

## Clearinghouse Rule 23-039

### PROPOSED ORDER OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING AMENDING AND CREATING RULES

The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to repeal DFI-Bkg 3.01, 3.02, 3.08 (5) (c) 3. to 5., 14.03, 15.02 (4), 18.04 (2), ch. 19, 40.03 (1), 41.05 (4), 74.01 (2) (c), 74.15 (2), 75.05 (4), 75.07 (3), 75.10 (7), DFI-SL 1.03 (5) (b) explanatory note, 3.02, 5.01 (1) (a) 1. and 2., 6.05 (1), 12.03, DFI-SB 6.05 (1), 12.03, 16.03 (5) **NOTE**, 22.01 (12), and DFI-WCA 1.241, 1.65, and 1.655 of the Wisconsin Administrative Code; to renumber DFI-Bkg 14.07 (2) (a) 5., 6., 7., and 8., 18.01 (1), 18.04 (1), 74.01 (1) (e), 74.06, 74.10 (2), and 74.15 (1), DFI-SL 1.03 (8), and 5.01 (1) (a) (intro.); to amend DFI-Bkg 3.03 (intro.) and (1), 3.04 (5), 3.05 (1) (b) (intro.) 1., and 2., (c) (intro.) and 1. to 4., (d) (intro.) and 1., (f) (intro.) and 1., and (g), (2) (a) (intro.) and 1., (3) (a) (intro.), 1., and 2., and (b), 3.06 (1) (intro.), (a) and (b), 3.07 (1), 3.08 (1) (h) (intro.), 1. and 2. (2) (a), (b), and (c) (intro.), (5) (c) 1. and 2., and (d) 1. and 2., 4.08, 8.01 (1), 8.09, 11.02, 11.03, 11.06 (2), 11.07, 11.08 (1), 11.09, 11.11, 11.13, 11.14, 11.15 (1) (intro.) and (a), (b), and (c), 14.02, 14.04 (1) (intro.) and (a) to (c) and (2) (intro.) and (a), 14.06 (intro.), (1), (2) (intro.), (a), and (b), and (3) (intro.) and (a), 14.08 (2) (a) and (b), (3) (intro.), and (4), 16.05, 16.06, 17.02, 17.05, 17.06, 17.07, 17.08 (1) (intro.) and (2) (intro.), 18.02, 18.03, 18.05, 18.06, 18.07, 40.03 (2), 40.04, 40.06, 41.05 (3) and (5), 42.02, 43.01 (intro.), 73.04 (6), 74.01 (1), 74.01 (2) (d), 74.01 (6), 74.02 (1) (a) (title) and (a), 74.04 (1) (intro.), 74.05 (1) (intro.) and (c), 74.07 (1) (intro.), 74.13 (1), 74.16 (intro.) and (9), 75.03 (1) to (3), (4) (intro.), (6), and (7), 75.06 (3), 75.08 (4) (a), 75.10 (1) (c), 76.01 (1), 76.13 (1), 77.03 (1), 77.07, 77.09 (intro.) and (3), 78.02 (1) and (2), and 78.03 (2) (i), DFI-SL 1.01, 1.02, 1.03 (intro.) and (6), 6.05 (title) and (2), 9.03, 13.01 (3), 13.03 (3) (d) 6., 15.01 (5) (a) to (c), 16.01 (8), 16.06 (2), 17.08 (4), and 21.04 **NOTE**; DFI-SB 2.04 (2) and (5) (b), 6.05 (6) (title) and (2), 12.01, 16.03 (5), 21.10 (2), 21.13 (3), 22.01 (5) (a) 1., 22.03 (1) (d), and 22.09 (2), and DFI-WCA 1.85 (3); to repeal and recreate DFI-SB 13.03; and to create DFI-Bkg 3.08 (2) (intro.), 11.08 (2), 18.01 (1e), 18.01 (1m), 74.01 (5m), 74.06 (1) and (6), 74.07 (1) (j), 74.10 (1) (c) and (2) (a), 74.11 (10), and 74.16 (9m), and DFI-SL 1.03 (5m) of the Wisconsin Administrative Code, relating to authorizing the use of mobile and intermittent branches by state banks, eliminating obsolete provisions, correcting cross-references, eliminating rules that conflict with statutes, correcting errors, modifying the structure of existing rules in nonsubstantive ways, and clarifying rules governing collection agencies.

The scope statement for this rule was approved by the Governor on October 13, 2022, published in *Administrative Register* No. 802A4 on October 24, 2022, and approved by the Division of Banking on November 7, 2022. On June 13, 2023, the Banking Institutions Review Board approved the modification of Wis. Admin. Code DFI-Bkg 8.01 (1) as contained in this proposed rule.

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## ANALYSIS

**1. Statutes interpreted:**

Sections 221.0302 and 227.14 (1) of the Wisconsin Statutes.

**2. Statutory authority:**

Sections 214.715 (1) (d), 215.02 (7) (a), 218.04 (7) (d), and 220.04 (8) of the Wisconsin Statutes.

**3. Explanation of agency authority:**

The Division of Banking, a division of the Department of Financial Institutions, has general and specific supervisory authority over state banks, savings and loan associations, savings banks, and collection agencies. Some of the Division's rulemaking authority is subject to the approval of the banking institutions review board (BIRB). Specifically, the Division may "by rule . . . with the approval of the [BIRB]" authorize state banks to "exercise any right, power, or privilege permitted national banks under federal law, regulation, or interpretation." See WIS. STAT., s. 220.04 (8).

With regard to savings banks, the Division is required to "promulgate rules" to supervise such institutions. See WIS. STAT., s. 214.715 (1) (d).

With regard to collection agencies, the Division has the duty and authority to "make all necessary or proper orders, rules and regulations for the administration and enforcement of this section." See WIS. STAT., s. 218.04 (7) (d).

All other proposed amendments are non-substantive and seek to ensure that rules the Division administers are compliant with WIS. STAT., s. 227.14 (1), which requires that in drafting administrative rules "an agency shall adhere substantially to the form and style used by the legislative reference bureau in the preparation of bill drafts and the form and style specified in the manual prepared by the legislative council staff and the legislative reference bureau under s. [227.15 \(7\)](#)," and with WIS. STAT., s. 227.29 (1), which directs agencies to address rules that are "unauthorized," "obsolete or that have been rendered unnecessary," or "duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction."

**4. Related statutes or rules:**

Not applicable.

## **5. Plain language analysis:**

Under the proposed rules, the Division seeks to amend certain rules it administers in three respects.

First, it proposes to modify Wis. Admin. Code DFI-Bkg 8.01 (1), which currently defines a state bank branch as a “permanent” facility, to allow state banks to offer services through attended mobile or intermittent branches as well, subject to the approval of the Division. This change will enable banks to extend services to Wisconsinites in areas that may be underbanked and whose residents may be underserved, and to areas where permanent branches may not be feasible. Authorizing such branches also helps state banks maintain parity with national banks (which are authorized to operate mobile and intermittent branches), and state savings banks, state savings and loan associations, and state credit unions (which are not subject to rules limiting their branches to “permanent” locations).

Second, the Division proposes to update certain rules governing collection agencies, which are licensed by the Division, to reflect changes in industry practices during the 16 years since the existing rules were enacted. The proposed rules would clarify the meaning of the term “actual process of collection;” specify that a “terminated license” includes any license that has expired or been surrendered or revoked; clarify that a licensee’s trust checking account must be identified as a “trust account;” restrict third-party payment processors from withdrawing funds from a trust account; clarify that a collection agency may charge a contracted fee for reasonable costs incurred for each account placed in error by the creditor that is returned to the creditor; and require a collection agency to disclose and obtain Division approval for a trade name before using it to conduct business in the state.

Third, the Division proposes several non-substantive revisions to its rules to keep up to date with current law and drafting practices, including:

- a. Eliminating obsolete rules identified by staff or in the rules report required under WIS. STAT., s. 227.29 (1) (c), or rules that conflict with other state or federal rules or statutes as provided under WIS. STAT. s. 227.29 (1) (d).
- b. Correcting erroneous cross-references to other state or federal rules or statutes.
- c. Modifying the structure of existing rules in nonsubstantive ways to ensure that the rules are drafted to be substantially in the form and style used by the legislative reference bureau, and consistent with the manual prepared by the bureau and the legislative council staff, as provided in WIS. STAT., ss. 227.14 (1) and 227.15 (7).

## **6. Summary of, and comparison with, existing or proposed federal regulation:**

Under federal law, a branch of a national bank may include “a mobile facility, a temporary facility, or an intermittent facility.” See 12 CFR § 5.30 (d) (1) (i).

## **7. Comparison with rules in adjacent states:**

Most of Wisconsin's neighboring states currently allow mobile banking, either explicitly, as does Michigan, or by defining a bank branch in a way that does not preclude a mobile branch, such as Iowa and Illinois. For Michigan, see Michigan Compiled Laws, section 487.3417 (1) and (2). Iowa law does not prohibit mobile banking, stating that "A state bank may establish and operate any number of bank offices at any location in this state subject to the approval and regulation of the superintendent." See Iowa Code chapter 524, s. 524.1201 (1). Similarly, Illinois law does not prohibit mobile banking, stating that a bank organized under the Illinois Banking Act may "establish and maintain, in addition to the main banking premises, branches offering any banking services permitted at the main banking premises of a State bank", and may also maintain an intermittent bank location at certain international fairs. See 205 ILCS 5/5 (15) and (18) Illinois Compiled Statutes ch. 205, section 5/5 subsections (15) and (18).

## **8. Summary of factual data and analytical methodologies:**

The proposed changes are based on (1) the Division's experience in administering chs. 214, 215, 218, 220, and 421 to 427 of the Wisconsin Statutes and the rules promulgated thereunder; (2) The Division's belief that for Wisconsin state banks to have parity with national banks, as provided under WIS. STAT., s. 220.04 (8), and with state savings banks, state savings and loan associations, and state credit unions, DFI-Bkg 8.01 (1) must be amended to allow for mobile and intermittent branch banks; (3) The Division's recognition that most of Wisconsin's neighbors already allow mobile branch banks; (4) The Division's knowledge of and experience working with current industry practices related to collection agencies, as those practices have evolved in the 16 years since the existing rules were enacted; (5) The Division's knowledge of and desire to fix erroneous cross-references to other state or federal rules or statutes; and (6) The need to modify the structure of existing rules in nonsubstantive ways to be consistent with modern drafting practices of the legislative reference bureau and the form and style requirements of the bureau and the legislative council staff.

## **9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:**

N/A

## **10. Effect on small business:**

These proposed rules would not have an immediate or measurable economic impact upon the Division or its licensees. While the availability of mobile branches may provide some economic benefit to the banks and customers who utilize them, those benefits are dependent on several variables and the Division is unable to estimate them in advance.

**11. Agency contact person:**

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**12. Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to the contact person shown below no later than the date on which the public hearing on this proposed rule order is conducted. Information as to the place, date and time of the public hearing will be published in the Wisconsin Administrative Register.

By mail: Marc Shovers, Assistant Chief Legal Counsel, Department of Financial Institutions, PO Box 8861, Madison, WI 53708-8861.

By e-mail: [DFIRulesComments@wisconsin.gov](mailto:DFIRulesComments@wisconsin.gov)

Via the department's website: <https://dfi.wi.gov/Pages/About/ProposedRules.aspx>

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**Rule Text**

**SECTION 1.** DFI-Bkg 3.01 and 3.02 are repealed.

**SECTION 2.** DFI-Bkg 3.03 (intro.) and (1) are amended to read:

DFI-Bkg 3.03 (intro.) As part of its banking business and incidental thereto, a bank may collect, transcribe, process, analyze, and store, for itself and others, banking, financial, or related economic data. In addition, incidental to its banking business, a bank may do all of the following:

(1) Market a by-product (such as program or output) of a data processing activity described in this rule; ~~and~~.

**SECTION 3.** DFI-Bkg 3.04 (5) is amended to read:

DFI-Bkg 3.04 (5) Unless otherwise provided by banking laws or regulations, pertinent book figures of the parent bank and its operating subsidiaries, except agricultural credit corporations, shall be consolidated for the purpose of applying applicable statutory limitations, including ~~but not limited to~~ s. [221.0319](#), [221.0320](#), [221.0324](#) or [221.0328](#), Stats.

**SECTION 4.** DFI-Bkg 3.05 (1) (b) (intro.), 1., and 2., (c) (intro.) and 1. to 4., (d) (intro.) and 1., (e) (intro.) and 1., (f) (intro.) and 1., (g), (2) (a) (intro.) and 1., (3) (a) (intro.), 1., and 2., and (b) and are amended to read:

DFI-Bkg 3.05 (1) (b) (intro.) A bank may enter into a lease financing transaction only if it can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from all of the following:

1. Rental;

2. Estimated tax benefits;~~and.~~

(c) (intro.) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for any of the following:

1. The servicing, repair or maintenance of the leased property during the lease term;

2. The purchasing of parts and accessories for the leased property. However, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with any applicable requirements for maximum estimated residual value;

3. The loan of replacement or substitute property while the leased property is being serviced;

4. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;~~or.~~

(d) (intro.) If, in good faith, a bank determines that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the bank may do any of the following:

1. As the owner and lessor under a net lease or a net, full-payout lease, take reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease;~~or.~~

(e) (intro.) The limitations contained in par. (c) do not prohibit a bank from doing any of the following:

1. Including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in par. (d);~~or.~~

(f) (intro.) A bank may acquire specific property to be leased only after the bank has entered into ~~either~~ one of the following:

1. A legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property;~~or.~~

(g) At the expiration of ~~the~~ a lease, including any renewal or extensions with the same lessee, or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this subsection and either sub. (2) or (3), as soon as practicable, but in no event later than 2 years

from the expiration of the lease. Property which the bank retains in anticipation of re-lease must be revalued at the lower of current fair market value or book value prior to any subsequent lease.

(2) (a) (intro.) Subject to the limitations of this subsection and sub. (1), and provided that the aggregate book value of all tangible personal property held for lease under this subsection does not exceed 10% of the consolidated assets of the bank, a bank may do any of the following:

1. Invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture for lease financing transactions on a net lease basis; ~~or.~~

(3) (a) (intro.) Subject to the limitations of this subsection and sub. (1), and provided the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease, a bank may do all of the following:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property; ~~or.~~

2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease; ~~and.~~

(b) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return on a net, full-payout lease ~~shall~~ may not exceed 25% of the original cost of the property to the lessor. The amount of any estimated value guaranteed by a manufacturer, lessee or a third party which is not an affiliate of the bank may exceed 25% of the original cost of the property where the bank has determined, and can provide, full supporting documentation that the guarantor has the resources to meet the guarantee.

**SECTION 5.** DFI-Bkg 3.06 (1) (intro.) and (1) (a) and (b) are amended to read:

DFI-Bkg 3.06 (1) (intro.) **AUTHORITY.** A bank may purchase for its own account shares of investment companies registered with the securities and exchange commission or a privately offered fund sponsored by an affiliated commercial bank if the investment company shares meet all of the following requirements:

(a) The bank has an equitable and equal proportionate undivided interest in the underlying assets of the investment company; ~~and.~~

(b) The bank is shielded from personal liability for acts or obligations of the investment company; ~~and.~~

**SECTION 6.** DFI-Bkg 3.07 (1) is amended to read:

DFI-Bkg 3.07 (1) A savings and loan association may be converted into a state chartered bank in compliance with 12 USC 1815 (d) (2) (G), with the approval of the administrator of the division of banking.

**SECTION 7.** DFI-Bkg 3.08 (1) (h) (intro.), 1. and 2. are amended to read:

DFI-Bkg 3.08 (1) (h) (intro.) "Open-end credit" means consumer credit extended by a bank under a plan in which all of the following apply:

1. The bank reasonably contemplates repeated transactions;
  2. The bank may impose a finance charge from time to time on an outstanding unpaid balance;
- and.

**SECTION 8.** DFI-Bkg 3.08 (2) (intro.) is created to read:

DFI-Bkg 3.08 (2) (intro.) A bank may not do any of the following:

**SECTION 9.** DFI-Bkg 3.08 (2) (a), (b), and (c) (intro.) are amended to read:

DFI-Bkg (2) (a) *Anti-tying.* ~~A bank shall not extend~~ Extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the bank.

(b) *Misrepresentations generally.* ~~A bank shall not engage~~ Engage in any practice or use any advertisement that is false, misleading or deceptive, or which omits to state material information, or otherwise would cause a reasonable person to reach an erroneous belief with respect to information that may be disclosed under this section.

(c) *Prohibited contract terms.* (intro.) ~~A bank shall not offer~~ Offer debt cancellation contracts or debt suspension agreements that contain any of the following:

**SECTION 10.** DFI-Bkg 3.08 (5) (c) 1. and 2. are amended to read:

DFI-Bkg 3.08 (5) (c) 1. ~~'Short form disclosures.'~~ The bank shall make the short form disclosures orally at the time the bank first solicits the purchase of a contract.

2. ~~'Long form disclosures.'~~ The bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the bank shall provide the long form disclosures in writing at that time.

**SECTION 11.** DFI-Bkg 3.08 (5) (c) 3. to 5. are repealed.

**SECTION 12.** DFI-Bkg 3.08 (5) (d) 1. and 2. are amended to read:

DFI-Bkg 3.08 (5) (d) 1. ~~'Understandable disclosures.'~~ The disclosures required by this section shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

2. ~~'Meaningful disclosures.'~~ The disclosures required by this section shall be in a meaningful form.

**SECTION 13.** DFI-Bkg 4.08 is amended to read:

DFI-Bkg 4.08 A financial institution that establishes or maintains a financial subsidiary shall ensure do all of the following:



(1) ~~The~~ Ensure that 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~~ Ensure that 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.

**SECTION 14.** DFI-Bkg 8.01 (1) is amended to read:

DFI-Bkg 8.01 (1) “Branch” means ~~a permanent,~~ an attended banking facility, whether fixed, intermittent, or mobile, that is authorized pursuant to s. 221.0302, Stats., which has no legal identity, assets or liabilities separate from the home office, and which accepts deposits, cashes checks, lends money or provides trust services. The term does not include the home office of a bank, a customer bank communications terminal or a night depository.

**SECTION 15.** DFI-Bkg 8.09 is amended to read:

DFI-Bkg 8.09 Joint branch personnel ~~shall~~ may not represent more than one bank in any transactions or activities or services offered at the joint branch bank other than the cashing of checks or acceptance of deposits or loan payments.

**SECTION 16.** DFI-Bkg 11.02 of the administrative code is amended to read:

DFI-Bkg 11.02 **Place of hearings.** Unless otherwise specifically provided by law or ordered by the administrator, all hearings shall be held at the office of the Administrator of the Division of Banking of Wisconsin, 4822 Madison Yards Way, North Tower, Madison, Wisconsin, 53703-53705.

**SECTION 17.** DFI-Bkg 11.03 of the administrative code is amended to read:

DFI-Bkg 11.03 All hearings shall be conducted and presided over by the administrator or such subordinate ~~as may be designated to hear the matter~~ the administrator designates.

**SECTION 18.** DFI-Bkg 11.06 (2) of the administrative code is amended to read:

DFI-Bkg 11.06 (2) Any person desiring a copy of the transcript shall ~~so indicate at the commencement of the proceedings~~ arrange for a court reporter, at the person’s expense, at least 30 days before the commencement of the proceedings and shall simultaneously so notify the administrator. In the alternative, any person desiring a copy of the transcript shall request that the administrator obtain the services of a court reporter to produce the transcript, at the person’s expense, at least 30 days before the commencement of the proceedings. The cost of each copy shall be paid by the person requesting it. A charge of 75¢ for each 8 1/2 by 11 inch page will be charged for copies prepared by the office of administrator. However, if the administrator determines that any party is impecunious or would suffer an undue economic hardship, such party shall be provided a copy of the transcript without charge. Where a transcript of proceedings, other than a contested case is prepared at the request of any party, such party shall also pay all recording and transcription costs.

**SECTION 19.** DFI-Bkg 11.07 of the administrative code is amended to read:

DFI-Bkg 11.07 The administrator ~~shall not be~~ is not bound by common law or statutory rules of evidence, except that all privileges set forth in ch. 905, Stats., apply. All testimony having reasonable probative value shall be admitted, but immaterial, irrelevant, or unduly repetitious testimony shall be excluded. ~~The rules of privilege recognized by law shall be given effect.~~ Basic principles of relevancy, materiality, and probative force, as recognized in equitable proceedings, shall govern the proof of all questions of fact.

**SECTION 20.** DFI-Bkg 11.08 is renumbered DFI-Bkg 11.08 (1) and amended to read:

DFI-Bkg 11.08 (1) ~~All~~ Except as provided in sub. (2), all papers filed in connection with any hearing shall be either printed or typewritten and, as far as practicable, shall be on paper 8 1/2 inches wide and 11 inches long. An original and 2 copies thereof shall be filed with the administrator and copies thereof shall also be served or furnished, as the case may be, to any other party or person interested who enters an appearance in said proceeding. Pleadings shall bear the name and mailing address of the party or a representative presenting the same. All pleadings, notices and other papers shall be captioned "BEFORE THE ADMINISTRATOR OF THE DIVISION OF BANKING OF WISCONSIN."

**SECTION 21.** DFI-Bkg 11.08 (2) is created to read:

DFI-Bkg 11.08 (2) Notwithstanding the provisions of sub. (1) and s. DFI-Bkg 11.09, papers and copies filed as described in sub. (1) may be filed by electronic means, as directed by the administrator.

**SECTION 22.** DFI-Bkg 11.09 is amended to read:

DFI-Bkg 11.09 ~~Unless~~ Except as provided in s. DFI-Bkg 11.08 (2), and unless otherwise provided by law, all orders, notices and other papers may be served by the administrator by first class or registered mail addressed to any party at the last known post office address or to the party's attorney of record. Papers required to be filed with the administrator may be mailed to the following address: Office of the Administrator of the Division of Banking, P.O. Box 7876, Madison, Wisconsin, 53707.

**SECTION 23.** DFI-Bkg 11.11 is amended to read:

DFI-Bkg 11.11 ~~(1)~~ (intro.) The respondent shall be required to ~~make file~~ file an answer to any such notice in a contested case within the time ~~therein specified and failure in the notice.~~ Failure to do so shall constitute a default, but such the administrator may excuse the default may be excused upon proper showing upon such terms as may be deemed the administrator considers to be just. The answer of the respondent shall be verified unless an admission of the allegations might subject the respondent to prosecution for a felony. ~~Such~~ The answer must contain all of the following:

(a) (1) A specific denial of each of the material allegations ~~of the charges which~~ that are controverted by the respondent; .

(b) (2) A statement of any new matter constituting a defense or affecting the respondent's situation which respondent wishes to have considered.

**SECTION 24.** DFI-Bkg 11.13 is amended to read:

DFI-Bkg 11.13 (1) Any interested person may petition the administrator ~~requesting for the promulgation or, amendment, or repeal of any rule, the making of which that~~ is within the jurisdiction of the administrator. Every such petition shall specify in detail the particulars in which any rule presently existing is desired to be amended, shall specify with particularity any rule which it is desired should be repealed, and in the event the petition is for the promulgation of any rule, such petition shall set out the proposed rule in full. The petition shall specify in detail any rule or part thereof that is proposed to be repealed, the content of any proposed amendment, and, if the petition seeks the promulgation of a new rule, the nature and purposes of the proposed new rule. If the petitioner requests the promulgation of a new rule, the petitioner shall specify with particularity the goal he or she would like to accomplish with the proposed rule.

(2) Upon the receipt of any such petition the administrator may ~~make such~~ commence an investigation ~~as he or she desires~~ into the matter, hold any conferences or hearings deemed necessary, and ~~may~~ give notice of such hearings to all parties which he or she deems may be interested in ~~said~~ the matter. ~~But the~~ Alternatively, the administrator may dispose of any such petition in a summary manner ~~if he or she so desires.~~

**SECTION 25.** DFI-Bkg 11.14 is amended to read:

DFI-Bkg 11.14 Any person in interest may petition the administrator for a declaratory ruling with respect to the applicability of any rule or statute enforced by the administrator to any persons, property, or state of facts in which ~~such~~ the person has an interest, ~~of any rule or statute enforced by the administrator.~~ Any such petition shall be verified by the party presenting the ~~same~~ petition, and upon receipt of ~~such~~ the petition the administrator may ~~make such~~ investigation or investigate the facts set forth in such petition ~~as he or she deems desirable,~~ and may hold such hearings upon notice to ~~such~~ the petitioner or any other interested party ~~as he or she may deem necessary or desirable.~~ The administrator, however, ~~shall~~ is not be required to issue ~~any such~~ a declaratory ruling and ~~such~~ any action the administrator takes shall be discretionary except upon reference of a case in accordance with the provisions of s. [227.41](#), Stats.

**SECTION 26.** DFI-Bkg 11.15 (1) (intro.) and (a) to (c) is amended to read:

DFI-Bkg (1) (intro.) In any ~~matter pending before him or her~~ matter the administrator may direct any party or attorney for any party to appear before the administrator or ~~subordinate who has the matter in charge~~ the administrator's delegate to consider all of the following:

(a) Simplification of the issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining admissions of fact or as to documents which will avoid unnecessary proof;

**SECTION 27.** DFI-Bkg 14.02 amended to read:

DFI-Bkg 14.02 This chapter is promulgated as a joint rule by the division of banking and office of credit unions pursuant to ~~under~~ s. [221.0303](#), (2) Stats.

**SECTION 28.** DFI-Bkg 14.03 is repealed.

**SECTION 29.** DFI-Bkg 14.04 (1) (intro.) and (a) to (c) and (2) (intro.) and (a) are amended to read:

DFI-Bkg 14.04 (1) (intro.) Except as provided in sub. ~~(2)~~, no bank may directly or indirectly acquire, place, or operate a customer bank communications terminal, and no bank may participate in the acquisition, placement, or operation of a customer bank communications terminal, unless the terminal is available on a nondiscriminatory basis to all of the following financial institutions and their designated customers:

- (a) Any financial institution that has its home office in this state;
- (b) Any other savings and loan association which is qualified to do business in this state and has obtained the written consent of a savings and loan association that has its home office in this state and is making use of the terminal;
- (c) Any other bank which is qualified to do business in this state and has obtained the written approval of a bank that has its home office in this state and is making use of the terminal; ~~and~~

(2) (intro.) The temporary limitation of access to a customer bank communications terminal to designated customers of designated financial institutions for reasonable test periods determined by the administrator will not be deemed in violation of this section if approved by the administrator in writing. The administrator may approve such limitations if any of the following apply:

- (a) The administrator considers it necessary or desirable to permit restricted operation during periods of testing or experimentation; ~~or~~

**SECTION 30.** DFI-Bkg 14.06 (intro.), (1), (2) (intro.), (a), and (b), and (3) (intro.) and (a) are amended to read

DFI-Bkg 14.06 (intro.) No bank may directly or indirectly acquire, place, or operate a customer bank communications terminal, and no bank may participate in the acquisition, placement, or operation of a customer bank communications terminal, unless the bank has implemented precautions, in a manner acceptable to the administrator ~~are provided~~, to address all of the following:

(1) ~~PRECAUTIONS AGAINST UNAUTHORIZED ACCESS. Prevent~~ Preventing unauthorized access to, or use of, the terminal.

(2) (intro.) ~~(PECAUTIONS TO ASSURE CONFIDENTIALITY. Prevent~~ Preventing information regarding a transaction conducted through the terminal from being disclosed to any person other

than any of the following:

(a) The customer making the transaction;

(b) Any other person who is a party to the transaction or is necessary to effect the transaction, but only to the extent that the information disclosed is necessary to effect the transaction;   

**(3) (Intro.)** ~~UNSOLICITED ACCESS TO CUSTOMER BANK COMMUNICATIONS TERMINAL PROHIBITED. Ensure~~ Ensuring that the plastic card or other means providing its customers access to the terminal is issued only under one or more of the following circumstances:

(a) In response to a request or application therefor; ~~or.~~

**SECTION 31.** DFI-Bkg 14.07 (2) (a) 5., 6., 7., and 8. is renumbered to be 14.07 (2) (am) 1., 2., 3., 4., 5., and 6., and, as renumbered, is amended to read:

DFI-Bkg 14.07 (2) ~~(a) 5.~~ (am) 1. A customer must report an unauthorized transfer from the unauthorized use of a plastic card or other access device to a customer bank communications terminal that appears on a periodic statement within 60 days of the bank's transmittal of the statement to avoid liability for subsequent transfers. If the customer fails to do so, the customer's liability may not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the bank and that the bank establishes would not have occurred had the customer notified the bank within the 60-day period. When a plastic card or other access device is involved in the unauthorized transfer, the customer may be liable for other amounts set forth in ~~subd. par. (a) 3.~~ or 4., as applicable.

~~6. 2.~~ If the customer's delay in notifying the bank as provided in subd. ~~5. 1.~~ 5. 1. was due to extenuating circumstances, the bank shall extend the time specified in subd. ~~5. 1.~~ 5. 1. to a reasonable period.

~~7.~~

~~a. 3.~~ Notice to a bank is given when a customer takes steps reasonably necessary to provide the bank with the pertinent information, whether or not a particular employee or agent of the bank actually receives the information.

~~b. 4.~~ A customer may notify the bank in person, by telephone, or in writing.

~~e. 5.~~ Written notice to a bank is ~~considered~~ given at the time when the customer mails the notice or delivers it for transmission to the bank by any other usual means. Notice may be considered constructively given when the bank becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the customer's account has been or may be made.

~~8. 6.~~ If an agreement between the customer and the bank imposes less liability than is provided by this section, the customer's liability may not exceed the amount imposed under the agreement.

**SECTION 32.** DFI-Bkg 14.08 (2) (a) and (b), (3) (intro.), and (4) are amended to read:

DFI-Bkg 14.08 (2) (a) The terminal simultaneously controls the distribution of products at several locations on the same site to more than one customer;—.

(b) Each customer must remove the access device from the terminal and move to another location in order to complete the transaction;—~~and~~.

(3) WRITTEN DISCLOSURE OF SERVICES AND CHARGES. (intro.) Each customer of a bank whose account with the bank is accessible through a customer bank communications terminal shall be provided with a written statement of the terms and conditions governing the account. Such a statement shall be provided at the time that the customer is issued a card or other means affording access to the customer bank communications terminal, and whenever the terms and conditions governing the account are amended. The statement shall set out all of the following:

(4) EXCEPTION FOR WRITTEN DOCUMENT IN SMALL-VALUE TRANSFERS. A bank is not subject to the requirement to make available a written document under sub. (2) ~~if the~~ under any of the following circumstances:

(a) The amount of the transfer is \$15 or less.

(b) At the time of the transaction, the customer declines to receive a written document .

**SECTION 33.** DFI-Bkg 15.02 (4) is repealed.

**SECTION 34.** DFI-Bkg 16.05 is amended to read:

DFI-Bkg 16.05 A bank may provide real estate brokerage services directly or through a subsidiary at its home office, authorized branch offices, and other locations, provided, the bank does not make loans, accept deposits, provide trust services other than as permitted by s. [221.0316](#), Stats., or cash checks or other negotiable instruments at such other locations. Notification of locations shall be made annually as part of the financial statement provided to the division of banking under s. DFI-Bkg 16.04. Prior approval by the administrator of the division of banking of such other locations is not required.

**SECTION 35.** DFI-Bkg 16.06 is amended to read:

DFI-Bkg 16.06 No officer or employee of a bank who personally approves a borrower's application with respect to a particular real estate loan ~~shall~~ may receive any commission earned on the sale of the real estate related to the loan. Any such commission shall be paid directly to the bank.

**SECTION 36.** DFI-Bkg 17.02 is amended to read:

DFI-Bkg 17.02 An application ~~for an interim bank~~ shall be on a form prescribed by the division and shall be accompanied by a fee set by the division. A copy of any application filed by the applicant with the Federal Deposit Insurance Corporation or the Federal Reserve System relating to the ~~interim bank~~ application shall accompany the application.

**SECTION 37.** DFI-Bkg 17.05 is amended to read:

DFI-Bkg 17.05 Upon approval of ~~the~~ an application, the division shall issue to the applicant a certificate to organize the interim bank.

**SECTION 38.** DFI-Bkg 17.06 is amended to read:

DFI-Bkg 17.06 Shareholders of ~~the~~ an existing bank who did not vote for the merger or consolidation shall be given notice of the division's approval.

**SECTION 39.** DFI-Bkg 17.07 is amended to read:

DFI-Bkg 17.07 Upon approval of ~~the~~ an application, the applicant shall file with the division 2 copies of the articles of incorporation of the interim bank. The articles of incorporation shall be on a form prescribed by the division.

**SECTION 40.** DFI-Bkg 17.08 (1) (intro.) and (2) (intro.) are amended to read:

DFI-Bkg 17.08 (1) (intro.) The following documentation shall be filed with the division prior to the effective date of ~~the~~ a merger or consolidation:

(2) (intro.) The following documentation shall be filed with the division within 90 days after the articles of incorporation of ~~the~~ an interim bank have been approved and capital has been paid-in:

**SECTION 41.** DFI-Bkg 18.01 (1) is renumbered to be 18.01 (1s).

**SECTION 42.** DFI-Bkg 18.01 (1e) is created to read:

DFI-Bkg 18.01 (1e) "Administrator" means the administrator of the division of banking.

**SECTION 43.** DFI-Bkg 18.01 (1m) is created to read:

DFI-Bkg 18.01 (1m) "Division" means the division of banking.

**SECTION 44.** DFI-Bkg 18.02 is amended to read:

DFI-Bkg 18.02 (1) A bank or its subsidiary is limited for its aggregate loan or investment portfolio to the respective percentage established by the administrator ~~of the division of banking~~ pursuant to s. [221.0321 \(3\)](#), Stats.

(2) The statutory limitations with respect to ~~officers', directors' and employees'~~ officers, directors, and employees of a bank, as set forth at s. [221.0625](#), Stats., are applicable to and included in calculating the appropriate amounts of such officers', directors' or employees' involvement, relationship, ownership or other participation through a subsidiary.

**SECTION 45.** DFI-Bkg 18.03 is amended to read:

DFI-Bkg 18.03 Prior to lending or investing by a bank or its subsidiary pursuant to s. [221.0321](#), Stats., the bank or subsidiary shall request the administrator ~~of the division of banking~~ to make a

determination establishing applicable percentage limitations. The administrator's determination may include consideration of the bank's assets, management and liquidity ratio and its capital ratio. The administrator ~~of the division of banking~~ shall report the determination to the requestor within 60 days from the date of the receipt of the request.

**SECTION 46.** DFI-Bkg 18.04 (1) is renumbered 18.04 and as renumbered is amended to read:

DFI-Bkg 18.04 The administrator ~~of the division of banking~~ may review ~~the a~~ determination made under s. DFI-Bkg 18.03 and establish, withdraw or suspend the percentage in effect after consideration of factors such as the bank's capital, capital ratio, asset quality, management, earnings, liquidity ratio, contingent liabilities and off balance sheet risk. After any loss is reported the administrator ~~of the division of banking~~ shall have 60 days to review and establish, withdraw or suspend a percentage pursuant to s. [221.0321](#), Stats.

**SECTION 47.** DFI-Bkg 18.04 (2) is repealed.

**SECTION 48.** DFI-Bkg 18.05 is amended to read:

DFI-Bkg 18.05 ~~The A~~ A bank or its subsidiary shall, prior to disposition of, or withdrawal from, ~~the a~~ loan or investment subject to this chapter, inform the administrator ~~of the division of banking~~ by letter of the terms of the transaction. The bank or its operating subsidiary shall provide a financial statement to the administrator ~~of the division of banking~~ within 90 days after the close of its fiscal year. It shall further provide the administrator ~~of the division of banking~~ a copy of all resolutions or other records of the board of directors ~~resolution or resolutions~~ approving any investments or loans or taking any action with regard thereto pursuant to s. [221.0321](#), Stats.

**SECTION 49.** DFI-Bkg 18.06 is amended to read:

DFI-Bkg 18.06 ~~The A~~ A bank or its subsidiary shall follow the instructions approved for use by the ~~office of administrator of the division of banking~~ for the preparation of reports in the reports of condition and income to account for investments made pursuant to s. [221.0321](#), Stats.

**SECTION 50.** DFI-Bkg 18.07 is amended to read:

DFI-Bkg 18.07 ~~The A~~ A bank or its subsidiary shall within 30 days report any losses incurred on loans or investments made pursuant to s. [221.0321](#), Stats.

**SECTION 51.** Chapter DFI-Bkg 19 is repealed.

**SECTION 52.** DFI-Bkg 40.03 (1) is repealed.

**SECTION 53.** DFI-Bkg 40.03 (2) is amended to read:

DFI-Bkg 40.03 (2) A branch location shall may not be licensed under two different licensees.



**SECTION 54.** DFI-Bkg 40.04 is amended to read:

DFI-Bkg 40.04 (1) A licensee ~~shall~~ may not conduct business under any name or names other than the name or names listed on the license.

(2) Before using any trade name or d/b/a designation, ~~the~~ a licensee shall obtain approval from the division for the use of ~~such~~ the trade name or d/b/a designation.

(3) The combined total of trade names and d/b/a designations used by a licensee in Wisconsin ~~shall~~ may not exceed five.

**SECTION 55.** DFI-Bkg 40.06 is amended to read:

DFI-Bkg 40.06 An independent contractor ~~shall~~ may not engage in the activities of a loan processor or underwriter unless he or she is licensed under s. [224.725](#), Stats., and has obtained a valid unique identifier issued by the Nationwide Mortgage Licensing System.

**SECTION 56.** DFI-Bkg 41.05 (3) and (5) are amended to read:

DFI-Bkg 41.05 (3) The reinstatement period for a renewal application received by the Nationwide Mortgage Licensing System ~~shall begin~~ begins on January 1 and ~~end~~ ends on the last day of February of the year following the expiration date of the license. A renewal application received by the Nationwide Mortgage Licensing System during the reinstatement period shall be accompanied by an additional nonrefundable fee of \$100.

(5) A licensee whose application for renewal is not received by the Nationwide Mortgage Licensing System before March 1 shall submit an application for a new license, and no business for which the license is required ~~shall~~ may be conducted after the license expires and before a new license is issued by the division.

**SECTION 57.** DFI-Bkg 41.05 (4) is repealed.

**SECTION 58.** DFI-Bkg 42.02 is amended to read:

DFI-Bkg 42.02 Upon request by the division, ~~the~~ a licensee shall provide the division with the name and number of every trust account maintained by the licensee in a depository institution and the name and address of the depository institution in which the licensee holds each account.

**SECTION 59.** DFI-Bkg 43.01 (intro.) is amended to read:

DFI-Bkg 43.01 (intro.) ~~The following conduct, without limitation because of enumeration, constitutes improper, Improper, fraudulent, or dishonest dealing by a mortgage banker, mortgage loan originator or mortgage broker prohibited by s. [224.77 \(1\) \(m\)](#), Stats., includes any of the following conduct:~~

**SECTION 60.** DFI-Bkg 73.04 (6) is amended to read:

DFI-Bkg 73.04 (6) Take a note or evidence of indebtedness or require a debtor to give an order or an assignment of wages. Licensee may take such an order or an assignment of ~~order~~ wages if requested to do so in writing by the customer for his or her convenience.

**SECTION 61.** DFI-Bkg 74.01 (1) is amended to read:

DFI-Bkg 74.01 (1) "Actual process of collection" means regularly receiving payments at periodic intervals, or debtor contacted within last 30 days and promise of payment received, or an account referred for legal actions where the collection agency has advanced legal costs. A collection agency and its client may by written contract agree to a different actual process of collection. ~~This subsection first applies to contractual relationships entered into between a collection agency and its client after March 1, 1993, but this different actual process of collection must require more effort on the part of the collection agency than merely listing the account, inputting the account into its database, writing one letter or making one call, or similar levels of effort.~~

**SECTION 62.** DFI-Bkg 74.01 (2) (c) is repealed.

**SECTION 63.** DFI-Bkg 74.01 (2) (d) is amended to read:

DFI-Bkg 74.01 (2) (d) The collection agency license is displayed ~~at the active office.~~

**SECTION 64.** DFI-Bkg 74.01 (5m) is created to read:

DFI-Bkg 74.01 (5m) "Licensee" means a person licensed under s. 218.04, Stats.

**SECTION 65.** DFI-Bkg 74.01 (6) is amended to read:

DFI-Bkg 74.01 (6) "Merger" means the business combination of 2 or more collection agencies under s. [180.1101](#) or ~~[183.1201](#)~~ [183.1021](#), Stats., or other applicable law.

**SECTION 66.** DFI-Bkg 74.02 (1) (a) (title) and (a) are amended to read:

DFI-Bkg 74.02 (1) SHARED OFFICE SPACE. (a) ~~SHARED OFFICE SPACE.~~ Except as set forth in par. (b), the licensed office of a collection agency ~~shall~~ may not be shared or have a common waiting room with a practicing attorney or a loan company or be located in a private residence. If other approved business is conducted in the same office as provided for in s. [218.04 \(4\) \(b\)](#), Stats., the books and records of such other business shall be kept separate from the books and records of the collection agency.

**SECTION 67.** DFI-Bkg 74.04 (1) (intro.) is amended to read:

DFI-Bkg 74.04 (1) (intro.) Prior to accepting accounts for collection from a creditor or earning or collecting a fee or commission, the licensee shall enter into a written agreement with the creditor. The agreement shall do all of the following:

**SECTION 68.** DFI-Bkg 74.04 (1) (e) is renumbered DFI-Bkg 74.04 (1m) and as renumbered is amended to read:

DFI-Bkg 74.04 (1m) PROHIBITIONS. ~~Not~~ Except as provided in s. DFI-Bkg 74.10 (1) (c), an agreement described under sub. (1) may not permit the a collection agency to charge the creditor for returning any account to the creditor.

**SECTION 69.** DFI-Bkg 74.05 (1) (intro.) and (c) are amended to read:

DFI-Bkg 74.05 (1) (intro.) ~~Licensee~~ A licensee shall provide a remittance statement and remit any and all money due to any and all creditors or forwarders within 30 days from a creditor or forwarder on or before the last day of the month following the close of the month during which the collection was effected as provided in s. 218.04 (5) (a) 4., Stats. The remittance statement shall set forth all of the following:

(c) Date of collection and amount collected from each debtor which shall include interest and other charges. ~~Attorneys~~ Attorney fees, court costs or suit fees if paid by or charged to the creditor and non-sufficient fund fees assessed by the creditor shall be included as other charges. Fees permitted and collected pursuant to s. DFI-Bkg 74.11 (2) (b) to (d) shall may not be included as other charges.

**SECTION 70.** DFI-Bkg 74.06 is renumbered 74.06 (2) and as renumbered is amended to read:

DFI-Bkg 74.06 (2) ~~Each licensee shall deposit in a trust fund account in any approved financial institution promptly after collection, sufficient funds to pay all moneys due or owing all creditors or forwarders. The trust fund account shall be used only for this purpose. A licensee may maintain trust funds in an interest-bearing interest-bearing savings account or instrument provided it is identified as a "trust account".~~ account."

(3) Sufficient funds shall be maintained in the trust account or trust accounts to pay all moneys due or owing all creditors or forwarders. For the purpose of determining sufficient funds, amounts collected by a 3<sup>rd</sup> party, but not yet deposited into the licensee's trust account, are not considered trust funds.

(4) Sufficient funds shall be maintained in ~~or made available to~~ the trust checking account on which remittance checks or electronic debits are drawn or made to pay all checks and debits when presented.

(5) The licensee shall have sufficient documentation from the trust account or trust accounts available to make an adequate examination.

**SECTION 71.** DFI-Bkg 74.06 (1) is created to read:

DFI-Bkg 74.06 (1) A licensee's trust checking account shall be identified as a "trust account."

**SECTION 72.** DFI-Bkg 74.06 (6) is created to read:

DFI-Bkg 74.06 (6) Third party payment processors may not be given authority to withdraw funds from the licensee's trust account.

**SECTION 73.** DFI-Bkg 74.07 (1) (intro.) is amended to read:

DFI-Bkg 74.07 (1) (intro.) Every licensee shall maintain in the principal licensed office adequate records which shall include ~~but not be limited to~~ all of the following:

**SECTION 74.** DFI-Bkg 74.07 (1) (j) is created to read:

DFI-Bkg 74.07 (1) (j) A roster of all collectors and solicitors employed by the licensee. The list shall be updated and accurate at all times and set forth all of the following:

1. The individual's first and last name, home address, and indication of whether the individual works from the individual's residence.
2. The first and last name of any alias that is used by the individual, the date the individual started to use the alias, and, if applicable, the date the individual stopped using the alias.
3. The date the individual was hired by the licensee.
4. The date the individual's employment with the licensee was terminated, if applicable.

**SECTION 75.** DFI-Bkg 74.10 (1) (c) of the administrative code is created to read:

DFI-Bkg 74.10 (1) (c) A licensee may not contract for or assess a fee, commission, or any other charge to a creditor for returning any account to the creditor that is not in the actual process of collection, other than a fee for reasonable costs incurred by the licensee for each account placed in error by the creditor.

**SECTION 76.** DFI-Bkg 74.10 (2) of the administrative code is renumbered DFI-Bkg 74.10 (2) (b).

**SECTION 77.** DFI-Bkg 74.10 (2) (a) of the administrative code is created to read:

DFI-Bkg 74.10 (2) (a) In this subsection, "terminated," with respect to a license, includes a license that is surrendered, revoked, or expired.

**SECTION 78.** DFI-Bkg 74.11 (10) of the administrative code is created to read:

DFI-Bkg 74.11 (10) TRADE NAMES. (a) A licensee may not conduct business in this state under any name or names other than the name or names listed on the license.

(b) Before using any trade name, a licensee shall obtain approval from the division for the use of the trade name.

(c) A licensee may not conduct business in this state using a trade name that includes a corporate identifier.

**SECTION 79.** DFI-Bkg 74.13 (1) is amended to read:

DFI-Bkg 74.13 (1) Unless the initial communication is written and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor the following notice within 5 days after the initial communication with a debtor: "This collection agency is licensed by the Division of Banking in the Wisconsin Department of Financial Institutions, [www.wdfi.org](http://www.wdfi.org) [www.dfi.wi.gov](http://www.dfi.wi.gov)." This notice shall be in at least 8 point type and shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Section 809 of the Federal Fair Debt Collection Practices Act.

**SECTION 80.** DFI-Bkg 74.15 (1) is renumbered 74.15 and as renumbered is amended to read:

DFI-Bkg 74.15 Except as set forth in sub. ~~(2)~~ (2) for an attorney employed by a licensee, no collector or other employee of a the licensee may, in attempting to collect an account, engage in the practice of law. This includes ~~but is not limited to~~ the preparation of a summons or complaint or the appearance on behalf of any creditor, except when called as a witness by the plaintiff's attorney in open court, before any court including the clerk of any small claims court in an action on the debt or in garnishment proceedings. It is not considered the practice of law for an employee of a licensee to prepare a summons or complaint under the direction of an attorney which will subsequently be signed and filed by the plaintiff's attorney. This section does not prohibit the appearance of an owner or officer of a licensed collection agency in court for the purpose of obtaining judgment on a debt owed to the licensee directly.

**SECTION 81.** DFI-Bkg 74.15 (2) is repealed.

**SECTION 82.** DFI-Bkg 74.16 (intro.) is amended to read:

DFI-Bkg 74.16 (intro.) A licensee ~~shall~~ may not engage in any oppressive or deceptive practices. In attempting to collect an alleged account, bill, or other indebtedness, a licensee ~~shall~~ may not do any of the following:

**SECTION 83.** DFI-Bkg 74.16 (9) is amended to read:

DFI-Bkg 74.16 (9) Engage in other conduct ~~which~~ that can reasonably be expected to threaten or harass the debtor or a person related to the debtor ~~including conduct which violates~~.

(9g) Violate the Federal Fair Debt Collection Practices Act.

**SECTION 84.** DFI-Bkg 74.16 (9m) is created to read:

DFI-Bkg 74.16 (9m) Violate any federal or state statute, rule, or regulation that relates to practice as a collection agency.

**SECTION 85.** DFI-Bkg 75.01 (6m) is amended to read:

DFI-Bkg 75.01 (6m) “Licensee” means a holder of a license issued under s. [138.14 \(5\)](#), Stats., except where the context requires otherwise.

**SECTION 86.** DFI-Bkg 75.03 (1) to (3), (4) (intro.), (6), and (7) are amended to read:

DFI-Bkg 75.03 (1) A licensee ~~shall~~ may not engage in conduct that is an attempt to evade or undermine the purpose and intent of s. [138.14](#), Stats.

(2) No licensee ~~shall~~ may make a payday loan ~~under~~ if any of the following circumstances apply:

(a) ~~That~~ The loan requires a payment that is more than twice as large as the average of all other scheduled payments.

(b) ~~Pursuant to~~ The loan is made pursuant to an open-end credit plan.

(c) ~~Where the~~ The lender accepts, and agrees to hold, more than 5 of a customer's checks.

(d) ~~That~~ The loan is, or is to be, secured by an interest in a motor vehicle.

(3) Except as provided in subs. [\(4\)](#) and [\(5\)](#), no licensee under s. [138.09](#) ~~shall~~ may make a loan of \$1,500 or less ~~under~~ if any of the following ~~circumstances~~ apply:

(a) ~~That~~ The loan requires payments be made on any schedule other than substantially equal biweekly installments or substantially equal monthly installments, except as provided in s. [138.09 \(7\) \(c\) 2.](#), Stats.

(b) ~~Pursuant to~~ The loan is made pursuant to an open-end credit plan.

(c) ~~That~~ The loan has a term of 90 days or less.

(4) (intro.) Subsection [\(3\)](#) does not apply to a licensee under s. [138.09](#), Stats., ~~where~~ if all of the following apply:

(6) No licensee under s. [138.09](#), Stats., ~~shall~~ may originate a loan subject to s. [138.09](#), Stats., at the same time, or within the 24 hour period before or after, the licensee originates a payday loan with the same customer.

(7) No licensee under s. [138.09](#), Stats., ~~shall~~ may originate a loan subject to s. [138.09](#), Stats., at the same time, or within the 24 hour period before or after, a payday loan made by the licensee with the same customer is paid in full.

**SECTION 87.** DFI-Bkg 75.05 (4) is repealed.

**SECTION 88.** DFI-Bkg 75.06 (3) is amended to read:

DFI-Bkg 75.06 (3) The documents set forth in sub. [\(2\) \(a\)](#) through [\(d\)](#) ~~shall~~ may not be dated more than 180 days prior to the date on which the payday loan is made.

**SECTION 89.** DFI-Bkg 75.07 (3) is repealed.

**SECTION 90.** DFI-Bkg 75.08 (4) (a) is amended to read:

DFI-Bkg 75.08 (4) (a) The first payment ~~shall~~ may not be due earlier than the customer's next pay day following the date the offer is made.

**SECTION 91.** DFI-Bkg 75.10 (1) (c) is amended to read:

DFI-Bkg 75.10 (1) (c) A licensee ~~shall~~ may not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless connections, Wi-Fi connections, or other connections that are not secure.

**SECTION 92.** DFI-Bkg 75.10 (7) is repealed.

**SECTION 93.** DFI-Bkg 76.01 (1) is amended to read:

DFI-Bkg 76.01 (1) A retail seller may in addition to the finance charge bargain for and receive, in accordance with the requirements of ss. 218.0148 (2), 422.202 (1) and (2s), and 424.301, Stats., only those additional charges described therein. To the extent that any charge qualifies as an additional charge under this regulation it may be excluded from the finance charge.

**SECTION 94.** DFI-Bkg 76.13 (1) is amended to read:

DFI-Bkg 76.13 (1) The division of banking shall collect fees based on the statutory formulas described in ~~s. 218.0114 (15)~~ ss. 218.0114 (15) and (16), Stats., ~~and elsewhere~~, which is the number of years in a licensing period multiplied by the current annual fee of \$50. If the dealer originates and carries or retains time sales contracts for more than 30 days in a total amount exceeding \$100,000, a bill will be issued for additional business license fees due based upon the schedule of fees in s. 218.0114 (16), Stats.

**SECTION 95.** DFI-Bkg 77.03 (1) is amended to read:

DFI-Bkg 77.03 (1) A pawnbroker ~~shall~~ may not be open for business on any day prior to 8:00 a.m. or after 8:00 p.m.

**SECTION 96.** DFI-Bkg 77.07 is amended to read:

DFI-Bkg 77.07 A pledgor ~~shall have~~ has no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within 30 days after the original or extended maturity date of the loan shall automatically be forfeited to the pawnbroker.

**SECTION 97.** DFI-Bkg 77.09 (intro.) and (3) are amended to read:

DFI-Bkg 77.09 (intro.) A pawnbroker ~~shall~~ may not do any of the following:

(3) Fail to return pledged goods to a pledgor or seller when the pledgor or seller pays the full amount due the pawnbroker within 30 days of the original or extended maturity date of the loan, ~~or unless~~ the pledged goods have been taken into custody by a court or local, state, or federal law enforcement agency.

**SECTION 98.** DFI-Bkg 78.02 (1) and (2) are amended to read:

DFI-Bkg 78.02 (1) "Division" ~~has the meaning set forth in s. [138.16 \(1\) \(a\)](#), Stats.~~ means the division of banking.

(2) "Licensed lender" ~~has the meaning set forth in s. [138.16 \(1\) \(b\)](#),~~ means a person licensed under s. [138.09](#), Stats.

**SECTION 99.** DFI-Bkg 78.03 (2) (i) is amended to read:

DFI-Bkg 78.02 (2) (i) Other criteria used by ~~the~~ a nationally recognized vehicle valuation guide when determining the retail value of a motor vehicle.

**SECTION 100.** DFI-SL 1.01 is amended to read:

DFI-SL 1.01 In ~~chs. [DFI-SL 1](#) to [20](#)~~ all chapters beginning with DFI-SL, unless otherwise indicated, all words and phrases shall be construed according to their common and approved usage unless such construction would produce a result inconsistent with the manifest intent of the legislature in enacting ch. [215](#), Stats., or of the division and the review board in adopting these rules.

**SECTION 101.** DFI-SL 1.02 is amended to read:

DFI-SL 1.02 In ~~chs. [DFI-SL 1](#) to [20](#)~~ all chapters beginning with DFI-SL, unless otherwise indicated, words and phrases shall have the meanings specified in ss. [215.01](#) and [990.01](#), Stats.

**SECTION 102.** DFI-SL 1.03 (intro.) is amended to read:

DFI-SL 1.03 (intro.) In ~~chs. [DFI-SL 1](#) to [20](#)~~ all chapters beginning with DFI-SL, unless otherwise indicated:

**SECTION 103.** DFI-SL 1.03 (5) (b), explanatory note, is repealed.

**SECTION 104.** DFI-SL 1.03 (5m) is created to read:

DFI-SL 1.03 (5m) "Division" means the division of banking.

**SECTION 105.** DFI-SL 1.03 (6) is amended to read:

DFI-SL 1.03 (6) "Federal insuring agency" means the ~~FSLIC~~ FDIC or other federal agency insuring the accounts of a given association.

**SECTION 106.** DFI-SL 1.03 (8) is renumbered DFI-SL 1.03 (5s) and amended to read:

DFI-SL 1.03 (5s) ~~"FSLIC"~~ "FDIC" means the federal ~~savings and loan~~ deposit insurance corporation or any successor to it.

**SECTION 107.** DFI-SL 2.03 is amended to read:

DFI-SL 2.03 When a person in a decision making position with an association must decide between his or her personal financial interests and those of the association, the association is exposed to unnecessary risk. Each officer, director and ~~employee~~ employee shall avoid such conflict of interest situations. The board of directors of each association shall establish and



implement written policies and procedures reasonably calculated to identify potential conflicts of interest and, when reasonably possible, to avoid placing an association's officer, director or employe in such a position. Establishing and implementing policies and procedures that assure compliance with its federal insuring agency's regulations governing transactions between the insured association and affiliated persons shall constitute compliance with this section.

**SECTION 108.** DFI-SL 3.02 is repealed.

**SECTION 109.** DFI-SL 5.01 (1) (a) (intro.) is renumbered DFI-SL 5.01 (1) (a) and amended to read:

DFI-SL 5.01 (1) (a) Except as provided in par. (b), an association shall at all times maintain a net worth ratio in an amount not less than 6.0%. ~~This level shall be attained according to the following schedule:~~

**SECTION 110.** DFI-SL 5.01 (1) (a) 1. and 2. are repealed.

**SECTION 111.** DFI-SL 6.05 (title) and (2) are amended to read:

DFI-SL 6.05 (title) **Recordkeeping standards, availability for examination.**

~~(2) AVAILABILITY FOR EXAMINATION. The~~ An association shall provide at its expense such facilities, equipment or services as may be necessary to enable the division to conveniently examine and reproduce individual records.

**SECTION 112.** DFI-SL 6.05 (1) is repealed.

**SECTION 113.** DFI-SL 9.03 is amended to read:

DFI-SL 9.03 The following is an optional approved provision for articles of incorporation of capital stock associations:

Article 8. Pursuant to the requirements of ~~the Federal Savings and Loan Insurance Corporation's Regulations~~ federal regulations, the association shall establish and maintain a liquidation account for the benefit of its savings account holders as of ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such ~~Regulations~~ regulations with respect to the amount and the priorities on liquidation of each of the association's eligible saver's inchoate interest in the liquidation account, to the extent it is still in existence, provided that an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

**SECTION 114.** DFI-SL 12.03 is repealed.

**SECTION 115.** DFI-SL 13.01 (3) is amended to read:

DFI-SL 13.01 (3) COMMERCIAL LOANS. The aggregate of commercial loans to one borrower is subject to the limitations contained in 12 CFR 563.9-3 (b) (2) 12 CFR 32.3.

**SECTION 116.** DFI-SL 13.03 (3) (d) 6. is amended to read:

DFI-SL 13.03 (3) (d) 6. The loan is to meet the objectives of ~~12 USC 2109ff.~~ 12 USC 2901 with the prior written approval of the division.

**SECTION 117.** DFI-SL 15.01 (5) (a) to (c) are amended to read:

DFI-SL 15.01 (5) (a) The effect on the safety and solvency of the association;

(b) Compliance by the association with ch. 215, Stats. and ~~chs. DFI-SL 1 to 19~~; all chapters beginning with DFI-SL.

(c) The anticipated benefit to the association and its depositors and other customers; ~~and.~~

**SECTION 118.** DFI-SL 16.01 (8) is amended to read:

DFI-SL 16.01 (8) Invest in time deposits, savings accounts, certificates or other accounts of any institution the accounts of which are insured by the ~~FSLIC or the~~ federal deposit insurance corporation.

**SECTION 119.** DFI-SL 16.06 (2) is amended to read:

DFI-SL 16.06 (2) A bank chartered under ~~27 USC 27(b)(1)~~ 12 USC 27 (b) (1).

**SECTION 120.** DFI-SL 17.08 (4) is amended to read:

DFI-SL 17.08 (4) Collateral securities or securities substituted for collateral securities as collateral shall at all times be at least equal in face value to the amount of trust funds deposited under sub. (2), but the security is not required to the extent that the funds so deposited are insured by the federal ~~savings and loan~~ deposit insurance corporation.

**SECTION 121.** DFI-SL 21.04 ~~NOTE~~ is amended to read:

**Note:** A copy of the forms may be obtained at no charge from the Department of Financial Institutions, Division of Banking, 4822 Madison Yards Way, North Tower, 5th Floor, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) ~~261-2300~~ 261-7578.

**SECTION 122.** DFI-SB 2.04 (2) and (5) (b) are amended to read:

DFI-SB 2.04 (2) Require a savings bank to correct any violation by it, its holding company or a subsidiary, service corporation or affiliate if any of these entities are found to violate any applicable state or federal statute, state rule, federal regulation or a directive of the division. The division may require corrective action when ~~he or she~~ it determines a savings bank's lending practices or procedures are imprudent, even though individual loans may comply with any applicable state or federal statute, state rule, federal regulation or a directive of the division.

(5) (b) For purposes of this section, the division shall accept collateral of the kind specified in s. DFI-SB 13.02 (3) (d) 4. and may accept such other collateral as ~~he or she~~ it deems appropriate.

**SECTION 123.** DFI-SB 6.05 (title) and (2) are amended to read:

DFI-SB 6.05 (title) **Recordkeeping standards, availability for examination.**

~~(2) AVAILABILITY FOR EXAMINATION.~~ The A savings bank shall provide, at its expense, any facilities, equipment or services necessary to enable the division to conveniently examine and reproduce individual records.

**SECTION 124.** DFI-SB 6.05 (1) is repealed.

**SECTION 125.** DFI-SB 12.01 is amended to read:

DFI-SB 12.01 **Joint rule.** This chapter is patterned after a joint rule promulgated by ~~the division,~~ the division of banking and the office of credit unions in accordance with s. [214.04 \(21\)](#) (b), Stats.

**SECTION 126.** DFI-SB 12.03 is repealed.

**SECTION 127.** DFI-SB 13.03 is repealed and recreated to read:

DFI-SB 13.03 **Approval of indexes indices used for variable rate loans.** The division shall publish on its website a list of approved indices as described under s. 138.056 (1) (a) 4. d.

**SECTION 128.** DFI-SB 16.03 (5) is amended to read.

DFI-SB 16.03 (5) **LOAN-BACKED SECURITIES.** Securities backed by commercial or consumer loans or loan receivables. If the security is issued by a private source, the security shall be rated ~~in one of the 2 highest categories~~ as investment-grade by a nationally recognized rating service. Privately issued securities are also limited to 10% of unimpaired surplus of a savings bank in any one issuer and aggregate limitations are limited to 10% of total assets of a savings bank when combined with other commercial or consumer loans unless a greater amount is authorized by prior written approval of the division.

**SECTION 129.** DFI-SB 16.03 (5) ~~NOTE~~ is repealed.

**SECTION 130.** DFI-SB 21.10 (2) is amended to read:

DFI-SB 21.10 (2) ~~An employee benefit plan has~~ Eligible account holders and supplemental eligible account holders with subscription rights have a priority to purchase conversion stock prior to ~~eligible account holders and supplemental eligible account holders with subscription rights~~ an employee benefit plan.

**SECTION 131.** DFI-SB 21.13 (3) is amended to read:

DFI-SB 21.13 (3) **DISTRIBUTION.** In the event of a complete liquidation of the converted savings bank, each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account for deposit accounts held, in the amount of the date of complete liquidation subaccount balances adjusted under subs. (4) and (5) before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of any mutual capital certificates issued in accordance with [12 CFR 563.74](#) by the institution prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another ~~SAIF-insured~~ FDIC-insured institution is not considered a complete liquidation, and in this kind of transaction, the liquidation account

shall be assumed by the surviving institution. Preferred stock issued in exchange for mutual capital certificates may receive distributions in a liquidation prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of deposit account holders had the savings bank not been converted as of the date of liquidation.

**SECTION 132.** DFI-SB 22.01 (5) (a) 1. is amended to read:

DFI-SB 22.01 **(5) (a) 1.** The FDIC, FRB, ~~resolution trust corporation, OTS~~ or any federal home loan bank.

**SECTION 133.** DFI-SB 22.01 (12) is repealed.

**SECTION 134.** DFI-SB 22.03 (1) (d) is amended to read:

DFI-SB 22.03 **(1) (d)** Obtain the approval of the reorganization plan by the division and, if applicable, the FDIC, or FRB ~~or OTS~~.

**SECTION 135.** DFI-SB 22.09 (2) is amended to read:

DFI-SB 22.09 **(2) FILING.** Duplicate originals of the articles of incorporation and bylaws of a mutual holding company and any amendments to them shall be filed with and approved by the division. ~~Upon their approval they shall be recorded in the office of the register of deeds in the county in which the mutual holding company has its principal place of business.~~

**SECTION 136.** DFI-WCA 1.241 is repealed.

**SECTION 137.** DFI-WCA 1.65 is repealed.

**SECTION 138.** DFI-WCA 1.655 is repealed.

**SECTION 139.** DFI-WCA 1.85 (3) is amended to read:

DFI-WCA 1.85 **(3)** The management of each financial organization as defined in s. [71.04 \(8\) \(a\)](#), Stats., each person or organization licensed under s. [138.09](#) or 138.14, Stats., and each credit card issuer shall adopt a detailed statement of its policy of nondiscrimination in extending consumer credit including its commitment to avoid the specific prohibited practices set forth in this regulation. This statement of policy shall be available to any customer upon request at each office where extensions of credit are made, except that in the case of credit card issuers, the statement shall be furnished upon request of an applicant directed to any office from which such cards are issued. A copy of such policy statement shall be filed with the office of the secretary of the department of financial institutions upon request by that office. Such written policy shall be applied impartially to each person seeking credit.

**SECTION 140.** This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

Date: July 18, 2023

By: /s/ Kim Swissdorf

Kim Swissdorf  
Administrator  
Division of Banking