Chapter SEC 4

LICENSING OF BROKER–DEALERS, AGENTS AND INVESTMENT ADVISERS

SEC 4.01 License period. (1) Renewal licenses of broker–dealers whose names commence with the letters A through D expire on March 31 of each year; renewal licenses of broker–dealers whose names commence with the letters E through I expire on June 30 of each year; renewal licenses of broker–dealers whose names commence with the letters J through O expire on September 30 of each year; and renewal licenses of broker–dealers whose names commence with the letters P through Z expire on December 31 of each year. Renewal licenses of agents representing broker–dealers expire on the same day as that of the broker–dealer which they represent. Renewal licenses of agents representing issuers expire on December 31 of each year. Renewal licenses of investment advisers expire on December 31 of each year.

(2) Initial licenses of broker–dealers, agents and investment advisers shall, if renewed, expire on the respective dates set forth in subsection (1).

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.02 Licensing procedure. (1) Applications for initial and renewal licenses of broker–dealers, agents and investment advisers shall be filed on forms prescribed by the commissioner and shall include all information required by such forms with respect to the applicant's form and place of organization; proposed method of doing business and financial condition; qualifications and experience of the applicant, including, in the case of a broker–dealer or investment adviser, qualifications and experience of any partner, officer, director or controlling person; any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony; and any other matters which the commissioner determines are relevant to the application.

(2) If the commissioner reasonably requires any applicant for a license to furnish information in addition to that contained in the application or requires the applicant or any partner, officer, director or controlling person thereof to take an examination, the filing of the license application is deemed made when such information is furnished or such examination is satisfactorily completed.

(3) Each applicant for an initial license as an agent or investment adviser and each person representing an investment adviser in this state is required to pass a written examination prescribed by the

commissioner. The commissioner may require that a written examination be taken by one or more partners or officers representing a broker–dealer in this state prior to the issuance of a license to the broker–dealer, and by one or more supervisory employes of a licensed broker–dealer prior to acting as such in this state. Any such examination shall relate to chapter 551, Wis. Stats., and the rules of the commissioner thereunder, the applicable federal securities laws and the rules of the securities and exchange commission thereunder, general matters concerning the securities business and such other matters as the commissioner may determine. The commissioner may, with respect to any person, waive the examination insofar as it relates to general matters concerning the securities business upon receipt of evidence of satisfactory completion of a comparable examination administered by the National Association of Securities Dealers, Inc. The commissioner may prescribe different examinations for different classes of applicants.

(4) No person shall be issued an initial license as a broker–dealer, agent or investment adviser unless satisfactory evidence is furnished to the commissioner of the trustworthiness, training, experience and knowledge of the securities business of the applicant and its partners, officers, directors and controlling persons and their competence to engage in the business of effecting transactions in securities or giving investment advice.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.03 Withdrawals of licenses. An application for withdrawal from the status of a licensed broker–dealer, agent or investment adviser under section 551.34 (6), Wis. Stats., shall be filed by the licensee, except that withdrawal from the status of a licensed agent may be filed by the agent or by the broker–dealer or issuer which he represents. Notification of termination of an agent's connection with a broker–dealer or issuer is deemed an application for such withdrawal.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.04 Net capital requirements. (1) Every broker–dealer shall have the net capital necessary to comply with all of the following conditions:

(a) The aggregate indebtedness of the broker–dealer to all other persons shall not exceed 2,000% of its net capital.

(b) The broker–dealer shall have and maintain net capital of not less than $20,000; provided that if a broker–dealer effects only transactions involving the sale and redemption of redeemable securities of investment companies registered under the investment company act of 1940, does not effect margin transactions with any customers, and does not hold funds or securities of any customer or owe money or securities to any customer, such broker–dealer shall have and maintain net capital of not less than $10,000.

(2) Every investment adviser shall have and maintain net capital of not less than $5,000.

(3) If a broker–dealer or investment adviser is an individual, he shall segregate from his personal capital an amount sufficient to satisfy his net capital requirement, and the amount so segregated shall be utilized solely for the business for which such broker–dealer or investment adviser is licensed.

(4) For the purpose of this rule and to insure uniform interpretations, the terms "aggregate indebtedness" and "net capital" of a broker–dealer have the respective meanings as defined in rule 15c3–1 under the securities exchange act of 1934. A copy of any subordination agreement relating to a broker–dealer shall be filed with the commissioner or with a national securities exchange of which the broker–dealer is a member, within 10 days after such agreement has been entered into and shall meet the requirements of a "satisfactory subordination agreement" as defined in rule 15c3–1.

(5) The commissioner may by order exempt from the provisions of this rule, either unconditionally or upon special terms and conditions, any broker–dealer who satisfies the commissioner that because of membership in a national securities exchange or because of the special nature of business, and its financial position, and the safeguards that have been established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the broker–dealer to this rule.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.05 Broker-dealers' records. (1) Every licensed broker-dealer shall make and keep current the following books and records relating to its business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(b) Ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts.

(c) Ledgers (or other records) itemizing separately as to each cash and margin account of every customer and of such broker–dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;

2. Dividends and interest received;

3. Securities borrowed and securities loaned;

4. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);

5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker–dealer for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(f) A memorandum of each order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such broker–dealer, or any employe thereof, shall be so designated. The term "time of entry" shall mean the time when such broker–dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it is received.

(g) A memorandum of each purchase and sale of securities for the account of such broker–dealer showing the price and, to the extent feasible, the time of execution.

(h) Copies of confirmations of all purchases and sales of securities, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker–dealer.

(i) Copies of all communications, correspondence and other records relating to securities transactions with customers, including all complaints of customers relating to securities transactions.

(j) The account card and a record in respect of the opening and maintenance of each cash and margin account with such broker–dealer, all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority in respect of any account, the name and address of the beneficial owner of each account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(k) All partnership articles or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of such broker–dealer.

(2) Every licensed broker-dealer shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required under subsection (1) of this rule, except that records respecting an account required under subsection (1) (j) shall be preserved by a broker–dealer for a period of not less than 6 years after the closing of the account and records required under subsection (1) (k) shall be preserved by a broker–dealer for a period of not less than 6 years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for 2 years a microfilm copy thereof may be substituted for the remainder of the required period.

(3) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(4) Compliance with the requirements of the securities and exchange commission with respect to preservation of records is deemed compliance with this rule.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.06 Investment advisers' records. (1) Every licensed investment adviser shall maintain and keep current the following books and records relating to its business:

(a) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(b) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made.

(c) A record showing all receivables and payables.

(d) Records showing separately for each client the securities purchased or sold, and to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed, and the name of the broker–dealer who effected the transaction.

(e) Records showing separately all securities bought or sold by the clients of the investment adviser insofar as known to the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and price at which such securities were purchased or sold by or for each client; or, in the alternative, a record showing all such securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month.

(f) Copies of broker–dealers' confirmations of all transactions placed by the investment adviser for any account, and such other broker–dealers' confirmations as may be supplied to the investment adviser by a client or broker–dealer.

(g) Records of all accounts in which the investment adviser is vested with discretionary authority, including powers of attorney and other evidence of such discretionary authority.

(h) Copies of all agreements entered into by the investment adviser with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof, and copies of all communications, correspondence and other records relating to securities transactions with customers including all complaints of customers relating to securities transactions.

(i) All partnership articles, or all articles of incorporation, by-laws, minute books and stock certificate books of such investment adviser.

(2) Every licensed investment adviser shall preserve for a period of not less than 3 years, the first 2 years in an easily accessible place, all records required under subsection (1) of this rule, except that records respecting an account required under subsection (1) (g) and (h) shall be preserved by the investment adviser for a period of not less than 3 years after the closing of the account and records required under subsection (1) (i) shall be preserved by the investment adviser for a period of not less than 3 years after withdrawal or expiration of its license in this state. After a record or other document has been preserved for 2 years a microfilm copy thereof may be substituted for the remainder of the required period.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.07 Reporting requirements. (1) Each broker–dealer or investment adviser, within 45 days after the end of each fiscal year or within 45 days after any surprise audit of a broker–dealer under the rules of a national securities exchange of which it is a member, shall file with the commissioner a verified statement of assets and liabilities as of the end of such fiscal year or as of the date of such surprise audit. In the case of a broker–dealer such financial statements shall be prepared in accordance with the requirements of form X-17A-5 under the securities exchange act of 1934 and include all information specified under such requirements.

(2) Each broker–dealer and investment adviser shall file with the commissioner, within 20 days, a copy of any complaint filed against such broker–dealer or investment adviser or any of his or its partners, officers or agents, in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, related to its securities business or securities transactions in this state or affecting its operations in this state, a copy of any answer or reply thereto filed by such broker–dealer or investment adviser, and a copy of any decision, order or sanction made with respect to any such proceeding.

(3) Each broker–dealer shall file with the commissioner within 30 days after the end of each month, a written report on a form prescribed by the commissioner, stating with respect to that month (a) the securities and number of units or shares thereof sold and the aggregate selling price thereof and the number of customers to which such securities were sold in each distribution in which such broker–dealer participated, and (b) the securities and number of shares or units thereof sold by such broker–dealer, the price ranges thereof and the number of customers to whom such securities were sold in transactions exceeding in the aggregate such amounts as may be prescribed by the commissioner, exclusive of sales specified in (a), and whether such broker–dealer was acting as a market maker in such securities during such month. No reports are required to be filed for months during which the broker–dealer did not engage in transactions subject to this rule.

(4) Each broker–dealer and investment adviser shall file with the commissioner a notice of transfer of control of such broker–dealer or investment adviser not less than 20 days prior to the date on which such transfer of control is to become effective or such shorter period as he may permit, and shall furnish the commissioner with such additional information relating thereto as he may reasonably require.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.08 Rules of conduct. (1) Each broker–dealer, promptly after execution of and before completion of each transaction with its customer, shall give or send to the customer a written confirmation setting forth:

(a) A description of the security purchased or sold, the date of the transaction, the price at which the security was purchased or sold and any commission charged;

(b) Whether the broker–dealer was acting for its own account, as agent for the customer, as agent for some other person, or as agent both for the customer and some other person;

(c) When the broker–dealer is acting as agent for the customer, either the name of the person from whom the security was purchased or to whom it was sold or the fact that such information will be furnished upon the request of the customer.

(2) Each broker–dealer and investment adviser shall establish written supervisory procedures, and a system for applying such procedures, which may reasonably be expected to prevent and detect any violations of chapter 551, Wis. Stats., and rules and orders thereunder. Such procedures shall include the designation and qualification of a number of supervisory employes reasonable in relation to the number of its licensed agents, offices and transactions in this state.

(3) An investment adviser shall not enter into, extend, or renew any investment advisory contract unless it provides in writing:

(a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(4) Subsection (3) (a) of this rule does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subsection (3) (b) of this rule includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. As used in subsection (3) of this rule, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than persons specified under section 551.23 (8), Wis. Stats.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.09 Unethical business practices. (1) The following are deemed "unethical business practices" by a broker-dealer under section 551.34 (1) (g), Wis. Stats., without limiting that term to the practices specified herein:

(a) Causing an unreasonable delay in the delivery of securities purchased by any of its customers;

(b) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of such 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 such customer on the basis of information furnished by such customer after such reasonable inquiry as may be necessary under the circumstances concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker-dealer;

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

(e) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from such customer unless such discretionary power relates solely to the execution of orders;

(f) Extending credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board;

(g) Executing any transaction in a margin account without obtaining from its customer a written margin agreement prior to the completion of the initial transaction in such account;

(h) Failing to segregate customers' free securities or securities in safekeeping;

(i) Hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained;

(j) Charging its customer an unreasonable commission or service charge in any transaction executed as agent for such customer, taking into consideration all relevant factors;

(k) Entering into a transaction for its own account with a customer in a security at a price including an unreasonable mark-up or mark-down of the security, taking into consideration all relevant factors;

(l) Entering into a transaction with a customer in a security at a price not reasonably related to the current market price of the security; and

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

(2) The following are deemed "unethical business practices" by an agent under section 551.34 (1) (g), Wis. Stats., without limiting that term to the practices specified herein:

(a) Borrowing money or securities from a customer;

(b) Effecting securities transactions with a customer not recorded on the records of or disclosed to the broker-dealer which he represents;

(c) Operating an account under a fictitious name, unless disclosed to the broker-dealer which he represents;

(d) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which he represents;

(e) 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 a licensed broker-dealer or agent; and

(f) Engaging in any of the practices specified under subsection (1) (b), (c) and (d) of this rule.

(3) The following are deemed "unethical business practices" by an investment adviser under section 551.34 (1) (g), Wis. Stats., without limiting that term to the practices specified herein:

(a) Exercising any discretionary power in placing an order for the purchase or sale of securities for the account of a customer without first obtaining written discretionary authority from such customer; or

(b) Placing an order for the purchase or sale of a security pursuant to discretionary authority if such purchase or sale is in violation of chapter 551, Wis. Stats., or any rule thereunder.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

SEC 4.10 Bank agency transactions. (1) A bank, savings institution or trust company not licensed as a broker-dealer may execute orders for the purchase or sale of securities as agent for the purchaser or seller thereof, in transactions not in violation of chapter 551, Wis. Stats., or rules thereunder, under the following conditions:

(a) The bank, savings institution or trust company has no direct interest in the sale or distribution of the securities purchased or sold, receives no commission, profit, or other compensation from any source other than the purchaser or seller, delivers to the customer its own written confirmation of the order which clearly itemizes its commission, profit or other compensation; and

(b) The bank, savings institution or trust company, in connection with purchases of securities from or through broker-dealers, discloses to the broker-dealer whether such purchase is for its own account, or for the account of a customer for whom it is acting as trustee, or for the account of a customer for whom it is acting as agent and whether such customer is a person specified under section 551.23 (8), Wis. Stats.

(2) The bank, savings institution or trust company shall make, keep current and preserve for a period of not less than 3 years, adequate records of purchases and sales of securities by it as agent for its customers, including copies of its own confirmations delivered to its customers and copies of confirmations received from broker-dealers in connection with such transactions and records confirming any customer is a person specified under section 551.23 (8), Wis. Stats.

(3) Nothing in this rule shall prevent a bank, savings institution or trust company from acting as depository, custodian, exchange agent, escrow agent, transfer agent, registrar or in any similar capacity in the ordinary course of business.

History: Cr. Register, December, 1969, No. 168, eff. 1–1–70.

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