

DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF SECURITIES

YEAR 2003 ANNUAL RULES REVISION

SECTION 1. DFI-Sec 2.02(4)(b) is repealed.

ANALYSIS: The repeal in this SECTION is necessary to reflect the legislative repeal and recreation contained in 2001 Wisconsin Act 44 (which became effective October 1, 2002) that “federalized” Wisconsin’s “individual accredited investor” securities registration exemption in section 551.23(8)(g). The specific rule subsections contained in DFI-Sec 2.02(4)(b) [which is being repealed] set forth the tests contained in subsections (4), (5) and (6) of the federal accredited investor definitional rule 230.501(a) for individuals to qualify for purposes of the Wisconsin exemption in sec. 551.23(8)(g), of the Wisconsin Securities Law [by meeting specified annual income or net worth requirements, or being an officer, director, or general partner of the issuer]. Because the 2002 legislative change to 551.23(8)(g) and the related definition in 551.02(1g) incorporated the entire list of persons and entities contained in federal rule 230.501(a), the Wisconsin rule listing certain individual person-related subsections of the federal rule is unnecessary.

SECTION 2. DFI-Sec 2.02(4)(a) 1, 2, 3, 4, 5, 6 and 7 are renumbered DFI-Sec 2.02(4) (intro.), (a), (b), (c), (d), (e), (f) and (g).

ANALYSIS: This renumbering is necessary to maintain the proper numbering sequence resulting from the repeal of DFI-Sec 2.02(4)(b) in the preceding SECTION.

SECTION 3. DFI-Sec 8.03 is amended to read:

DFI-Sec 8.03 Appearances and defaults. Each party shall appear at the hearing and any prehearing conference either in person or by a duly authorized representative. If any party, without good cause, fails to file an answer as provided in s. DFI-Sec 8.02, or fails to appear at a hearing or prehearing conference of which the party has notice, such failure may be deemed a default and the hearing examiner may thereupon make a decision, enter an order, or otherwise dispose of the case.

Note: See the Dane County, Wisconsin, Circuit Court decision *Lee R. Krahenbuhl, DDS v. Wisconsin Department of Regulation and Licensing* (Memorandum Decision, February 26, 2003, Case No. 02-CV. 1148, Dane County) which held that only an attorney authorized to practice law in Wisconsin may participate in a contested case administrative hearing, action or proceeding. A copy of the decision may be obtained from the division of securities, department of financial institutions.

ANALYSIS: The Note added to this rule (dealing with appearances at hearings and prehearing conferences) is for the purpose of providing notice (to legal counsel not licensed to practice law in Wisconsin who look to represent a named party in a Division Order or Notice of Hearing) of a recent Dane County, Wisconsin Circuit Court decision. Under the decision in the *Krahenbuhl* case cited in the Note, only an attorney authorized to practice law in Wisconsin may participate in a contested case administrative hearing, action or proceeding.

SECTION 4. DFI-Sec 8.06 is amended to read:

DFI-Sec 8.06 Service of orders. A copy of every order issued without a hearing shall be sent promptly by certified mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or a legal representative the party's attorney of record .

ANALYSIS: The amendments to this rule regarding service of Division administrative orders provide that certified mail service can be made to a named party's attorney of record. Such amendments conform the rule to the Chapter 227 Administrative Procedure provision in sec. 227.48(1), Wis. Stats., dealing with service of administrative decisions which permits service by mail to a named party's attorney of record.

SECTION 5. DFI-Sec 8.07 is amended to read:

DFI-Sec 8.07 Effectiveness of orders or other documents, notice. Every order or other document is effective when signed. Mailing of any order or document under this chapter to the last known address of any person, or personal service, constitutes notice thereof to the person, provided that if the person is a corporation, service by certified mail to the corporation's registered agent at the registered agent's last known address also constitutes notice to the corporation.

ANALYSIS: The amendment to this rule (relating to effectuating service of summarily-issued Division administrative orders on named parties) provides that if the named party is a corporation, notice to such named party/corporation also may be achieved via certified mail sent to the corporation's registered agent at the registered agent's last known address.

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The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2)(intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED at Madison Wisconsin, this _____ day of _____, 2003.

[SEAL]

PATRICIA D. STRUCK
Administrator
Division of Securities