

under sub. (1) (o) shall be preserved by the broker-dealer for at least 6 years after withdrawal or expiration of its license in this state. The record may be retained by computer if a printed copy of the record can be prepared immediately upon request. In the event a record has been preserved for one year as required under this subsection, a microfilm copy may be substituted for the remainder of the required period. Compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records is deemed compliance with this subsection.

(3) Except as provided in par. (e), every branch office of a licensed broker-dealer, as defined in s. SEC 1.02 (7) (a), shall prepare and keep current the following records:

(a) Copies of the records described in sub. (1) (f), (h), (i), (j), (k), and (p);

(b) Blotters (or other records of original entry) setting forth an itemized daily record of all purchases and sales of securities. This requirement may be satisfied by maintaining a unit filing system where the order ticket information (described in sub. (1) (f)) required in par. (a) is accumulated and segregated on a daily basis;

(c) Blotters (or other records of original entry) setting forth an itemized daily record of all receipts and deliveries of securities (including certificate numbers), and all receipts and disbursements of cash.

(d) Copies of customer monthly or other periodic statements that are issued by the broker-dealer, or are furnished to the broker-dealer by the issuer of a security purchased by a customer of the broker-dealer.

(e) Branch offices of broker-dealers engaged solely in the offer and sale of either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or the securities of direct participation program issuers, or both, shall prepare and keep current copies of those records described in subs. (1) (f), (i), (j), (k), and (3) (c).

(4) The records required in sub. (3) shall be preserved at the branch office for a period of not less than 3 years, the first 2 years in an easily accessible place, except that customer new account forms shall be preserved for a period of not less than 3 years after the closing of the account. The record may be retained by computer if printed copy of the record can be prepared immediately upon request. In the event a record has been preserved for one year as required under this subsection, a microfilm copy may be substituted for the remainder of the required period.

(5) This section does not require a licensed broker-dealer to make and keep such records of transactions cleared for the licensee by another broker-dealer as are customarily made and kept by the clearing broker-dealer.

(6) The commissioner may by order exempt any broker-dealer from all or part of the requirements of this section, either unconditionally or upon specified conditions, if by reason of the special nature of its business, the commissioner finds the issuance of the order is necessary or appropriate in the public interest or for the protection of investors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (3) (Intro) and cr. (3)(d), Register, September, 1978, No. 273, eff. 10-1-78; r. and recr. (1) (p), Register, December, Register, December, 1991, No. 432

SEC 4

1979, No. 288, eff. 1-1-80; am. (1) (c), (d) 4., (e), (j), (k), (2), (3) (intro.), (a) and (b), (4) to (6), r. and recr. (1) (l), renum. (1) (m) to (p) to be (1) (n) to (q), (3) (c) and (d) to be (3) (d) and (e) and am., cr. (1) (r) and (3) (c), (1) (s) renum. from SEC 4.05 (9), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (r) and (4), Register, December, 1981, No. 312, eff. 1-1-82; r. (1) (s), am. (2), (3) (a) and (e), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (b) and (2), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (r), (2) and (4), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (r), Register, December, 1985, No. 360, eff. 1-1-86; am. (2), Register, December, 1986, No. 372, eff. 1-1-87; am. (1) (intro.) and cr. (1) (s), Register, December, 1987, No. 384, eff. 1-1-88; am. (1) (j), Register, December, 1989, No. 408, eff. 1-1-90; am. (3) (intro.), Register, December, 1991, No. 432, eff. 1-1-92.

SEC 4.035 Securities agent records. (1) Every licensed agent, except an agent who accepts only unsolicited orders for a discount brokerage firm, or an agent for a broker-dealer engaged solely in the offer and sale of either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or interests in direct participation programs, shall have and keep current the records in sub. (2) relating to customer securities transactions, unless the commissioner by order exempts an agent from all or part of the requirements of this section. The record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the commissioner. The originals of the records are considered records of the broker-dealer. Every broker-dealer shall within 15 days following receipt of a written request provide photocopies of the agent's customer securities holding records as may be requested by an agent within 30 days from the date of termination of his or her employment with the broker-dealer.

(2) A securities holding record for each customer including the customer's name and account number, and a chronological listing of the names and amount of all securities purchased or sold for the account of the customer, including the date of each transaction, and the unit purchase or sale price;

(3) Records required under this section that are maintained on an electronic data system in lieu of a hard copy shall be reproducible in printed form immediately upon request by the commissioner. Upon termination of employment with a broker-dealer, an agent's records so maintained shall be transferred immediately to printed or other form accessible to the broker-dealer for the broker-dealer's permanent records.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; renum. from SEC 4.05 (6) and am., Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1983, No. 336, eff. 1-1-84; am. (2), Register, December, 1984, No. 348, eff. 1-1-85; cr. (3), Register, December, 1988, No. 396, eff. 1-1-89; am. (1), Register, December, 1989, No. 408, eff. 1-1-90.

SEC 4.04 Reporting requirements. (1) (a) Except as provided in pars. (b) and (c), each broker-dealer shall file annually with the commissioner within 60 days from the end of its fiscal year a copy of its annual financial statement in the form specified in rule 17a-5 under the securities exchange act of 1934, accompanied by a computation of its net capital using the formula specified in rule 15c3-1 under the securities exchange act of 1934.

(b) The filing requirement in par. (a) is not applicable to any broker-dealer registered under the securities exchange act of 1934 if the broker-dealer is not delinquent in the filing of its annual financial statements with the U.S. securities and exchange commission under rule 17a-5 of the securities exchange act of 1934.

Register, December, 1991, No. 432

(c) The deadline established under par. (a) for a broker-dealer to file its annual financial statement shall be extended for an additional 30 days upon the broker-dealer filing with the commissioner before the deadline date, a written request for an additional 30 days to file its annual financial statement.

(2) Each broker-dealer shall file with the commissioner a copy of any complaint related to its business, transactions or operations in this state, naming the broker-dealer or any of its partners, officers or agents as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within 20 days of the date the complaint is served on the broker-dealer; a copy of any answer or reply thereto filed by the broker-dealer within 10 days of the date such is filed; and a copy of any decision, order or sanction made with respect to any such proceeding within 20 days of the date the decision, order or sanction is rendered.

(3) Each broker-dealer shall notify the commissioner in writing within 10 days from the first date that the person who is the designated supervisor under s. SEC 4.05 (6) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the commissioner in writing a substituted designated supervisor within the 45 day period provided under SEC 4.05 (6).

(4) Except as provided in subs. (2), (3) and (9), each broker-dealer shall file with the commissioner any notice of change of control or change of name, as well as any material change in the information included in the broker-dealer's most recent application for license, in an amendment to Form BD filed with the central registration depository within 30 days of the date of the change.

(5) Every broker-dealer shall file with the commissioner the following reports concerning its net capital and aggregate indebtedness:

(a) Immediate telegraphic or written notice whenever the net capital of the broker-dealer is less than is required under s. SEC 4.02 (1), specifying the respective amounts of its net capital and aggregate indebtedness on the date of the notice;

(b) A copy of every report or notice required to be filed by the broker-dealer pursuant to rule 17a-11 under the securities exchange act of 1934, contemporaneous with the date of filing with the U.S. securities and exchange commission.

(6) Each broker-dealer shall give immediate written notice to the commissioner of the theft or disappearance of any Wisconsin customers' securities or funds that are in the custody or control of any of its offices, whether within or outside this state, stating all material facts known to it concerning the theft or disappearance.

(7) Each broker-dealer shall file with the commissioner a copy of any subordination agreement relating to the broker-dealer, within 10 days after the agreement has been entered, unless prior thereto the broker-dealer has filed a copy of the agreement with a national securities exchange or association of which it is a member.

(8) (a) Each broker-dealer shall notify the commissioner in writing at least 14 days prior to either the opening or the change of address in this state of any "branch office" as defined in s. SEC 1.02 (7) (a).

SEC 4

(b) Each broker-dealer shall notify the commissioner in writing at least 14 days after the closing in this state of any "branch office" as defined in s. SEC 1.02 (7) (a).

(c) The notification provided to the commissioner under pars. (a) or (b) shall include the address and telephone number of the branch office, the name of the supervisor at the branch office, the number of agents operating out of that branch office and any other information the commissioner may request.

(9) Each broker-dealer shall file annually with the commissioner not later than November 30, a report identifying each of its branch offices located in this state on Form BDBrO(WI) designated by the commissioner in s. SEC 9.01 (1) (b).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) and (3), Register, December, 1979, No. 288, eff. 1-1-80; am. (4), (5), (8) and (9), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and (7), cr. (1) (b), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a), Register, December, 1983, No. 336, eff. 1-1-84; r. and recr. (1) (a), renum. (1) (b) to be (1) (c), cr. (1) (b) and am. (9), Register, December, 1984, No. 348, eff. 1-1-85; cr. (10), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. (3), Register, December, 1989, No. 408, eff. 1-1-90; r. and recr. (4), r. (5), renum. (6) to (10) to be (5) to (9), Register, December, 1990, No. 420, eff. 1-1-91; renum. (8) to be (8) (a) and am., cr. (8) (b) and (c), Register, December, 1991, No. 432, eff. 1-1-92.

SEC 4.05 Rules of conduct. (1)(a) Except as provided in pars. (b) and (c), each broker-dealer shall give or send to the customer a written confirmation, promptly after execution of, and before completion of, each transaction. The confirmation shall set forth the information prescribed in rule 10b-10 of the securities and exchange act of 1934 and whether the transaction was unsolicited.

(b) A broker-dealer engaged solely in the offer and sale of securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940 is not required to give or send a written confirmation under par. (a), provided that the issuer gives or sends a written confirmation directly to the customer for the transaction.

(c) A broker-dealer engaged solely in the offer and sale of interests in direct participation programs is not required to give or send a written confirmation under par. (a), provided that a customer subscribing to purchase an interest in a direct participation program is provided immediately upon subscription with a copy of the subscription agreement entered into and the issuer gives or sends a written confirmation directly to the customer for the transaction.

(2) Each broker-dealer shall establish and keep current a set of written supervisory procedures and a system for applying such procedures, which may be reasonably expected to prevent and detect any violations of ch. 551, Stats., and rules and orders thereunder. The procedures shall include the designation, by name or title, of a number of supervisory employees reasonable in relation to the number of its licensed agents, offices and transactions in this state. A complete set of the procedures and system for applying them shall be kept and maintained at every branch office.

(3) A broker-dealer shall not enter any contract with a customer if the contract contains any condition, stipulation or provision binding the customer to waive any rights under ch. 551, Stats., or any rule or order thereunder. Any such condition, stipulation or provision is void.

Register, December, 1991, No. 432

(4) No broker-dealer shall permit or effect a withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, that would cause its net capital or its aggregate indebtedness to violate s. SEC 4.02 (1) or (2), without prior written approval of the commissioner.

(5) Each broker-dealer shall provide each customer with a conformed copy of all contracts or agreements between the broker-dealer and the customer, and a copy of the customer information form prescribed under s. SEC 4.03 (1) (k), not later than 20 days after the customer's account is first established on the books and records of the broker-dealer. A copy of any material amendment to a customer's contract, agreement or customer information form shall be provided to the customer within 20 days from the date of the material amendment. In this subsection, a material amendment is presumed to exist, without limitation, in the event the broker-dealer receives from the customer and records on the customer information form, changes to the customer's annual income, net worth, investment objectives or other changes to information affecting the agent's ability to make suitable recommendations for the customer as required under s. SEC 4.06 (1) (c).

(6) Every licensed broker-dealer shall employ at its principal office at least one person designated in writing to the commissioner to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01 (5), provided that if a licensed broker-dealer is not in compliance with the requirements of this paragraph, it has 45 days from the first date of non-compliance to meet the requirements of this paragraph.

(7) Every broker-dealer whose principal office is located in this state, other than a broker-dealer engaged solely in the offer and sale of either interests in direct participation programs or securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, shall have at least one licensed person employed on a full-time basis at its principal office.

(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 2 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.

(9) Each broker-dealer which by contract, agreement or other means provides securities services on the premises of a financial institution that is not licensed as a broker-dealer shall:

SEC 4

(a) Perform the securities services within a specific area on the premises of the financial institution designated by agreement between the broker-dealer and the financial institution. Nothing in this paragraph prohibits the financial institution from carrying out other activities within the designated area, provided that no promotional signs or materials shall be displayed within the designated area other than those relating to the securities services;

(b) Prominently display the identity of the licensed broker-dealer in the area on the premises of the financial institution designated under par. (a);

(c) Prominently disclose the identity of the licensed broker-dealer in all advertising, correspondence and securities records relating to the broker-dealer's securities services provided on the premises of the financial institution; and

(d) Establish and file with the commissioner written supervisory procedures and a system for applying the procedures. The procedures and system shall comply with sub. (2) and shall be designed to accomplish certain supervisory functions, including but not limited to, the following:

1. Prevention and detection of violations of ch. 551, Stats., and any applicable rules and orders thereunder;

2. Establishment of a system under which the broker-dealer approves prior to use copies of all advertising used by the financial institution relating to the securities services conducted on the premises of the financial institution for the purpose of ensuring compliance with ss. 551.41 and 551.53, Stats.; and

3. Establishment of a system for prompt and proper execution and settlement of securities transaction orders, the safekeeping of customer funds and securities and the maintenance of books and records.

(e) Disclose to persons having securities services performed for their account on the premises of a financial institution that the securities transactions are not covered by applicable deposit insurance of the financial institution but may be covered by securities transaction insurance of the broker-dealer performing the securities services. The disclosure may be provided to those persons by means of, without limitation, letters to those persons, securities transaction order confirmations or monthly securities account statements.

(10) (a) Except as provided in par. (b), each licensed broker-dealer engaged in a general securities business that ceases to do business at a principal or branch office located in Wisconsin shall mail to each Wisconsin customer with an account at the office at least 14 days before the cessation of business at the office a written notification that shall contain the following information:

1. The date on which the office will cease to do business;

2. A description of the procedure a customer may follow to maintain the customer's account with the broker-dealer, transfer the account to another broker-dealer, or have securities and funds held by the broker-dealer delivered to the customer;

3. The name and telephone number of a person representing the broker-dealer who may be contacted without expense to the customer to answer questions regarding items in subd. 2; and

4. Any additional information necessary under the circumstances to clarify the information prescribed in this paragraph.

(b) The notification requirement under par. (a) is not applicable to the cessation of business at an office where the cessation is caused by illness or death of all licensed agents at that office, if the cessation of business at the office does not occur for a period exceeding 14 days.

(11) Each broker-dealer shall disclose in writing to customers at the time of opening an account, any custody fees, service fees, or maintenance fees that may be charged to the customer and the basis upon which the charges are determined. Customers shall receive written notice at least 45 days prior to the imposition of any new custody, service, maintenance or similar fees, or any changes to existing fees of that nature.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. (8), (intro.), Register, September, 1978, No. 273, eff. 10-1-78; r. (5), renum. (6) to (8) to be (4) to (6) and am. (5), (6) (intro.), (a) and (b), cr. (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (6) (intro.) and r. (9), Register, December, 1981, No. 312, eff. 1-1-82; renum. (6) to be SEC 4.035, renum. (7) and (8) to be (6) and (7) and am. (6), Register, December, 1982, No. 324, eff. 1-1-83; emerg. cr. (8), eff. 4-15-83; cr. (8), Register, August, 1983, No. 332, eff. 9-1-83; am. (1) (a), r. and recr. (1) (b), cr. (1) (c), (9) and (10), Register, December, 1984, No. 348, eff. 1-1-85; am. (7), Register, December, 1985, No. 360, eff. 1-1-86; am. (6), Register, December, 1987, No. 384, eff. 1-1-88; am. (6), Register, December, 1989, No. 408, eff. 1-1-90; am. (5), cr. (11), Register, December, 1991, No. 432, eff. 1-1-92.

SEC 4.06 Prohibited business practices. (1) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by a broker-dealer under s. 551.34 (1) (g), Stats., without limiting those terms to the practices specified herein:

(a) Causing any unreasonable delay in the transmitting of customer orders for execution, the delivery of securities purchased by any of its customers, the payment upon request of free credit balances reflecting completed transactions of any of its customers or the transfer of a customer's account securities positions and balances to another broker-dealer;

(b) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(c) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;

(d) Executing a transaction on behalf of a customer without authority to do so;

(e) Executing a transaction for the account of a customer upon instructions from a 3rd party without first having obtained written 3rd party authorization from the customer;

(f) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary author-

Register, December, 1991, No. 432

ity from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

(g) Extending, arranging for, or participating in arranging for credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board;

(h) Executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;

(i) Failing to segregate customers' free securities or securities in safe-keeping;

(j) Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the U.S. securities and exchange commission;

(k) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

(l) Entering into a transaction for its own account with a customer with an unreasonable mark-up or mark-down;

(m) Entering into a transaction for its own account with a customer in which a commission is charged;

(n) Entering into a transaction with or for a customer at a price not reasonably related to the current market price;

(o) Executing orders for the purchase by a customer of securities not registered under s. 551.25 or 551.26, Stats., unless the securities are exempted under s. 551.22, Stats., or the transaction is exempted under s. 551.23, Stats.;

(p) Representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

(q) Violating any rule of any securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

(r) Failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

(s) Introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23 (8), Stats.;

(t) Recommending to a customer that the customer engage the services of an investment adviser, broker-dealer or agent not licensed under ch. 551, Stats., unless the customer is a person described in s. 551.23 (8), Stats.;

(2) The following are deemed "dishonest or unethical business practices" or "taking unfair advantage of a customer" by an agent under s.

551.34 (1) (g), Stats., without limiting those terms to the practices specified in this subsection:

- (a) Borrowing money or securities from, or lending money or securities to, a customer;
- (b) Acting as a custodian for money, securities or an executed stock power of a customer;
- (c) Effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;
- (d) Effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the agent represents;
- (e) Sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the agent represents;
- (f) Dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not also licensed as an agent for the same