

**ORDER OF THE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES  
STATE OF WISCONSIN  
ADOPTING EMERGENCY RULES**

To repeal DFI-Sec 4.03(6), to renumber DFI-Sec 4.03(7), to repeal and recreate DFI-Sec 4.03(1) through (4), and to amend DFI-Sec 4.05(5) of the Rules of the Division of Securities relating to conforming Wisconsin's Securities Law rules concerning broker-dealer books and records to federally-mandated standards under the Securities Exchange Act.

Statutory Authority: Sections 551.33(1), and 551.63(1) & (2), Wis. Stats.

Statute Interpreted: Section 551.33(1), Wis. Stats.

**FINDING OF EMERGENCY AND ANALYSIS**

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that the attached rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

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 ("SEC").

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Law dealing with broker-dealer books and records covering the information categories (1) to (6) described above are superseded by the federal rules established by the SEC that became effective today, May 2, 2003. Additionally, certain existing Wisconsin Rule of Conduct provisions tied to the existing Wisconsin books and records rules need to be revised appropriately.

Consequently, it is necessary to immediately revise and amend Wisconsin's broker-dealer books and records rules to conform to the federal rules that now have become effective, and to remove inconsistent requirements contained in the existing Wisconsin books and record-keeping rules. 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 as set forth in this Order Adopting Emergency Rules.

Accordingly, the emergency rules do the following:

(1) Under Section 1, 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.

(2) Section 2 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.

(3) Section 3 is a renumbering of current rule DFI-Sec 4.03(7) to reflect the repeal of DFI-Sec 4.03(6) in Section 2 above.

(4) Under Section 4, 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.

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

**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 section 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.

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

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

**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)(c).

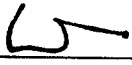
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#### EFFECTIVE DATE

The emergency rules adopted by this Order shall take effect upon publication of the rules in the official state newspaper and compliance with other applicable requirements, pursuant to the provisions of sec. 227.24, Wis. Stats.

Dated at Madison, Wisconsin, this 22 day of May 2003.

[SEAL]

  
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 Patricia D. Struck  
 Administrator