



Office of Commissioner of Savings and Loan

STATE OF WISCONSIN)

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OFFICE OF COMMISSIONER OF SAVINGS AND LOAN)

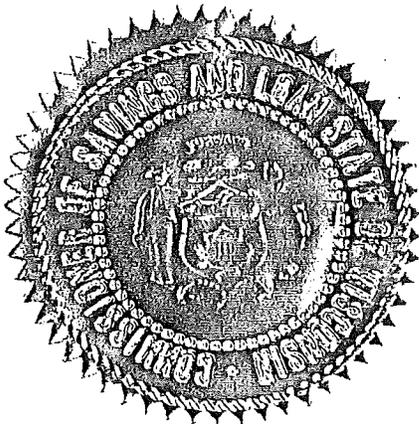
CERTIFICATION

ORDER NO. 131

I, R. J. McMahon, Commissioner of Savings and Loan and custodian of the official records of the Office of the Commissioner of Savings and Loan, do hereby certify that the annexed Order No. 131 relating to loans, transactions with and compensation of, affiliated persons of savings and loan associations was duly approved and adopted by this office on October 24, 1984.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of this office in the City of Madison, this 24th day of October, 1984.



[Handwritten Signature]

H. J. McMahon, Commissioner

COMMISSIONER OF SAVINGS AND LOAN

ADOPTING, REPEALING AND RECREATING, AMENDING AND RENUMBERING RULES

Relating to loans, transactions with, and compensation of, affiliated persons of savings and loan associations.

Analysis Prepared by the Office of Commissioner of Savings and Loan

This rule revises Chapter S-L 9 of the Wisconsin Administrative Code which regulates loans by savings and loan associations to their directors, officers, employes and their affiliates. The revision reflects the authority savings and loan associations were recently granted to make consumer and commercial loans and other recent changes in the savings and loan industry. The rule:

- 1) Generally prohibits an association and its service corporation and subsidiaries from making loans or entering into transactions with affiliated persons if the loan or transaction is the result of or will result in an unreasonable conflict between the interests of the association and the interests of the affiliated person.
- 2) Requires employes of savings and loan associations who are directly involved in approving transactions (other than loans) or their terms to report their interest in business ventures to the board of directors of the association.
- 3) Requires an association and its service corporation and subsidiaries to notify the commissioner of savings and loan in writing prior to making a commercial loan to an affiliated person in excess of \$10,000. (Approval is not required.)
- 4) Prohibits an association and its service corporation and subsidiaries from making a loan to an affiliated person if the aggregate amount loaned by the association to the person will exceed \$100,000 other than mortgage loans secured by the borrower's principal residence and consumer loans aggregating not more than \$25,000 or an amount determined by the commissioner.
- 5) Requires all loans to affiliated persons to be at market rates and terms unless the loan is a home mortgage loan or a consumer loan aggregating not greater than \$25,000 in which case the interest rate must be at least at current cost of funds.
- 6) Requires all transactions (other than loans) with affiliated persons to be at market terms and price and approved by the board of directors of the association as competitive.
- 7) Prohibits any transaction (other than a loan) which results in revenue to the affiliated person exceeding \$100,000 unless the transaction is approved in writing by the commissioner.
- 8) Requires that compensation paid to directors, advisory directors, officers and employes of an absorbed association to be reasonable.
- 9) Provides that compensation increases in connection with a merger greater than 25% or \$10,000, whichever is greater, are presumed to be unreasonable unless rebutted.
- 10) Provides that compensation increases to persons appointed advisory directors of a surviving association following a merger greater than 15% or to an amount of \$250 per meeting, whichever is greater, are presumed to be unreasonable unless rebutted or unless other advisory directors receive an equal or greater amount.
- 11) Excludes mergers approved by members of a converting mutual association or stockholder of a stock association from the presumption regarding compensation.

Pursuant to the authority vested in the Commissioner of Savings and Loan and the Savings and Loan Review Board by ss. 215.02(7) (a), 215.21(17) and s. 227.014(2) (a), Stats., the Commissioner of Savings and Loan, with the approval of the Savings and Loan Review Board, adopts, repeals and recreates, amends and renumbers rules interpreting s. 215.21(17), Stats. as set out in the attached certified copy and incorporated herein by reference.

The rules as affected by this order shall take effect on January 1, 1985.

Dated at Madison, Wisconsin, this 24th day of October, 1984.

OFFICE OF COMMISSIONER OF SAVINGS AND LOAN



R. J. McMahon, Commissioner

ADMINISTRATIVE RULES ADOPTED, REPEALED AND RECREATED,
AMENDED AND RENUMBERED

SECTION 1. S-L 9.01(3) is renumbered S-L 9.01(4).

SECTION 2. S-L 9.01(3) is created to read:

S-L 9.01(3) An association, service corporation or subsidiary may make a loan to, or enter into a transaction with, an affiliated person or a business venture in which a director, officer or employe has an interest only if:

(a) The loan or transaction is reasonably considered to be in the best interests of the association; and

(b) The sound administration and management of the loan or transaction by the association, service corporation or subsidiary is reasonably considered not to be adversely influenced by the conflict between the interests of the association, service corporation or subsidiary and the interests of the affiliated person or business venture.

SECTION 3. S-L 9.02 is repealed and recreated to read:

S-L 9.02 DEFINITIONS. In this chapter and s. 215.21(17)(b) of the statutes:

(1) "Affiliated person" means:

(a) A director, officer or employe of an association;

(b) A spouse or a legal dependent of a director, officer or employe of an association; or

(c) A business venture in which a person listed under par. (a) or (b) has a reportable interest.

(2) "Association" means a savings and loan association chartered by this state.

(3) "Business venture" means any partnership, joint venture, corporation or similar entity, but does not include any non-profit, religious, charitable or fraternal organization or a corporation in which the association has been authorized to invest by the commissioner.

(4) "Commissioner" means the commissioner of savings and loan or his or her authorized representative.

(5) "Director" means a person who is a member of a board of directors, but does not include an advisory director.

(6) "Employee" means a person who is:

(a) Employed by an association and is directly involved in approving loans made by the association or determining the terms or conditions under which any specific loan is made.

(b) Employed by an association and is directly involved in approving transactions, or in determining the terms or conditions of transactions entered into by the association.

(7) "Legal dependent" means a person treated as a dependent for federal income tax purposes.

(8) "Officer" means a president, vice president or secretary, but does not include any assistant officer.

(9) "Reportable interest" means an interest in debt or equity of a business venture other than an interest:

(a) In debt of a business venture of not more than \$10,000 or 5% of the assets of the business venture, whichever is greater; or

(b) Of 5% or less of the stock of a corporation or of 5% or less in a limited partnership.

(10) "Transaction" means a purchase, agreement or contract, or series of related purchases, agreements or contracts, which result in the receipt of revenue aggregating \$30,000 or more by an affiliated person, but does not include:

(a) A loan; or

(b) An agreement or contract with, or compensation provided, a director, officer, employe or other personnel of an association which is customarily related to their employment.

SECTION 4. S-L 9.03 (title) and (1) are repealed and recreated to read:

S-L 9.03 CONFLICT OF INTEREST; RESTRICTIONS ON LOANS AND TRANSACTIONS.

(1) An association shall notify the commissioner in writing when it makes a loan for commercial or investment purposes to an affiliated person if the aggregate commercial credit extended by the association to the affiliated person will exceed \$10,000. The notice shall describe all other extensions of commercial credit to the person.

SECTION 5. S-L 9.03(2) is renumbered S-L 9.03(6) and S-L 9.03(6) (a), as renumbered, is amended to read:

S-L 9.03(6) (a) An association, service corporation or subsidiary may make a loan to or enter into a transaction with a business venture employing an officer, director or employe of the association, or the spouse or legal dependent of such an officer, director or employe, without ~~further~~ written approval from the commissioner only if:

1. The officer, director or employe of the association who is employed by the business venture or whose spouse or legal dependent is employed by the business venture does not in any way participate in approving the loan or transaction or determining the specific terms or conditions ~~under-which-it-is-made~~ of the loan or transaction; and

2. The loan or transaction is brought before the association's board of directors for individual consideration, and is approved by a resolution of the board before the association is in any way committed to make the loan or enter into the transaction.

SECTION 6. S-L 9.03(2) to (5) are created to read:

S-L 9.03(2) An association, service corporation or subsidiary may not make a loan to an affiliated person if the aggregate amount loaned by the association and its service corporations and subsidiaries will exceed \$100,000 except:

(a) Mortgage loans by the association to directors, officers or employees or a spouse or legal dependent secured by the borrower's principal residence are excluded from the calculation of the aggregate amount of credit extended.

(b) Loans to an affiliated person for personal, family or household purposes which results in the aggregate amount of credit not exceeding \$25,000 or a greater amount approved in writing by the commissioner are excluded.

(3) An association, service corporation or subsidiary may not make a loan to an affiliated person unless it is at terms, in the amount and with an interest rate substantially the same as those prevailing at the same time for comparable loans made to members of the general public of similar credit status except:

(a) An association may make a mortgage loan to a director, officer or employee or a spouse or legal dependent which is secured by the borrower's principal residence at an interest rate not below its current cost of funds, including all savings accounts and borrowings.

(b) An association may make a loan for personal, family or household purposes to an affiliated person at an interest rate not below its current cost of funds, including all savings accounts and borrowings, if the aggregate amount of credit extended under this paragraph after the loan is made will not exceed \$25,000.

(4) No association may make a mortgage loan prohibited under s. 215.21(17), stats.

(5) No association, service corporation or subsidiary may enter into a transaction with an affiliated person unless:

(a) The association has reasonably determined the consideration, terms and price for the transaction are at least as favorable to the association as could be obtained from other persons;

(b) The board of directors of the association approves the transaction after full disclosure; and

(c) The gross amount paid to or revenue received by the affiliated person as the result of the transaction does not exceed .02% of assets of the association or \$100,000 whichever is greater, but not more than \$500,000, in an association fiscal year unless the commissioner approves the transaction in writing before the association, service corporation or subsidiary enters into it.

SECTION 7. S-L 9.03(7) and (8) are created to read:

S-L 9.03(7) No director, officer or employe may participate in approving, enter into or accept a loan or transaction which violates this section.

(8) The burden of proof is on the association, service corporation or subsidiary and association directors, officers and employes to demonstrate compliance with this section in any action or proceeding initiated by the commissioner because of a violation.

SECTION 8. S-L 9.035 is created to read:

S-L 9.035 MERGER; COMPENSATION. (1) As a condition precedent to the commissioner's consent to an absorption under s. 215.53 or 215.73, stats., compensation, including deferred compensation, to officers, directors or employes of the absorbed association by the surviving association, its service corporation or subsidiaries may not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The application for consent under s. 215.53 or 215.73, stats., shall fully justify the compensation to be paid. This subsection applies only to compensation agreed to or negotiated for in connection with an absorption.

(2) Except as provided under sub. (3) compensation is rebuttably presumed to be unreasonable under sub. (1) if:

(a) A director, officer or employe is to receive a material increase in compensation above that paid by an absorbed association prior to commencement of merger negotiations. An increase in compensation in excess of 15% or \$10,000, whichever is greater, is a material increase.

(b) Advisory directors of the surviving association who were directors, advisory directors, officers or employes of the absorbed association receive compensation which is:

1. For other than meetings attended or services actually performed; or

2. In excess of an increase of 15% above the director fees paid by the absorbed association prior to commencement of merger negotiations, unless the compensation does not exceed the fee per monthly meeting attended that the advisory directors of the acquiring association receive or \$250, whichever is greater.

(3) Subsection (2) does not apply if the surviving association is a stock association and the absorption is approved by a vote of the members or stockholders of the absorbed association under s. 215.58 or ch. 180, stats.

(4) Factors the commissioner will consider in determining whether the presumption under sub. (2) is rebutted include, but are not limited to:

(a) The director, officer or employe will significantly increase his or her commitment to employment with the surviving association, as, for example from part-time employment to full-time.

(b) The director, officer or employe will assume responsibilities and duties with the surviving association which are significantly different from and more responsible and demanding than his or her duties prior to the absorption.

SECTION 9. S-L 9.04 (2) is repealed and recreated to read:

S-L 9.04(2) INTEREST TO BE DISCLOSED. The report required under sub. (1) shall identify for each director, officer and employe and his or her spouse and legal dependents:

(a) Their reportable interests; and

(b) Each position they hold as a director, officer or salaried employe of a business venture.

SECTION 10. EFFECTIVE DATE. The above adopted, repealed and recreated, amended and renumbered administrative rules shall be effective on January 1, 1985.