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SECRETARY

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## Correspondence Memorandum

**Date:** February 8, 2019

**To:** Wisconsin Deferred Compensation Board

**From:** Shelly Schueller, Director  
Wisconsin Deferred Compensation Program  
Dan Hayes, Attorney  
Office of Legal Services

**Subject:** Proposed Administrative Rule Changes

**This memo is for informational purposes only. No Board action is required.**

This memorandum informs the Board of proposed changes to the Wisconsin Administrative Code that affect the Wisconsin Deferred Compensation Program (WDC). As part of a larger rule that makes technical changes throughout the code, ETF is proposing two changes to Chapter ETF 70. A statement of scope was approved by the Governor on January 30, 2019; a copy is attached.

The two changes affecting the WDC are as follows:

- Amend Wis. Admin. Code § ETF 70.03(4). This subsection currently requires the Board to annually evaluate the performance of the program administrator, Empower Retirement, to determine compliance with its contract with the Board and established performance standards. ETF proposes updating the administrative code to reflect that such evaluations are completed every two years, rather than annually. For the past fifteen years, the contract compliance audit has been completed on odd-numbered years. This every-other-year approach has worked well and means that any significant findings can be addressed and resolved prior to the start of a new audit cycle.
- Amend Wis. Admin. Code § ETF 70.08(3). This subsection currently provides for a two-step process over a 12-month period for participants to move their investment to another investment product if the Board decides to remove an investment product from the plan. This process is significantly longer than standard practice in other plans and limits the Board's flexibility to make plan changes. ETF proposes modifying this process to provide a 90-day period for

Reviewed and approved by David Nispel, General Counsel, Legal Services

Electronically Signed 2/13/19

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participants to move their investment or have it moved for them to a board designated alternative investment product.

The next step in the process is drafting the rule by ETF staff. Once the draft rule has been reviewed by the Legislative Council and has a public hearing, it will come to the Board for approval prior to being sent to the Legislature for further review.

Staff will be available at the Board meeting to answer any questions.

Attachment: Technical Scope Statement

# STATEMENT OF SCOPE

## Department of Employee Trust Funds

**Rule No.:** Chapters ETF 10, 11, 20, 40, 60 and 70 (revised)

**Relating to:** Technical Changes to ETF Rules

**Rule Type:** Permanent

### 1. Detailed description of the objective of the proposed rule:

The objective of this rule is to make technical updates to existing ETF rules, delete obsolete language in ETF rules, and make other minor substantive changes. The changes include updating the code to be consistent with the break in service provisions of 2015 Wisconsin Act 187, removing obsolete references related to domestic partnerships, updating ETF's receipt of electronic correspondence rule to make it consistent with the Wisconsin circuit court e-filing initiative, eliminating language that applies to domestic relations orders filed on or after January 1, 1982, and before April 28, 1990, because, as of May 1, 2018, ETF can no longer accept domestic relations orders more than 20 years old pursuant to a recent Wisconsin Supreme Court decision, modifying the requirement to evaluate the third-party administrator of the Wisconsin Deferred Compensation Program from annually to biennially to make the code consistent with modern auditing practices, modifying the Wisconsin Deferred Compensation Program investment product termination process, correcting outdated cross-references to statutes, and other minor changes.

### 2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

This rule is technical in nature and does not contain significant changes in policy. It is designed to update ETF rules by deleting obsolete regulatory provisions, terms, and cross-references and making ETF regulations consistent with recent statutory changes. The alternative is continuing with the outdated language in ETF's current code.

### 3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wis. Stat. s. 40.03 (2) (i) The secretary... Shall promulgate, with the approval of the board, all rules, except rules promulgated under par. (ig) or (ir), that are required for the efficient administration of the fund or of any of the benefit plans established by this chapter. In addition to being approved by the board, rules promulgated under this paragraph relating to teachers must be approved by the teachers retirement board and

rules promulgated under this paragraph relating to participants other than teachers must be approved by the Wisconsin retirement board, except rules promulgated under s. 40.30.

Wis. Stat. § 40.03 (2)(ig): The secretary... Shall promulgate, with the approval of the group insurance board, all rules required for the administration of the group health, long-term care, income continuation or life insurance plans established under subchs. IV to VI.

Wis. Stat. s. 40.03 (ir) The secretary... Shall promulgate, with the approval of the deferred compensation board, all rules required for the administration of deferred compensation plans established under subch. VII.

General rulemaking authority for state agencies is found at Wis. Stat. s. 227.11 (2):

Rule-making authority is expressly conferred as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating

the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

**4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

State employees will spend an estimated 80 hours to develop this rule.

**5. List with description of all entities that may be affected by the proposed rule:**

The proposed rule will affect WRS employers and employee participants and participants in the Wisconsin Deferred Compensation Program.

**6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

N/A

**7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

ETF anticipates that the proposed rule will have no economic impact locally or statewide and will not impact small businesses.

**Contact Person:** ETF General Counsel David H. Nispel. Phone: (608) 264-6936



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Robert J. Conlin, Secretary  
Department of Employee Trust Funds

1/14/2019

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Date Submitted