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 does all of the following:

- (a) Requires that the promotional, administrative or transaction execution functions are performed by its employees who are supervised by a person at the bank, savings institution or trust company who is an officer, branch or assistant branch manager or other employee occupying a similar office or performing similar functions at each location where the promotional, administrative or transaction execution functions are performed.
- (b) Discloses to each customer the identity of the issuer of the certificate of deposit if different from the bank, savings institution or trust company offering it.
- (c) Discloses in advertising materials published or circulated in this state relating to the certificate of deposit all of the following:

1. The name, and the city and state location, of the bank, savings institution or trust company that is the issuer of the certificate of deposit.
  2. The interest rate on, as well as the duration of, the certificate of deposit.
  3. The identity of the provider of the federal deposit insurance on the certificate of deposit.
  4. The existence of any formal supervisory, managing or similar agreement between an issuing bank, savings institution or trust company and 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 bank, savings institution or trust company, whether under state or federal law.
- (d) Makes, keeps current and preserves for a period of not less than 3 years, a record of purchases of third party certificates of deposit by it as agent for the purchaser or seller. This requirement may be satisfied by keeping copies of purchase applications and customer checks or copies of confirmations from the issuing bank, savings institution, or trust company.

\* \* \* \* \*

The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2) (intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED at Madison, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2002.

[SEAL]

PATRICIA D. STRUCK  
Administrator  
Division of Securities

**REPORT PREPARED BY THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES  
RELATING TO BANK SALES OF CERTIFICATES  
OF DEPOSIT OF THIRD PARTY BANKS**

(a) Statement Explaining Need for Rules

The Division currently has administrative rules in DFI-Sec 4.10(1) to (4) entitled "Bank Agency Transactions." That series of rules sets forth the requirements to be met for a bank, savings institution or trust company ("bank") not to have to be licensed as a broker-dealer in Wisconsin in order to execute transactions involving various types of securities as an agent for public investor-purchasers or sellers of the securities.

Currently, when a bank, as the issuer, sells its own certificates of deposit ("CDs") to purchasers, such does not trigger the Wisconsin securities broker-dealer licensing requirements because of the definitional exclusion in sec. 551.02(3)(b), Wis. Stats.. However, when a bank sells CDs of third-party banks, such sales activities do not come within current Wisconsin statutory definitional exclusions or current administrative rules establishing exclusions from broker-dealer licensure for banks involved in effectuating securities transactions as agent for investors.

As a result, Wisconsin banks cannot engage in that activity, and Wisconsin investors cannot purchase at their "home" bank, the CDs of other banks, unless and until an administrative rule with appropriate and necessary investor protections is enacted to enable those sales activities to take place. Section 551.02(3)(c), Wis. Stats., in conjunction with 551.31(5), Wis. Stats., provides specific rule-making authority for the Division to exclude from the definition of "broker-dealer," a bank, savings institution or trust company when effecting transactions as agent for a public investor purchaser or seller. The Division previously used such authority to adopt the rules in DFI-Sec 4.10(1) to (4) discussed in the first paragraph above

The proposed rules [which also involve a renumbering of current DFI-Sec 4.10(1) to (4) to be DFI-Sec 4.10(1)(a) to (d)] would create a new subsection (2) under existing Bank Agency Transactions rule DFI-Sec 4.10 to deal separately with this situation where the type of security involved in the transaction effectuated by the bank is a certificate of deposit issued by a third-party bank. Because the scope of authority under secs. 551.02(3)(c) and 551.31(5), Wis. Stats., for rule-making on this subject is limited to sales activities by banks, savings institutions and trust companies (the entities specified under sec. 551.22(3), Wis. Stats.), the proposed rules cannot include savings and loan associations, savings banks or credit unions (which are entities separately listed under secs. 551.22(4) and (5), Wis. Stats.).

Because the CDs involved in such transactions under the proposed rules would be federally-insured certificates of deposit in amounts not exceeding the \$100,000 per investor insurance levels under FDIC provisions (such that there is no risk of loss of principal to an investor), the

entirety of the existing rules under DFI-Sec 4.10(1) to (4) are not made applicable. Rather, in addition to those parts of current rules DFI-Sec 4.10(1) to (4) that will be utilized, the proposed rules include several of the specific requirements currently contained in existing administrative rule DFI-Sec 4.11 relating to sales to the public by securities broker-dealers of so-called "brokered certificates of deposit."

The components of the proposed rule include the following:

- (1) Supervisory requirements to be met by the bank regarding persons involved in providing administrative services and executing the CD transactions, which requirements correspond to existing requirements in current rule DFI-Sec 4.10(1)(b)2. [See proposed rule subdivision DFI-Sec 4.10(2)(a)]
- (2) Record-keeping requirements to be met by the bank relating to the CD transactions that correspond to existing requirements in current rule DFI-Sec 4.10(2). [See proposed rule subdivision DFI-Sec 4.10(2)(d)]
- (3) Disclosure requirements to be met--applicable to general advertising materials as well as materials used individually with investors--that are derived from current "brokered certificates of deposit" rule subsections in DFI-Sec 4.11(1). [See proposed rule subdivisions DFI-Sec 4.10(2)(b) and (c)1. to 4]
- (4) The certificates of deposit involved in transactions under the rule may not exceed \$100,000 per investor such that, due to the existence of FDIC deposit insurance up to that level, there is no risk of loss of principal to investors. [See proposed rule DFI-Sec 4.10(2)(Intro.)]

\* \* \* \*

(b) Explanation of Modifications Made as a Result of the Public Hearing and Comment Process

- No modifications were made as a result of the public hearing and comment process.

\* \* \* \*

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Administrator Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received.

- Randall E. Schumann, Legal Counsel for the Division of Securities, Department of Financial Institutions, made an appearance on behalf of the Division's staff to submit documents and information for the record and to be available both to ask questions and to respond to questions regarding hearing testimony.
- Kenneth L. Hojnacki, Director of the Bureau of Licensing & Compliance for the Division of Securities, Department of Financial Institutions, was present on behalf of the Division's staff to be available both to ask questions and to respond to licensing-related questions regarding hearing testimony.
- Victoria L. Strobel, Vice President & Assistant Secretary of Marshall & Ilsley Corporation, Milwaukee, Wisconsin.

\* \* \* \*

Comment Letters Received

- (1) Comment letter dated May 15, 2002 from Victoria L. Strobel, Vice President & Assistant Secretary of Marshall & Ilsley Corporation, Milwaukee, Wisconsin.

\* \* \* \*

(d) Response to Legislative Council/Rules Clearinghouse Report Recommendations

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

- Consistent with the Rules Clearinghouse comment in paragraph a. regarding DFI-Sec 4.10(2)(intro.), the phrase "does all of the following " is inserted before the semicolon, subs. (a) and (b) each are concluded with a period, and sub. (2)(d) is rewritten using the language suggested.
- Consistent with the Rules Clearinghouse comment in paragraph b. regarding DFI-Sec 4.10(2)(intro.), a comma is inserted after the first occurrence of the notation "Stats."
- Consistent with the Rules Clearinghouse comment in paragraph c. regarding DFI-Sec 4.10(2)(c) (intro.), the phrase "all of" is inserted after the word "deposit."

Under 5. Clarity, Grammar, Punctuation and the Use of Plain Language

- In response to the Rules Clearinghouse comment regarding DFI-Sec 4.10(2)(c), the paragraph is rewritten using the language suggested.

\* \* \* \*

- (e) No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

\* \* \* \*

**Fiscal Estimate — 2001 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number DFI-Sec 4.10(2)

**Subject**  
 Division of Securities rules relating to bank sales of certificates of deposit of third-party banks

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No  
 Decrease Costs

Local:  No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Chapter 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This fiscal estimate relates to proposed rules of the Division of Securities under the Wisconsin Uniform Securities Law relating to bank sales of certificates of deposit of third-party banks. The proposed rules do not have any fiscal effects inasmuch as they do not involve any one-time revenue fluctuations or annualized fiscal effects.

**Long-Range Fiscal Implications**

None

Prepared By: Randall Schumann	Telephone No. 266-3414	Agency DFI-Division of Securities
Authorized Signature  Patricia D. Struck	Telephone No. 266-3432	Date (mm/dd/ccyy) 04/04/2002

### Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number DFI-Sec 4.10(2)

**Subject**  
 Division of Securities rules relating to bank sales of certificates of deposit of third-party banks

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):  
 None

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE )	( - FTE )
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>Total State Costs by Category</b>	\$ 0	\$ - 0
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
<b>State Revenues</b>		
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	0	- 0
SEG/SEG-S		-
<b>Total State Revenues</b>	\$ 0	\$ - 0

#### Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By:	Telephone No.	Agency
Randall Schumann	266-3414	DFI-Division of Securities
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
Patricia D. Struck	266-3432	04/04/2002



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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

## CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

### CLEARINGHOUSE RULE 02-041

AN ORDER to renumber DFI-Sec 4.10 (1) to (4); and to create DFI-Sec 4.10 (2), relating to bank sales of certificates of deposit of third-party banks.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

04-04-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-18-02 REPORT SENT TO AGENCY.

RS:NZ:tlu;ksm

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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# WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

## CLEARINGHOUSE RULE 02-041

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. DFI-Sec 4.10 (2) (intro.), the phrase "does all of the following" should be inserted before the semicolon. With this addition, sub. (2) (a) and (b) each should conclude with a period. Finally, sub. (2) (d) should be rewritten to read:

Makes, keeps current and preserves for a period of not less than three years . . . purchaser or seller. This requirement may be satisfied by keeping copies . . . trust company.

b. In s. DFI-Sec 4.10 (2) (intro.), a comma should be inserted after the first occurrence of the notation "Stats."

c. In s. DFI-Sec 4.10 (2) (c) (intro.), the phrase "all of" should be inserted after the word "deposit."

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

It appears that s. DFI-Sec 4.10 (2) (c) 1. would be clearer if rewritten to read: "The name, and the city and state location, of the bank, savings institution or trust company that issues the certificate of deposit."