

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING
ADOPTING RULES**

1 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
2 create ch. DFI—Bkg 17, relating to the process for the organization of interim banks in
3 accordance with ch. 221, Stats.

Analysis Prepared by the Department of Financial Institutions, Division of Banking

Statutory Authority: ss. 221.0704 and 227.11(2), Stats.

Statutes Interpreted: s. 221.0704, Stats.

Summary: The purpose of the rule is to set forth the process for the organization of interim banks under ch. 221, Stats. The rule establishes documentation to be submitted to and issued by the division, and requirements regarding dissenters rights, capital structure and shareholders notices. Agency person to be contacted if there are substantive questions on the rule: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451. Agency person responsible for the agency's internal processing of the rule: Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705. Pursuant to the statutory authority referenced above, the division adopts the following:

4 SECTION 1. CHAPTER DFI—Bkg 17 is created to read:

5 **CHAPTER DFI—Bkg 17**

6 **INTERIM BANKS**

7 **DFI-Bkg 17.01 Definitions.** In this chapter:

8 (1) "Application" means an application for an interim bank.

9 (2) "Articles of incorporation" has the meaning set forth in s. 221.0102(1), Stats.

10 (3) "Capital" has the meaning set forth in s. 221.0102(4), Stats.

11 (4) "Capital stock" has the meaning set forth ins. 221.0102(3), Stats.

12 (5) "Dissenter" has the meaning set forth in s. 221.0705(3), Stats.

13 (6) “Division” means the division of banking.

14 (7) “Shareholder” has the meaning set forth in s. 221.0102(6), Stats.

15 **DFI—Bkg 17.02 Application.** An application for an interim bank shall be on a form prescribed
16 by the division and shall be accompanied by a fee set by the division. A copy of any application
17 filed by the applicant with the Federal Deposit Insurance Corporation or the Federal Reserve
18 System relating to the interim bank application shall accompany the application.

19 **Note:** A copy of the form may be obtained by writing to the Department of Financial
20 Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, or
21 downloaded from the department’s website, www.wdfi.org.
22

23 **DFI—Bkg 17.03 Dissenters’ rights.** A shareholders’ meeting notice shall be accompanied by
24 a notice of dissenters’ rights pursuant to s. 221.0708, Stats.

25 **DFI—Bkg 17.04 Capital structure.** (1) The minimum level of capital stock for an interim
26 bank shall be \$5,000. The establishment of a paid-in capital account and contingent fund under
27 s. 221.0205, Stats., is not required for an interim bank.

28 (2) If the existing bank is the surviving charter in a merger or consolidation, the interim bank’s
29 capital stock may be cancelled and transferred to the surplus of the surviving entity at the time of
30 the merger or consolidation, or the stock of the surviving entity may be increased by the amount
31 of the interim bank’s capital stock through an amendment to the articles of incorporation of the
32 existing bank.

33 (3) If the interim bank is the surviving charter in the merger or consolidation, and the total assets
34 of the combined entity is similar to that of the existing bank, the capital stock of the interim bank
35 immediately following the merger or consolidation shall, by an amendment to the articles of
36 incorporation of the interim bank, be increased to an amount at least equal to the capital stock of
37 the existing bank prior to the merger or consolidation.

38 (4) If the interim bank is the surviving charter in the merger or consolidation, and the transaction
39 results in a significant increase in total assets from what the existing bank reflects prior to the
40 merger or consolidation, the capital stock of the interim bank immediately following the merger
41 or consolidation shall, by an amendment to the articles of incorporation of the interim bank, be
42 increased to the greater of \$1,000,000 or the amount of capital stock of the existing bank prior to
43 the merger or consolidation.

44 **DFI—Bkg 17.05 Certificate to organize.** Upon approval of the application, the division shall
45 issue to the applicant a certificate to organize the interim bank.

46 **DFI—Bkg 17.06 Notice of approval.** Shareholders of the existing bank who did not vote for
47 the merger or consolidation shall be given notice of the division's approval.

48 **DFI—Bkg 17.07 Articles of incorporation.** Upon approval of the application, the applicant
49 shall file with the division two copies of the articles of incorporation of the interim bank. The
50 articles of incorporation shall be on a form prescribed by the division.

51 **Note:** A copy of the form may be obtained by writing to the Department of Financial
52 Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, or
53 downloaded from the department's website, www.wdfi.org.

54 **DFI—Bkg 17.08 Required documentation.** (1) The following documentation shall be filed
55 with the division prior to the effective date of the merger or consolidation:

56 (a) Copies of the notices sent to the shareholders of each bank for the shareholders meeting to be
57 held to vote on the merger or consolidation. The notice for the interim bank shall be dated after
58 the division has approved the articles of incorporation and capital has been paid-in.

59 (b) Certified copies of the resolutions adopted by the shareholders of each bank involved in the
60 merger or consolidation, including the record of the vote. The resolutions for the interim bank

61 shall be dated after the division has approved the articles of incorporation and capital has been
62 paid-in.

63 (c) Copy of the notice of approval sent to the shareholders of the existing banks who voted to
64 oppose the merger or consolidation.

65 (d) Copy of the Federal Deposit Insurance Corporation's or the Federal Reserve System's
66 approval of the transaction.

67 (e) Amendments to the articles of incorporation of the surviving bank if the merger or
68 consolidation results in changes in the articles of incorporation.

69 *Example: Changes in articles of incorporation include name, location and the amount of*
70 *capital.*

71 (2) The following documentation shall be filed with the division within 90 days after the articles
72 of incorporation of the interim bank have been approved and capital has been paid-in:

73 (a) List of shareholders.

74 (b) Oath of directors.

75 (c) Incorporators' declaration under s. 221.0207(2), Stats., certifying that all stock has been
76 paid-in.

77 (d) The proposed bylaws and the shareholders' resolution adopting the bylaws if the interim
78 bank is the surviving bank in the merger or consolidation.

79 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____
(signature and title of officer)