



Senator Dale Schultz  
Room # 18 South  
State Capitol  
Madison, WI 53707-7882

**Senate Committee on Agriculture, Financial Institutions  
and Insurance**

Room 18 South State Capitol, PO Box 7882, Madison WI 53707-7882  
(608) 266-0703

***Senator Dale W. Schultz, Chairman***

Monday, August 18, 2003

Senator Dale Schultz  
Room # 18 South  
State Capitol  
Madison, WI 53707-7882

The following clearinghouse rule was referred to the Senate Committee on Agriculture Financial Institutions and Insurance. The thirty-day review period began on August 13<sup>th</sup>, 2003.

**Clearinghouse Rule 03-068, To repeal DFI-Sec 4.03(6); to renumber DFI-Sec 4.03(7); to amend DFI-Sec 4.05(5); and to repeal and recreate DFI-Sec 4.03(1) to (4); relating to securities broker-dealer books and record-keeping requirements.**

A hard copy of the rule is attached. The text is also available online in the FOLIO Clearinghouse Rules infobase.

The last business day for action on this rule is **Friday September 12<sup>th</sup>, 2003.**

If you have concerns or questions related to this rule, please contact John in my office (6-0703) with any questions, or to request the committee hold a hearing on this rule.

Thank you.

Senator Dale Schultz  
Chairman

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in Committee  
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Brief me  
by phone



**State of Wisconsin**  
*Department of Financial Institutions*

Scott McCallum, **Governor**

John F. Kundert, **Secretary**

August 12, 2003

✓ The Honorable Alan Lasee, President  
Wisconsin State Senate  
Attn: Donna Doyle  
c/o Office of Senate Journals and Records  
17 West Main St., Ste. 401  
Madison, WI 53702

The Honorable John Gard  
Speaker of the Assembly  
Attn: Ken Stigler  
c/o Office of Assembly Records  
17 West Main St., Ste. 208  
Madison, WI 53702

Re: Clearinghouse Rule 03-068 Administrative Rule-Making Notice and Report to  
Legislative Standing Committees Under secs. 227.19(2) and (3), Wis. Stats.

Gentlemen:

The Division of Securities of the Department of Financial Institutions hereby submits for filing with the Wisconsin Legislature pursuant to the administrative rule-making requirements of secs. 227.19(2) and (3), Wis. Stats., copies in triplicate of the Notice and Report required thereunder consisting of:

- (1) Proposed administrative rules in proposed final form as specified in sec. 227.14(1), Wis. Stats., relating to securities broker-dealer books and record-keeping requirements.
- (2) A Report as prescribed in sec. 227.19(3), Wis. Stats.
- (3) A fiscal estimate for the proposed rules.
- (4) A copy of the Clearinghouse Report of the Wisconsin Legislative Council relating to the Public Comment Draft form of the proposed rules.

If you have any comments or questions regarding the above, please telephone me at 266-3414.

Very truly yours,

Randall E. Schumann  
Legal Counsel for the Division

**Attachments**

cc: Revisor of Statutes Bureau  
Joint Committee for Review of Administrative Rules  
Patricia D. Struck, Administrator, Division of Securities  
Mark Schlei, DFI Deputy General Counsel

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*Division of Securities*

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Courier: 345 W. Washington Ave. 4<sup>th</sup> Floor Madison, WI 53703  
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**PROPOSED ORDER OF THE  
DIVISION OF SECURITIES  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
STATE OF WISCONSIN  
AMENDING, ADOPTING AND REPEALING RULES**

To repeal DFI-Sec 4.03(6); to renumber DFI-Sec 4.03(7); to amend DFI-Sec 4.05(5); and to repeal and recreate DFI-Sec 4.03(1) to (4); relating to securities broker-dealer books and record-keeping requirements.

Pursuant to sections 551.33(1), and 551.63(1) and (2), Wis. Stats., the Division of Securities of the Department of Financial Institutions amends, adopts and repeals rules interpreting those sections as follows:

STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

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Proposed Rules  
Relating to Broker-Dealer Books and Record-keeping Requirements

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**Section 1. DFI-Sec 4.03(1) through (4) are repealed and recreated to read:**

**DFI-Sec 4.03(1)** Every licensed broker-dealer shall prepare and keep current at its principal office the books and records as described in rules 17a-3 and 17a-4 under the securities exchange act of 1934.

**(2)** Every licensed broker-dealer shall preserve the records required under sub. (1) according to the schedule provided in rule 17a-4 under the securities exchange act of 1934 in compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records or other means of retention of records.

**(3)** Every branch office of a licensed broker-dealer, as defined under s. DFI-Sec 1.02(7)(a), shall prepare and keep current the branch office books and records as described in rule 17a-3(f) under the securities exchange act of 1934.

**(4)** Every licensed broker-dealer shall preserve the branch office records required under sub. (3) according to the schedule provided in rule 17a-4(k) under the securities exchange act of 1934 in compliance with the requirements of the U.S. securities and exchange commission concerning preservation and microfilming of records or other means of retention of records.

**ANALYSIS:** Under this Section, the entirety of the existing Wisconsin general books and records requirement for licensed broker-dealers as set forth in rules DFI-Sec 4.03(1) to (4) (that particularizes the types of required books and records, and prescribes records retention periods), is repealed and recreated to incorporate by reference the new, superseding, federal rules adopted by the SEC contained in sections 17a-3 and 4 under the Securities Exchange Act. New sub. (1) requires a firm to retain the books and records cross-referenced in federal SEC rules 17a-3 and 4, and new sub. (2) incorporates by reference the records preservation and retention requirements in federal SEC rule 17a-4. New subsections (3) and (4) replace the current Wisconsin rules in DFI-Sec 4.03(3) and (4) [that prescribe branch office records and retention requirements], with language which provides that the books and records required to be prepared and maintained at broker-dealer offices triggering the definition of "branch office" under current rule DFI-Sec 1.02(7)(a), are the same records prescribed under the new federal provisions in new federal Rule 17a-3, and must be held for the retention periods specified in new federal Rule 17a-4.

**Section 2. DFI-Sec 4.03(6) is repealed**

**ANALYSIS:** This Section repeals current Wisconsin rule DFI-Sec 4.03(6) [which permitted broker-dealers to utilize alternative records to satisfy the principal office and branch office records required in existing rules DFI-Sec 4.03 (1) and (3)], because under NSMIA, states no longer have the authority to permit alternative forms of broker-dealer records different from the records prescribed by federal law.

**Section 3. DFI-Sec 4.03(7) is renumbered DFI-Sec 4.03(6)**

**ANALYSIS:** This Section is a renumbering of current rule DFI-Sec 4.03(7) to reflect the repeal of DFI-Sec 4.03(6) in Section 2.

**Section 4. DFI-Sec 4.05(5) is amended to read:**

**DFI-Sec 4.05(5)** Each broker-dealer shall provide each customer with a conformed copy of all contracts and agreements between the broker-dealer and the customer not later than ~~20~~ 30 days after the customer's account is first established on the books and records of the broker-dealer. Each broker-dealer shall provide each customer with a conformed copy of the customer information form prescribed under s. DFI Sec 4.03(1)(k) or an alternative document that contains at a minimum the customer's name, address, net worth, annual income, investment objectives and any other information affecting the agent's ability to make suitable recommendations, not later than 20 days after the customer's account is first established on the books and records of the broker-dealer pursuant to the requirements of rule 17a-3(a)(17) under the securities exchange act of 1934. Each contract or agreement and new account form for a customer whose account involves both an introducing broker and a clearing broker who provides services to the customer, shall contain or be accompanied by a disclosure of the identity and address of each 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 DFI Sec 4.06(1)(e).~~

**ANALYSIS:** Under this Section, the existing Wisconsin Rule of Conduct provision in DFI-Sec 4.05(5) [requiring broker-dealers to provide customers with prescribed new account information and subsequent amendments to such information] is amended to both substitute a cross-reference to the new federal provision on that subject in SEC rule 17a-3(a)(17) under the Securities Exchange Act of 1934, and to repeal language in the Wisconsin rule inconsistent with federal provisions.

\* \* \* \* \*

The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2)(b), Stats., on the first day following expiration of identical emergency rules issued by the Division on May 2, 2003 (and as extended) on this subject.

DATED at Madison Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2003.

[SEAL]

\_\_\_\_\_  
PATRICIA D. STRUCK  
Administrator  
Division of Securities



**REPORT PREPARED BY THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES  
RELATING TO PROPOSED FINAL FORM OF  
PERMANENT RULES CONCERNING BROKER-DEALER BOOKS  
AND RECORD-KEEPING REQUIREMENTS**

(a) Statement Explaining Need for Rules

The rulemaking procedures under Chapter 227 of the Wisconsin Statutes are being implemented for the purpose of adopting permanent rules to be in effect upon expiration of emergency rules issued by the Division on May 2, 2003 to conform Wisconsin's Securities Law rules concerning broker-dealer books and record-keeping requirements to federally mandated standards established in rules adopted by the U.S. Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 that became effective on May 2, 2003.

Congress in its passage of the National Securities Markets Improvement Act ("NSMIA") in 1996 prohibited state securities regulators from establishing or enforcing under their state securities laws or rules, record-keeping requirements for securities broker-dealers that are inconsistent with, or not required by, the U.S. Securities and Exchange Commission.

Following passage of NSMIA, the SEC commenced a rule-making process that spanned a several-year period (including a 1998 reproposal of the entirety of the proposed rules for a new public comment period), culminating in adoption in late 2001 of an extensive series of broker-dealer books and records rules for effectiveness commencing May 2, 2003. The SEC's revised books and records rules cover a comprehensive series of areas, including: (1) customer account records; (2) order ticket information; (3) customer complaints; (4) mandated reports and audits; (5) compliance manuals; (6) records maintenance, retention, production and access; and (7) records required to be maintained at a firm's home office and at "local" offices.

Because of the preemptive effects of federal law under NSMIA, all of the existing provisions of the Wisconsin administrative rules in Chapter SEC 4 under the Wisconsin Securities Law dealing with broker-dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules needed to be revised appropriately.

Consequently, it is necessary to adopt permanent rules (to be in place upon expiration of the emergency rules adopted May 2, 2003) to revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that became effective May 2, 2003, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. The permanent rules in their proposed final form are identical to the emergency rules in all respects. A subcommittee of the North American Securities Administrators Association ("NASAA"), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has reviewed the impact of the SEC's books and record-keeping rules on existing state securities law licensing rules, and recommended that states utilize the incorporation-by-reference-of-the-federal-rules treatment contained in the proposed permanent rules.

(b) Explanation of Modifications Made as a Result of the Public Hearing and Comment Process

- No modifications are being made as a result of the public hearing and comment process inasmuch as no outside person attended the public hearing, and no comment letters were received.

\* \* \* \* \*

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Administrator Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received.

- Randall E. Schumann, Legal Counsel for the Division of Securities, Department of Financial Institutions, made an appearance on behalf of the Division's staff to submit documents and information for the record and to be available both to ask questions and to respond to questions regarding hearing testimony.
- Kenneth L. Hojnacki, Director of the Bureau of Licensing & Compliance for the Division of Securities, Department of Financial Institutions, was present on behalf of the Division's staff to be available both to ask questions and to respond to licensing-related questions regarding hearing testimony.

Comment Letters Received

- No comment letters were received.

\* \* \* \* \*

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

- (1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

Consistent with the Rules Clearinghouse comment regarding DFI-Sec 4.03(3), the word "section" was abbreviated to read "s."

- (2) Rejection of recommendations and reasons therefor:

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

Following discussion with, and approval by, the Rules Clearinghouse Staff regarding the Rules Clearinghouse comment concerning citations to the U.S. Code, the citations contained in the proposed rules referring to the federal Securities Exchange Act of 1934 are retained rather than replaced by U.S. Code citations for the following reasons: (1) the federal securities law statutes, including the Securities Exchange Act of 1934, are all

defined terms under sec. 551.02(12) of the Wisconsin Uniform Securities Law that use citations to the statutes rather than the U.S. Code citations; (2) Currently, throughout the Rules of the Division of Securities, all of the citations used to date are, and always have been, to the federal statutes, not the U.S. Code citations; (3) the national publication services (such as Commerce Clearing House) that are used for reference purposes by the securities industry, by broker-dealer and investment adviser licensees, as well as by securities law legal practitioners, are based on citations to the federal statutes, not the U.S. Code citations.

\* \* \* \* \*

- (e) No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

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