

CR 83-47

CERTIFICATE

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STATE OF WISCONSIN )  
OFFICE OF THE ) SS  
COMMISSIONER OF SECURITIES )

JUL 15 1983  
3:50 pm  
Revisor of Statutes  
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard R. Malmgren, Commissioner of the State of Wisconsin Office of the Commissioner of Securities and custodian of the official records of said agency do hereby certify that the annexed rules relating to the operation of ch. 551., Stats., the Wisconsin Uniform Securities Law, with respect to certain financial institutions directly providing securities brokerage services to the public, or promoting or assisting in opening securities accounts on behalf of "discount" broker-dealers, were duly approved and adopted by this agency on July 15, 1983.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the city of Madison, this 15<sup>th</sup> day of July, 1983.

(SEAL)

Richard R. Malmgren  
RICHARD R. MALMGREN  
Commissioner of Securities  
State of Wisconsin

P-1-83

ORDER OF  
THE OFFICE OF THE  
COMMISSIONER OF SECURITIES  
STATE OF WISCONSIN  
ADOPTING RULES

To renumber SEC 4.10(1)(a) and (b) to be (1) (c) and (d); and to create SEC 4.05(8) and SEC 4.10(1)(a), (1)(b) and (4), relating to the Rules of the Commissioner of Securities with respect to certain financial institutions directly providing securities brokerage services to the public, or promoting or assisting in opening securities accounts on behalf of "discount" securities brokers.

Pursuant to the authority vested in the Office of the Commissioner of Securities by ss. 551.31(5), 551.33(6) and 551.63(1), Stats., the Wisconsin Commissioner of Securities amends and adopts rules interpreting ss. 551.31(5) and 551.33(6), Stats., as follows:

SECTION 1. SEC 4.05(8) is created to read:

SEC 4.05(8) No broker-dealer may associate with a bank, savings institution, trust company, savings and loan association or credit union by contract, agreement or other means for the purpose of that entity publishing or circulating advertising promoting the services offered by the broker-dealer or assisting or providing information to persons to establish an account with the broker-dealer unless:

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

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

SECTION 2. SEC 4.10(1)(a) and (b) are renumbered (1)(c) and (d).

SECTION 3. SEC 4.10(1)(a) and (b) are created to read:

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

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

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

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

SECTION 4. SEC 4.10(4) is created to read:

SEC 4.10(4) In this section, the phrase "hold itself out generally to the public" includes, but is not limited to:

(a) publication or circulation of advertising that offers or describes securities brokerage services available at or through the bank, savings institution or trust company; or

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


\* \* \* \*

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.026(1), (Intro.), Wis. Stats.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of July, 1983.

(SEAL)

  
\_\_\_\_\_  
RICHARD R. MALMGREN  
Commissioner of Securities

Report Prepared by the  
Office of the Commissioner of Securities  
Relating to Amendments to the  
Rules of the Commissioner of Securities

(a) Findings of Fact

(1) The administrative rule promulgation procedure has been implemented in this matter for the purpose of adopting in permanent form emergency rules adopted March 18, 1983, for effectiveness April 15, 1983.

(2) A Notice of Hearing to consider the promulgation of the rules that are the subject of this Order was issued by the Commissioner on March 15, 1983 and was published in the March 31, 1983 Wisconsin Administrative Register, designating the public hearing to be held in Room 318 Southwest of the State Capitol on the 17th day of May, 1983, commencing at 10:00 a.m.

(3) A summary of the Notice of Hearing and the complete text of the rules with Explanatory Notes was contained in the March, 1983 monthly Wisconsin Securities Bulletin distributed to the general public, securities licensees and registrants, securities law practitioners and regulatory bodies.

(4) Copies of the March, 1983 Wisconsin Securities Bulletin, together with copies of the form and content of the rules were distributed to, and comments were requested from, banking regulatory authorities, members of the banking industry, legal practitioners in the area of banking and securities law, the Wisconsin banking trade association, and other interested persons.

(5) A summary of the Notice of Hearing was published in the April 5, 1983 edition (Number 684) of the Blue Sky Law Reporter, published by Commerce Clearing House.

(6) The required filing of the rule amendments was made with the Rules Clearinghouse of the Wisconsin Legislative Council on March 25, 1983, and those rule amendments were designated in the Rules Clearinghouse Report as Clearinghouse Rule 83-47. The Rules Clearinghouse

Report contained comments on the rules that related solely to their "Form, Style and Placement in Administrative Code." All of the suggestions by the Rules Clearinghouse in its Report were implemented as particularized in sub. (e) of this Report.

(7) The public hearing relating to the rules that are the subject of this Order was held as scheduled on May 17, 1983 at a relocated hearing room, 418 Northwest Capitol, with the Wisconsin Commissioner of Securities presiding as the hearing officer.

(8) During the comment period, three letters were received setting forth specific comments on the revisions, and at the public hearing, testimony was presented by one person (other than agency staff) who set forth comments relating to one of the letters submitted.

(9) Certain of the comments made in the letters submitted and in the hearing testimony resulted in changes and modifications to the Rules as identified in sub. (c) of this Report.

(10) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to seek to exercise his rule-making authority under ss. 551.31(5), 551.33(6) and 551.63(1), Stats., to amend and adopt the rules as attached to carry out the purposes of the Wisconsin Uniform Securities Law.

\* \* \* \*

(b) Statement Explaining Need for Rules

The administrative rule promulgation procedure has been implemented in this matter for the purpose of adopting in permanent form emergency rules effective April 15, 1983, which were adopted for the reasons discussed below.

These rules and amendments are being promulgated because of newly established securities-related practices and activities by banks brought about by recent regulatory positions taken by the federal Comptroller of the Currency and the Federal Deposit Insurance Corporation. Those federal banking regulatory authorities announced in August of 1982, new and sweeping interpretations of federal banking laws that would for the first time permit banks to directly provide securities brokerage services to members of the general investing public as a regular part of their business and also would permit banks to assist in opening securities accounts on behalf of securities brokerage firms that provided low-commission securities transaction execution services (so-called "discount brokers").

Under current federal securities law and the securities laws of nearly every state, there is a requirement that virtually every person or firm that engages in the business of effectuating securities transactions for public investors be licensed as a securities broker or dealer. Both the federal and state securities laws, however, have excluded banks from the broker-dealer licensing requirement because of the traditionally limited nature of securities activities permitted under the federal Glass-Steagall Act, enacted in 1933, which restricts banks from entering into the investment banking and securities business.

The Office of the Commissioner of Securities has become aware that certain banks in Wisconsin either propose to, or in some instances have started to, become involved in the securities brokerage business with respect to both: (1) offering and directly providing securities brokerage execution services on a regular and ongoing basis for members of the general investing public in Wisconsin; and (2) assisting in opening securities accounts on behalf of "discount brokers," promoting or advertising the services of the "discount brokers," and debiting/crediting bank accounts for securities transactions. Further, it is the Office's understanding

that such banks intend to offer and provide those securities brokerage services referred to in items (1) and (2) without being licensed as securities broker-dealers in Wisconsin on the basis of a claim that the Bank Agency Transactions rule of section SEC 4.10, Wis. Adm. Code, excludes such banks from having to be licensed as broker-dealers under the Wisconsin Uniform Securities Law.

Current rule SEC 4.10, Wis. Adm. Code, permits banks, savings institutions and trust companies ("banks") to effectuate securities transaction orders for their customers without being licensed as a securities broker-dealer under the Wisconsin Uniform Securities Law. When the rule was adopted in 1970, banks provided those securities services on an isolated basis as an accommodation to their customers and was incidental to the performing of other banking functions for such customers (such as selling U.S. government savings bonds for a customer incident to setting up a savings account, or selling stock or other securities owned by a customer incident to setting up a trust account for the customer). In 1970, and in fact since the enactment in 1933 of the Glass-Steagall Act that restricts banks from entering into the general securities business, it was the understanding of both the banking and the securities industries that a bank could not conduct or become involved in providing retail brokerage services for the general public as a regular part of its business. Specifically, Section 21 of the Glass-Steagall Act makes it unlawful for a bank to become "engaged in the business of underwriting, selling or distributing . . . stocks, bonds, debentures, notes or other securities . . . ."

In addition, this Office is aware that numerous banks and financial institutions are entering into contractual arrangements with "discount brokers" in which the banks and financial institutions promote or advertise the availability of the discount securities brokerage service at or through the bank, provide account-opening forms and information to their customers and members of the general public, and establish bank accounts for debiting and crediting such accounts in connection with settlement of securities transactions, in exchange for which the bank or financial institution receives a portion of the securities transaction brokerage commission paid to the broker-dealer.

It is the position of the Office of the Commissioner of Securities that the Bank Agency Transactions rule in its current form should not be used as a vehicle to avoid the securities broker-dealer licensing requirement of the Wisconsin Uniform Securities Law when banks and other



financial institutions enter into the securities brokerage business with the general public on a regular and ongoing basis. The licensing requirements provide important investor protections for persons who entrust their monies and securities to persons and firms that engage in the business of effectuating securities transactions for the accounts of others. The investor protections that are provided under the securities broker-dealer licensing requirements include: (1) requiring persons effectuating securities transaction orders, opening accounts or approving the opening of customer accounts to demonstrate that they have adequate knowledge and experience in the securities business; (2) requiring any firm that effectuates securities transactions for the accounts of others to have adequate facilities and capabilities for executing transactions in a timely manner; (3) requiring any firm that provides securities brokerage services to the public to have and maintain specific kinds of books and records to account accurately for customer securities transactions as well as the cash and securities maintained in such securities accounts; and (4) establishing minimum net capital requirements for a brokerage firm. Further, the broker-dealer licensing provisions provide the state, through the Commissioner, with disciplinary powers to address violations of rules adopted by the Commissioner concerning prohibited business practices and unethical conduct in securities transactions by licensees.

It should be noted that the largest bank in Wisconsin in considering whether to provide securities brokerage services as a regular and ongoing part of its business and operations has sought and obtained a license under the Wisconsin Uniform Securities Law as a securities broker-dealer. Such action demonstrates that banks which seek to enter the securities brokerage business in Wisconsin on a regular and ongoing basis can do so in a manner which retains for the securities customer the investor protections that are provided under the broker-dealer licensing requirements of the Wisconsin Uniform Securities Law.

\* \* \* \*

(c) Explanation of Modifications Made as a Result of  
Public Comment Letters Received and Public Hearing  
Testimony

--SECTION 4, relating to SEC 4.10(4)(b). In response to public comments received, sub. (b) was amended to provide an exception for banks to engage in activities relating to those specific kinds of securities listed in the statutory sections cross-referenced in ss. 551.22(1) and 551.22(9), Stats.--namely, commercial paper, and securities issued or guaranteed by the U.S. government or by any state, municipality or agency or instrumentality thereof (other than industrial revenue bond securities). Under the Glass-Steagall Act, banks have traditionally been permitted to act as agent for persons in effecting transactions in those designated securities, and it was not the intent of the new rules as initially proposed to affect those traditional activities.

\* \* \* \*

(d) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities  
Richard R. Malmgren as Hearing Officer

- Ronald J. Burtch, 1 South Pinckney Street, Madison, Wisconsin, of the law firm of Foley & Lardner, representing the First National Bank of Milwaukee, Wisconsin.
- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff and submitted documents and information for the record.
- Richard P. Carney, Administrator of the Licensing and Regulation Division, made an appearance on behalf of the agency's staff relating to the purpose and scope of the proposed rules and the experience of the agency to date in implementing the emergency rules currently in effect on the subject.
- Comment letters received:
  - letter dated May 17, 1983, received May 17, 1983 from Attorney Joseph P. Hildebrandt of the law firm Foley & Lardner, 1 South Pinckney Street, Madison, Wisconsin.
  - letter dated May 17, 1983, received May 17, 1983 from Attorney Terry F. Peppard of the law firm Wendel, Pappas, Center, Lipman & Peppard, Suite 317, 222 West Washington Avenue, P.O. Box 2034, Madison, Wisconsin 53701.
  - letter dated May 17, 1983, received May 19, 1983 from Brian K. Koontz, Executive Director of the Wisconsin Bankers Association, 16 North Carroll Street, Madison, Wisconsin.

\* \* \* \*

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

(1) Acceptance of recommendations in whole:

Under 1. Statutory Authority

--No comments were made by the Rules Clearinghouse.

Under 2. Form, Style and Placement in Administrative Code

--Consistent with the Rules Clearinghouse comment in para. a., in the "Pursuant to" clause, "SECS" was changed to read "ss.", and "Wis. Stats." changed to "Stats".

--Consistent with the Rules Clearinghouse comment in para. b., former SECTION 5. dealing with SEC 4.05(8) was moved to become SECTION 1. in order for the amendments to proceed in proper numerical sequence.

--Consistent with the Rules Clearinghouse comment in para. c., the amendment to SEC 4.10(1)(Intro.) was eliminated because the correct terminology ("if" rather than "provided that") is already present in that section.

--Consistent with the Rules Clearinghouse comment in para. d., the term "sub. (4)" was substituted for "par. (4)" in SEC 4.10(1)(a).

--Consistent with the Rules Clearinghouse comment in para. e., subd. 1. and 2. of SEC 4.10(1)(b) were set off in separate paragraphs and the word "either" before the colon was deleted. Also, throughout the rule, wherever the word "such" was present, "the" or some other appropriate article was substituted.

--Consistent with the Rules Clearinghouse comment in para. f., the language "In this section" in SEC 4.10(4), was substituted for the language "in para. (1)".

--Consistent with the Rules Clearinghouse comment in para. g., para. (a) and (b) of SEC 4.05(8) were set off in separate paragraphs, and the word "either" before the colon was deleted.

--Consistent with the Rules Clearinghouse comment in para. h., in each "SECTION clause", the words "of the Wis. Adm. Code" were deleted.

Under 3. Review of Rules for Conflict With or Duplication of Existing Rules

--No comments were made by the Rules Clearinghouse.

Under 4. Adequacy of References to Related Statutes, Rules and Forms

--No comments were made by the Rules Clearinghouse.

Under 5. Clarity, Grammar, Punctuation and Plainness

--No comments were made by the Rules Clearinghouse.

- (2) Acceptance of Rules Clearinghouse recommendations in part; (3) Rejection of recommendations; and (4) Reasons for not accepting recommendations.

--Not applicable.

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# WISCONSIN LEGISLATIVE COUNCIL

LCRC  
FORM 2

## RULES CLEARINGHOUSE

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BONNIE REESE  
EXECUTIVE SECRETARY

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### CLEARINGHOUSE REPORT TO AGENCY

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.029, STATS., AS CREATED BY CH. 34, LAWS OF 1979. 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 83-47

AN ORDER to renumber SEC 4.10 (1) (a) and (b); to amend SEC 4.10 (1) (intro.); and to create SEC 4.05 (8) and 4.10 (1) (a) and (b) and (4), relating to certain financial institutions directly providing securities brokerage services to the public or promoting or assisting in opening securities accounts on behalf of "discount" securities brokers.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

3-25-83. Received by Legislative Council.  
4-22-83. Report sent to Agency.

RNS:DS:kja;las

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Pursuant to s. 227.029, Stats.)

1. REVIEW OF STATUTORY AUTHORITY [s. 227.029 (2) (a)]
  - a. Rules appear to be within the agency's statutory authority
  - b. Rules appear to be unsupported by statutory authority, either in whole or in part
  - c. Comment attached  yes  no
  
2. REVIEW OF RULES FOR FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.029 (2) (c)]
  - a. Rules satisfactory
  - b. Rules unsatisfactory
  - c. Comment attached  yes  no
  
3. REVIEW OF RULES FOR CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.029 (2) (d)]
  - a. Conflict or duplication not noted
  - b. Conflict or duplication noted
  - c. Comment attached  yes  no
  
4. REVIEW OF RULES FOR ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.029 (2) (e)]
  - a. References appear to be adequate
  - b. References appear to be inadequate
  - c. Comment attached  yes  no
  
5. REVIEW OF LANGUAGE OF RULES FOR CLARITY, GRAMMAR, PUNCTUATION AND PLAINNESS [s. 227.029 (2) (f)]
  - a. Rules satisfactory
  - b. Rules unsatisfactory
  - c. Comment attached  yes  no
  
6. REVIEW OF RULES FOR POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.029 (2) (g)]
  - a. No problems noted
  - b. Problems noted
  - c. Comment attached  yes  no

# WISCONSIN LEGISLATIVE COUNCIL

## RULES CLEARINGHOUSE

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BONNIE REESE  
EXECUTIVE SECRETARY

April 22, 1983

### CLEARINGHOUSE RULE 83-47

#### 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, dated April 1982.]

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

a. In the "pursuant to" clause before the text of the rule, "SECS." should be "ss." and "Wis. Stats." should be "Stats."

b. SECTION 5, which creates s. SEC 4.05 (8), should be the first SECTION in the text of the proposed rule since s. SEC 4.05 comes before s. SEC 4.10, which is dealt with in SECTIONS 1 to 4 of the proposed rule.

c. s. SEC 4.10 (1) (intro.). This amendment is unnecessary since "if," not "provided that," is the appropriate word to be used. Also, "Wis. Stats." should be "Stats."

d. s. SEC 4.10 (1) (a). The appropriate term is "sub. (4)" rather than "par. (4)."

e. s. SEC 4.10 (1) (b). Delete "either" before the colon. For proper form, subds. 1 and 2 should be separated from par. (b) (intro.) as follows:

...unless:

1. The promotional...; or
2. The promotional....



In subd. 2, "such bank" should be "the bank." Throughout the proposed rule, "the" or another appropriate article should be substituted for "such."

f. s. SEC 4.10 (4). The definition in this subsection should be preceded by the phrase "In this section,". The phrase "in para. (1)" should be deleted.

g. s. SEC 4.05 (8). Delete "either" before the colon. For proper form, pars. (a) and (b) should be separated from sub. (8) (intro.) as follows:

...unless:

(a) The promotional...; or

(b) the promotional....

h. In each "SECTION clause," the words "of the Wis. Adm. Code" should be deleted.