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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. 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 01-112

AN ORDER to amend DFI-Bkg 74.08 (2); and to create DFI-Bkg 74.001 (3) and 74.08 (4), relating to collection agencies and mergers.

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

09-26-01 RECEIVED BY LEGISLATIVE COUNCIL.

10-23-01 REPORT SENT TO AGENCY.

RNS:DLS:jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## CLEARINGHOUSE RULE 01-112

### 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 Staff, dated September 1998.]**

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

- a. In ss. DFI-Bkg 74.001 (3) and 74.08 (4) (c), “ss.” should be “s.” Also, “74.001” should be inserted before “(3).”
- b. In several parts of s. DFI-Bkg 74.08 (2) and (4) (c), “such” and “said” should not be used in place of an article.
- c. In s. DFI-Bkg 74.08 (4) (c), “shall” should replace “must.”

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

- a. In s. DFI-Bkg 74.08 (4) (b) 2. and (c), “s. DFI-Bkg 74.08 (4)” should just be “par.” In par. (d), “Stats.” should be inserted at the end of the sentence.
- b. In s. DFI-Bkg 74.08 (4) (c), can the cites to “s. 218.04 or 220.04, Stats.” be more specific? Can specific subsections be cited?

PROPOSED RULE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF BANKING

Analysis: To amend s. DFI—Bkg 74.08(2), and create ss. DFI—Bkg 74.001(3) and DFI—Bkg 74.08(4). Statutory authority: ss. 218.04(7)(d) and 227.11(2), Stats. Summary: Currently a collection agency must cancel and return all accounts when a license is terminated for whatever reason. However, current rules do not contemplate a merger between department licensees. Corporate merger statutes allow for the transition of the duties and obligations of the merged entity to the surviving entity. Allowing the transfer of all accounts accomplishes this. The rule also allows, under certain circumstances, a licensed collection agency to purchase the listed accounts of another agency. Accounts would not need to be cancelled and returned in these circumstances. Agency person to be contacted for substantive questions and responsible for agency's internal processing: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707-7876.

SECTION 1. DFI-Bkg 74.001 (3) is created to read:

74.001 DFI-Bkg (3) "Merger" means the business combination of two or more collection agencies under ss. 180.1101 or 183.1201, Stats.

SECTION 2. DFI-Bkg 74.08 (2) is amended to read:

**DFI-Bkg 74.08 (2) CANCELLATION AND RETURN OF ACCOUNTS AND VALUABLE PAPER UPON TERMINATION OF LICENSE.** Whenever the license of a collection agency is terminated ~~for any reason whatsoever~~, all accounts and any valuable papers which have been given to the agency in connection with any accounts placed with it for collection shall be returned to the person placing the account for collection within 5 days of the termination of said license unless upon written application an extension of time is granted by ~~the office of~~ the administrator of the division of banking. All agreements between the collection agency and the creditor or forwarder are automatically cancelled as of the date on which said license is terminated. If any of the accounts that have been placed for collection are in the hands of attorneys ~~or others~~ at the time of the termination of said license, such attorneys ~~or others~~ shall immediately be notified by the collection agency to thereafter correspond, remit and be solely responsible to the person placing the such accounts with you for the collection ~~on all such accounts~~ agency unless the creditor has authorized a successor or other licensee to continue to collect the accounts. In the case of death of the sole owner or a partner, all accounts shall be returned within a reasonable period of time, but in any event not to exceed 120 days.

SECTION 3: Section DFI – Bkg 74.08 (4) is created to read:

**DFI—Bkg 74.08 (4) WAIVER OF CANCELLATION AND RETURN OF ACCOUNTS.** (a) *Waiver.* The administrator of the division of banking may waive the

requirements of ss. DFI—Bkg 74.08 (2) and (3) under any of the following circumstances:

1. Two or more collection agencies licensed under s. 218.04, Stats., merge into one collection agency under the license of one of those agencies, and the licenses of the nonsurviving agencies are terminated on the effective date of the merger.

2. An agency licensed under s. 218.04, Stats., for at least the 3 years prior to the purchase purchases 100% of the listed accounts from another collection agency licensed under s. 218.04, Stats., and the agency from which the accounts are purchased terminates its license on the date of the purchase.

(b) *Procedure for waiver.* Waiver under this section shall be effective only upon completion of all of the following:

1. The request for waiver is submitted in writing to the division of banking in a form prescribed by the division of banking accompanied by a fee prescribed by the division.

2. The request for waiver is received by the division of banking at least 45 days before the effective date of the merger or purchase of assets under s. ~~DFI—Bkg 74.08~~ (4)(a). *par*

3. Written notice of approval of the request for waiver is issued by the administrator of the division of banking.

(c) *Notice.* At least 30 days prior to the merger or purchase of assets under s. ~~DFI—Bkg 74.08~~ (4)(a), the collection agencies whose licenses are being terminated must notify, in a form approved by the division, all persons who have listed accounts with those agencies of the merger or purchase of assets. The administrator of the division of banking may rescind any waiver under this section for failure to give such notice. Notice is not required if the merger or purchase of assets is pursuant to an order issued by the division pursuant to ss. 218.04 or 220.04, Stats. *par.*

(d) *Discontinuing operations.* Collection agencies merging or purchasing assets and receiving the waiver under this section shall not be considered to be discontinuing operations under s. 218.04 (6)(c), Stats. *X*

## NOTE

Pursuant to s. 227.14 (3), Stats., an agency shall include a reference to forms in a note to the proposed rule and shall attach a description of how copies of the forms may be obtained. Pursuant to s. 227.14 (3), copies of forms may be obtained at the following:

Department of Financial Institutions  
Division of Banking  
345 W. Washington, 4<sup>th</sup> Floor  
P.O. Box 7876  
Madison, WI 53707-7876  
tel. (608) 261-7578

CORRESPONDENCE / MEMORANDUM

STATE OF WISCONSIN  
Department of Financial Institutions  
Office of the Secretary

DATE: October 31, 2001

TO: Senator Fred Risser, President  
Wisconsin State Senate

Representative Scott Jensen, Speaker  
Wisconsin State Assembly

FROM: Mark Schlei, Deputy General Counsel  
Department of Financial Institutions  
Division of Banking

SUBJECT: Notice regarding CR 01-112

Pursuant to s. 227.19(2), Stats., notice is hereby given that CR 01-112 (proposed rule amending s. DFI—Bkg 74.08(2), and creating ss. DFI—Bkg 74.001(3) and 74.08(4)) is in final draft form. Pursuant to s. 227.19(3), Stats., the following documentation accompanies this notice in triplicate: proposed rule; the material specified in s. 227.14(2) to (4), Stats., (analysis, note regarding forms and fiscal estimate); a copy of any recommendations of legislative council staff; and an analysis pursuant to s. 227.19(3), Stats. If you have any questions regarding this matter or the enclosed, please do not hesitate to contact me at tel. 267-1705.

PROPOSED RULE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF BANKING

Analysis: To amend s. DFI—Bkg 74.08(2), and create ss. DFI—Bkg 74.001(3) and DFI—Bkg 74.08(4). Statutory authority: ss. 218.04(7)(d) and 227.11(2), Stats. Summary: Currently a collection agency must cancel and return all accounts when a license is terminated for whatever reason. However, current rules do not contemplate a merger between department licensees. Corporate merger statutes allow for the transition of the duties and obligations of the merged entity to the surviving entity. Allowing the transfer of all accounts accomplishes this. The rule also allows, under certain circumstances, a licensed collection agency to purchase the listed accounts of another agency. Accounts would not need to be cancelled and returned in these circumstances. Agency person to be contacted for substantive questions and responsible for agency's internal processing: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707-7876.

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**DFI-Bkg 74.001 (3)** "Merger" means the business combination of two or more collection agencies under s. 180.1101 or 183.1201, Stats.

SECTION 2. DFI-Bkg 74.08 (2) is amended to read:

**DFI-Bkg 74.08 (2) CANCELLATION AND RETURN OF ACCOUNTS AND VALUABLE PAPER UPON TERMINATION OF LICENSE.** Whenever the license of a collection agency is terminated ~~for any reason whatsoever~~, all accounts and any valuable papers which have been given to the agency in connection with any accounts placed with it for collection shall be returned to the person placing the account for collection within 5 days of the termination of the license unless upon written application an extension of time is granted by ~~the office of~~ the administrator of the division of banking. All agreements between the collection agency and the creditor or forwarder are automatically cancelled as of the date on which the license is terminated. If any of the accounts that have been placed for collection are in the hands of attorneys ~~or others~~ at the time of the termination of the license, such attorneys ~~or others~~ shall immediately be notified by the collection agency to thereafter correspond, remit and be solely responsible to the person placing the accounts with you ~~for the~~ collection ~~on all such accounts~~ agency unless the creditor has authorized a successor or other licensee to continue to collect the accounts. In the case of death of the sole owner or a partner, all accounts shall be returned within a reasonable period of time, but in any event not to exceed 120 days.

SECTION 3: Section DFI - Bkg 74.08 (4) is created to read:



**DFI—Bkg 74.08 (4) WAIVER OF CANCELLATION AND RETURN OF ACCOUNTS.** (a) *Waiver.* The administrator of the division of banking may waive the requirements of s. DFI—Bkg 74.08 (2) and (3) under any of the following circumstances:

1. Two or more collection agencies licensed under s. 218.04, Stats., merge into one collection agency under the license of one of those agencies, and the licenses of the nonsurviving agencies are terminated on the effective date of the merger.

2. An agency licensed under s. 218.04, Stats., for at least the 3 years prior to the purchase purchases 100% of the listed accounts from another collection agency licensed under s. 218.04, Stats., and the agency from which the accounts are purchased terminates its license on the date of the purchase.

(b) *Procedure for waiver.* Waiver under this section shall be effective only upon completion of all of the following:

1. The request for waiver is submitted in writing to the division of banking in a form prescribed by the division of banking accompanied by a fee prescribed by the division.

2. The request for waiver is received by the division of banking at least 45 days before the effective date of the merger or purchase of assets under par. (a).

3. Written notice of approval of the request for waiver is issued by the administrator of the division of banking.

(c) *Notice.* At least 30 days prior to the merger or purchase of assets under s. DFI—Bkg 74.08 (4)(a), the collection agencies whose licenses are being terminated shall notify, in a form approved by the division, all persons who have listed accounts with those agencies of the merger or purchase of assets. The administrator of the division of banking may rescind any waiver under this section for failure to give the notice. Notice is not required if the merger or purchase of assets is pursuant to an order issued by the division pursuant to s. 214.08 (8) or (9m), or 220.04 (9), Stats.

(d) *Discontinuing operations.* Collection agencies merging or purchasing assets and receiving the waiver under this section shall not be considered to be discontinuing operations under s. 218.04 (6)(c), Stats.

## NOTE

Pursuant to s. 227.14 (3), Stats., an agency shall include a reference to forms in a note to the proposed rule and shall attach a description of how copies of the forms may be obtained. Pursuant to s. 227.14 (3), copies of forms may be obtained at the following:

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P.O. Box 7876  
Madison, WI 53707-7876  
tel. (608) 261-7578

Fiscal Estimate — 2001 Session

- Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Subject

To amend s. DFI-Bkg 74.08(2), and create ss. DFI-BKG 74.001(3) and 74.08(4) regarding procedures for return or cancellation of accounts.

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.  
 Yes       No  
 Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others  
 School Districts       WTCS Districts

Fund Sources Affected

- GPR       FED       PRO       PRS       SEG       SEG-S

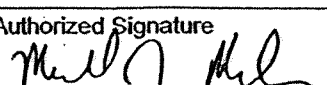
Affected Chapter 20 Appropriations  
 None

Assumptions Used in Arriving at Fiscal Estimate

The rule allows the Division of Banking to assess a fee for the applications filed for the waiver provided by the rule. There will be no significant fiscal effect as a result of the adoption of the rule. It is anticipated that there will only be a few applications filed, and that the revenue realized from a nominal application fee will be insignificant. Any related costs can be absorbed.

Long-Range Fiscal Implications

None

Prepared By: Michael J. Mach	Telephone No. (608) 266-0451	Agency DFI
Authorized Signature 	Telephone No. (608) 266-0451	Date (mm/dd/ccyy) 09/26/01



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Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

09-26-01 RECEIVED BY LEGISLATIVE COUNCIL.

10-23-01 REPORT SENT TO AGENCY.

RNS:DLS:jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 01-112

#### 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 Staff, dated September 1998.]**

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

- a. In ss. DFI-Bkg 74.001 (3) and 74.08 (4) (c), "ss." should be "s." Also, "74.001" should be inserted before "(3)."
- b. In several parts of s. DFI-Bkg 74.08 (2) and (4) (c), "such" and "said" should not be used in place of an article.
- c. In s. DFI-Bkg 74.08 (4) (c), "shall" should replace "must."

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

- a. In s. DFI-Bkg 74.08 (4) (b) 2. and (c), "s. DFI-Bkg 74.08 (4)" should just be "par." In par. (d), "Stats." should be inserted at the end of the sentence.
- b. In s. DFI-Bkg 74.08 (4) (c), can the cites to "s. 218.04 or 220.04, Stats." be more specific? Can specific subsections be cited?

DATE: October 31, 2001

TO: Senator Fred Risser, President  
Wisconsin State Senate

Representative Scott Jensen, Speaker  
Wisconsin State Assembly

FROM: Mark Schlei, Deputy General Counsel  
Department of Financial Institutions

SUBJECT: Report on CR 01-112

This report is submitted pursuant to s. 227.19 (2) and (3), Stats., regarding CR 01-112 (proposed rule amending s. DFI—Bkg 74.08(2), and creating DFI—Bkg 74.001(3) and 74.08(4)).

1. STATEMENT EXPLAINING THE NEED FOR THE PROPOSED RULE

Currently a collection agency must cancel and return all accounts when a license is terminated for whatever reason. However, current rules do not contemplate a merger between department licensees. Corporate merger statutes allow for the transition of the duties and obligations of the merged entity to the surviving entity. Allowing the transfer of all accounts accomplishes this. The rule also allows, under certain circumstances, a licensed collection agency to purchase the listed accounts of another agency. Accounts would not need to be cancelled and returned in these circumstances.

2. MODIFICATIONS MADE AS A RESULT OF TESTIMONY RECEIVED AT THE PUBLIC HEARING

No modifications were made as a result of testimony received at the public hearing.

3. PERSONS APPEARING OR REGISTERING FOR OR AGAINST THE PROPOSED RULE AT THE PUBLIC HEARING

The following persons registered for the proposed rule:

Mr. Chris Tackett, Wisconsin Merchants Federation  
Mr. Tom Haag, Wisconsin Collectors Association  
Mr. Scott Klewicki, Financial Recoveries, Inc.; Bonded Credit Co. and Bonded Collectors, Inc.  
Mr. Ken Klewicki, Financial Recoveries, Inc.; Bonded Credit Co. and Bonded Collectors, Inc.

No persons registered against the proposed rule.

4. RESPONSE TO LEGISLATIVE COUNCIL RECOMMENDATIONS

Legislative council staff recommendations were accepted in whole.

5. FINAL REGULATORY FLEXIBILITY ANALYSIS

Pursuant to s. 227.19(3m), a final regulatory flexibility analysis is not required.