Chapter SEC 3

REGISTRATION REQUIREMENTS AND PROCEDURES

SEC 3.01 Commissions and expenses. (1) The aggregate amount of underwriters' and sellers' discounts, commissions and other compensation shall be reasonable, and except for issuers specified in sub. (2), is presumed reasonable if it does not exceed 10% of the aggregate selling price of the securities or if, when added to the other expenses paid or payable in connection with the offering and sales of the securities, the total of commissions and other expenses does not exceed 15% of the aggregate selling price of the securities. For corporate equity offerings of less than $5 million in aggregate proceeds, if the aggregate amount of underwriters' and sellers' discounts, commissions and other compensation does not exceed 12% of the aggregate selling price of the securities, the total of commissions and other offering expenses is not subject to limitation.

(2) With respect to redeemable securities of investment companies registered under the investment company act of 1940, the maximum selling commission or discount is presumed reasonable if it does not exceed 9% of the selling price of the securities, including the percentage amount of any redemption fee payable upon redemption of the securities.

(3) With respect to investment company shares or face amount certificates sold pursuant to a contractual plan or program payable in installments, the selling commission may be deemed unreasonable if more than a pro rata portion of the total selling commission payable over the period of the contract is payable in connection with any installment payment, or if any charge or penalty is assessed for failure to make any installment payment.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; am. (1), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.02 Offering price. The offering price of any security shall be fair and equitable to purchasers. With respect to common stock, unless the offering is made pursuant to a firm commitment underwriting by a broker-dealer that is not affiliated with the issuer by means of direct or indirect common control and where the offering price of the common stock is at least $5 per share, the offering price shall be reasonably related to the existing public market for the stock or to the net earnings of the issuer as stated in the prospectus.

(1) With respect to common stock of issuers not in the promotional or developmental stage, the offering price may be deemed unfair or inequitable to purchasers unless it meets the requirements of par. (a), (b) or (c) of this subsection.

(a) The price for the stock does not exceed 25 times the issuer's net earnings per share for the last fiscal year, or does not exceed 25 times its average annual net earnings per share for the last 3 years prior to the proposed offering date, or does not exceed such other multiple of net earnings as the commissioner may prescribe.

(b) Information is filed with the commissioner showing there exists an adequate public market for the stock, provided that a public market will be presumed adequate if:

1. The stock is traded on a national or regional stock exchange registered under the securities exchange act of 1934;

2. The stock is quoted on the national association of securities dealers automated quotation system; or

3. Each of the criteria in this subdivision are met, consisting of there having been at least 500 holders of the stock at the beginning and end of the 6-month period preceding the date of the filing, at least 200,000 shares of the stock are publicly outstanding (exclusive of shares held by officers, directors, or 5% shareholders), at least 2 broker-dealers regularly make a market in the stock, at least one financial publication regularly quotes the market price, and trading of the issuer's stock in the 6-month period preceding the date of the filing averaged at least 100 transactions or at least 5% of the outstanding shares (not including shares held by officers, directors or 5% shareholders) per month.

(c) If no adequate public market exists, information satisfactory to the commissioner is filed justifying the proposed offering price-earnings ratio in relation to price-earnings ratios of companies comparable to the issuer in terms of size, history of operations, industry and products, and other relevant factors; such information may be contained in an underwriter's memorandum on the issuer prepared in connection with the proposed offering.

(2) With respect to common stock of issuers in the promotional or developmental stage as defined in sub. (3), the offering price shall be reasonably related to the price paid for the stock by promoters or controlling persons of the issuer in transactions effected prior to the public offering, except as permitted under s. SEC 3.04.

(3) In this chapter, an issuer in the "promotional or developmental stage" means an issuer that has no significant record of operations or earnings prior to the public offering date.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (4), Register, August, 1972, No. 200, eff. 9-1-72; am. (intro), r. (1) and (2), cr. (1), renum. (4) to be (2) and am. r. and recr. (3), Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (b) and (c), and (3), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (a), Register, December, 1981, No. 312, eff. 1-1-82; am. (intro.), Register, December, 1982, No. 324, eff. 1-1-83; am. (intro.), (1)(a) and (b), Register, December, 1983, No. 336, eff. 1-1-84.

SEC 3.03 Options and warrants. The amounts and kinds of options and warrants to purchase securities issued or sold, other than ratably to purchasers, in connection with a proposed offering of equity securities or securities convertible into equity securities, as well as the amounts and kinds of options and warrants issued or reserved for issuance at the date of the public offering, shall be reasonable. Options and warrants are presumed reasonable if they satisfy the following conditions:

(1) With respect to stock options to employes for incentive purposes, including employe stock purchase agreements extending for a period of more than one year, the options are reasonable in number and method of exercise.

(2) With respect to options or warrants to underwriters:

(a) The options or warrants are not granted to the underwriters until the entire issue has been sold, and are not transferable except among the partners or shareholders of the underwriter;

(b) The options or warrants are issued to managing underwriters under a firm underwriting agreement, and are not transferable except among the partners or shareholders of the underwriter;

(c) The exercise price of the options or warrants is at least equal to the public offering price plus a step-up of the public offering price of either 7% each year such options or warrants are outstanding, so that the exercise price throughout the second year is 107%, throughout the third year 114%, throughout the fourth year 121%, and throughout the fifth year 128%; or in the alternative, 20% at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the underwriters at the time that the options or warrants are issued;

(d) The options or warrants are issued by a company which is in the promotional or developmental stage, or which lacks a public market for its stock, or other factors justify the issuance of options to obtain underwriting services; provided that the direct commissions to the underwriters are lower than the usual and customary commissions in the absence of the options or warrants;

(e) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of the options or warrants, and, if the reason relates to future advisory services to be performed by the underwriter, a statement to that effect is placed in the prospectus; and

(f) The value of the options or warrants shall be included in the computation of underwriting commissions and discounts. The market value of such options or warrants, if any, shall be used, and if no market value exists, a presumed fair value of not less than 20% of the public offering

price of the stock to which the options or warrants relate shall be used, unless evidence indicates that a different value exists.

(3) With respect to options or warrants issued to financing institutions, other than underwriters, in connection with financing arrangements made by the issuer:

(a) The options or warrants are issued in connection with the issuance of the evidence of indebtedness of the loan;

(b) The options or warrants expire not later than 2 years after the final maturity date of the loan;

(c) The options or warrants are issued as a result of bona fide negotiations between the issuer and parties not affiliated with the issuer;

(d) The exercise price of the options or warrants is not less than the fair market value of the stock subject thereto on the date the loan is approved; and

(e) The number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the principal amount of the loan.

(4) (a) Except as provided in par. (b), the total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding options and warrants issued to financing institutions, other than underwriters, and excluding those issued to an entity being acquired, does not exceed either 10% of the shares to be outstanding upon completion of the offering or 10% of the shares outstanding during the period the registration statement is effective. The number of options and warrants reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective.

(b) The total amount of options and warrants issued or reserved for issuance at the date of the public offering by a Wisconsin corporation having its principal office in Wisconsin, excluding options and warrants issued to financing institutions, other than underwriters, and excluding those issued to an entity being acquired, does not exceed 20% of the shares to be outstanding upon completion of the offering, with options and warrants not to exceed 10% for any one person, or 20% of the shares outstanding during the period the registration statement is effective. The number of options and warrants reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective.

(5) All options and warrants except those issued to financing institutions shall be issued at not less than 85% of fair market value on the date of issuance, and the exercise price shall not be subject to change by the issuer except in accordance with anti-dilution provisions in effect on the date of issuance.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (1) and (2) (intro. par.), Register, August, 1972, No. 200, eff. 9-1-72; am. (1), (2) (intro), (2)(a) to (e), (3)(intro.), (3)(a) to (d) and (4), Register, December, 1977, No. 264, eff. 1-1-78; am. (4), Register, December, 1979, No. 288, eff. 1-1-80; am. (2) (c), (d) and (f) and (3) (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (intro.) and (4), Register, December, 1981, No. 312, eff. 1-1-82;

am. (1), renum. (4) to be (4) (a) and am., cr. (4) (b), Register, December, 1982, No. 324, eff. 1-1-83; am. (5), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.04 Promotional or cheap stock. (1) The offer or sale of equity securities or securities convertible into equity securities may be deemed unfair and inequitable to purchasers and to involve unreasonable amounts of promoters' profits or participations if the issuer has issued promotional or cheap stock that fails to comply with the provisions of the North American Securities Administrators Association Statement of Policy on Cheap Stock, adopted April 23, 1983. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2) and (4), Register, August, 1972, No. 200, eff. 9-1-72; am. (1), (3)(c) and (4), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), (3) (a) and (b), (4) (intro.), (a) 2., (b) (intro.), (d) and (e), Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. Register, December, 1983, No. 336, eff. 1-1-84.

SEC 3.05 Promoters' investment. The offer or sale of securities of an issuer in the promotional or developmental stage may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Existing Capitalization, adopted April 23, 1983. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2) (a) and (3), Register, August, 1972, No. 200, eff. 9-1-72; am. (1), (2) (a) and (6), r. (3), Register, December, 1977, No. 264, eff. 1-1-78; am. (1), (2) (intro.) and (2) (a), Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. Register, December, 1983, No. 336, eff. 1-1-84.

SEC 3.06 Preferred stock and debt securities. (1) The offer or sale of preferred stock of an issuer may be deemed unfair and inequitable to purchasers unless the net earnings of the issuer, for its last fiscal year prior to the offering and for the average of its last 3 fiscal years prior to the offering, are sufficient to cover the dividends on the preferred stock proposed to be offered. Net earnings shall be determined exclusive of non-recurring items and shall be adjusted for any preferred stock to be redeemed with the proceeds of the offering, less applicable income tax effects. The commissioner may waive the requirement under this subsection upon evidence showing a sufficient future net earnings capability including, but not limited to, evidence set forth in a financial forecast examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements as promulgated by the american institute of certified public accountants.

(2) The offer or sale of debt securities of an issuer may be deemed unfair and inequitable to purchasers unless the net earnings of the issuer, for its last fiscal year prior to the offering and for the average of its last 3 fiscal years prior to the offering, are sufficient to cover the interest requirements on all debt securities issued subsequent to its last fiscal year, including the securities proposed to be offered. Net earnings shall be determined before income taxes, depreciation and extraordinary items, and shall be adjusted for any debt securities to be redeemed with the proceeds of the offering. The commissioner may waive the requirement under this

subsection upon evidence showing a sufficient future net earnings capability including, but not limited to, evidence set forth in a financial forecast examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements as promulgated by the american institute of certified public accountants.

(3) If the issuer has made or proposes to make any material acquisitions subsequent to the last year specified in sub. (1) or (2), the earnings for the year shall be restated on a pro forma basis to reflect the acquisitions.

(4) The offer or sale of preferred stock or debentures by an issuer in the promotional or developmental stage is deemed unfair and inequitable to purchasers unless justified by the issuer or registrant under sub. (1) or (2).

(5) This rule does not apply to the offer or sale of:

(a) Debt securities by a nonprofit issuer under s. 551.23(15), Stats.;

(b) Securities issued pursuant to a voluntary or involuntary corporate reorganization; or

(c) Securities of an issuer whose financial structure or the issuance of whose securities is regulated by a federal or state governmental authority.

(6) The offer or sale of debt securities may be deemed unfair and inequitable to purchasers if the issuer offers to repurchase the securities at the request of the holder prior to maturity (except pursuant to sinking fund provisions or optional redemption provisions on specified dates) unless made in compliance with the following provisions:

(a) *Threshold test.* Subject to par. (b), an issuer may repurchase its debt securities at the request of the holders if its aggregate net earnings for the 3 preceding years and in the year immediately preceding the year of repurchase equalled or exceeded its aggregate fixed charges, as evidenced by a written statement of an independent certified public accountant, in connection with the annual examination of the issuer's financial statements, filed with the commissioner, as to whether or not the accountant has obtained knowledge of any failure of the issuer to meet this test. In this paragraph:

1. "Net earnings" means income before income taxes, extraordinary items and interest expense.

2. "Fixed charges" means interest on all debt, and dividends on other fixed obligation securities such as preferred stock.

(b) *Conditions of repurchase.* 1. Order of repurchase. Subject to the limitation in subd. 2., securities shall be repurchased on a first-come, first-served basis, except that no repurchases may be made from any person controlling, controlled by, or under common control with the issuer until all other pending requests for repurchase have been satisfied.

2. Limit on repurchases from one person. The issuer may not, in any 6-month period, repurchase from any person, including all joint, common and beneficial owners with the person, more than one percent of the publicly-held debt securities outstanding at the time repurchase is made until all other pending requests for repurchase of one percent or less have

been satisfied. This limitation does not apply to the repurchase of securities held as of August 2, 1973, by persons who as of that date held more than one percent of the outstanding debt securities.

3. Limit on total repurchases. a. Repurchases shall not reduce the issuer's current assets, exclusive of excess inventory, to an amount less than its current liabilities, nor reduce its total assets to an amount less than its total liabilities, excluding shareholder's equity. In this subsection, "excess inventory" means inventory in excess of a 4-month supply based on sales of the preceding year.

b. If the issuer is engaged in a business for which generally accepted accounting practices do not provide or permit the use of a classified balance sheet, current assets means total assets less property and equipment, net of depreciation; unamortized debt expense; and other assets not acquired in the normal course of business and expected to be liquidated after 1 year from the balance sheet date; and current liabilities means total liabilities less non-current maturities of long-term debt and shareholder's equity.

4. Reports. Within 30 days after the end of each month during which repurchases are made, the issuer shall file with the commissioner a balance sheet (which may be unaudited) as of the beginning of the month during which repurchases were made, and a statement as to the total amount of repurchases made during the month; the total amount of repurchase requests which were not met; and the name, address and amount of repurchase from every person controlling, in control of, or under common control with, the issuer. If the issuer prepares monthly financial statements, the reports may be made quarterly covering the preceding 3 months and shall be filed within 30 days after the end of the quarter.

(c) *Cover page of prospectus.* The cover page of the prospectus relating to the securities shall include the following statement in bold face type: "THESE SECURITIES MAY BE REDEEMED PRIOR TO MATURITY AT THE REQUEST OF THE HOLDER ONLY UNDER CERTAIN RESTRICTED CONDITIONS, SEE PAGE ____." On the page referred in the statement, the limitations set forth in this subsection, the amount of the debt securities redeemed in each of the preceding 3 years, the ratio of net earnings to fixed charges in each of the preceding 3 years, and the average ratio for those 3 years, shall be described in full.

(d) *Subscription agreement.* Any subscription agreement relating to the debt securities shall include the following statement in bold face type: "THESE SECURITIES MAY BE REDEEMED PRIOR TO MATURITY AT THE REQUEST OF THE HOLDER ONLY UNDER CERTAIN RESTRICTED CONDITIONS, SEE PAGE ____." A copy of the subscription agreement shall be provided to each purchaser.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2), Register, August, 1972, No. 200, eff. 9-1-72; r. and recr. (1) and (2), am. (3), (4) and (5), cr. (6), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), Register, September, 1978, No. 273, eff. 10-1-78; am. (1), (2), (3), (6) (a), (b) 2., (b) 3.a, (b) 3.b, (b) 4., (c) and (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) and (2), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) and (2), Register, December, 1986, No. 372, eff. 1-1-87.

SEC 3.07 Voting rights. (1) If the issuer is a corporation or business trust having more than one class of equity securities authorized or outstanding, the offer or sale may be deemed unfair and inequitable to purchasers if the class of equity securities offered or sold to the purchasers:

(a) Has no voting rights; or

(b) Has less than equal voting rights, in proportion to the number of shares of each class outstanding, adjusted for any prior reclassification of securities, on any matter, including election to the board of directors or board of trustees of the issuer; unless preferential treatment as to dividends and liquidation is provided with respect to the class of equity securities offered or sold or the inequality in voting rights is otherwise justified.

(2) If the issuer is a partnership, the offer or sale of its limited partnership interests may be deemed unfair and inequitable to purchasers unless the partnership agreement provides that:

(a) The limited partners, by a vote of a majority of the outstanding amount of limited partnership interests, shall have the right to remove the general partner, to amend the partnership agreement, to compel or refuse to approve the sale of all or substantially all the partnership's assets, to dissolve the partnership, and to continue its business with a substituted general partner;

(b) The general partner shall cause a vote to be taken on any of the matters referred to in this subsection upon the written request of 10% of the outstanding amount of limited partnership interests;

(c) Each limited partner has the right to a complete list of names, addresses, and interests of all limited partners, upon written request to the general partner, for any proper purpose;

(d) The partnership agreement shall not be amended in any material respect affecting the rights or interests of the limited partners except by the affirmative vote of not less than a majority of the outstanding amount of limited partnership interests; and

(e) All contracts whereby services or goods are to be furnished to the partnership by the general partners or any entity directly or indirectly controlled by the general partner shall provide that the contract may be modified only by a vote of a majority of the outstanding limited partnership interests, and shall allow termination of the contract without penalty upon 60 days notice by a vote of the majority of the outstanding limited partnership interests; or unless the partnership agreement includes appropriate alternative provisions or the lack of limited partners' rights is otherwise justified.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; am. (intro.) and (2), Register, December, 1977, No. 264, eff. 1-1-78; ren. (2) to be (3) and cr. (2), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (intro.), (3) (b), (c) and (e), Register, December, 1980, No. 300, eff. 1-1-81; am. (1), r. (2), renum. (3) to be (2), Register, December, 1983, No. 336, eff. 1-1-84.

SEC 3.08 Capitalization. The offer or sale of debt securities shall be in an amount which, upon completion of the offering, is reasonable in proportion to the amount of equity of the issuer, with reasonableness to be determined in relation to the prevailing debt-equity ratios for comparable companies in the issuer's industry.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.09 Open-end investment companies. The offer or sale of redeemable securities of an open-end management investment company, as de-

fined in the investment company act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The investments of the company shall be restricted in the following respects:

(a) No diversified investment company may purchase the securities of any issuer, excluding government securities, if by reason thereof the value of its investment in all securities of that issuer will exceed 5% of the value of its total assets.

(b) 1. No investment company, other than an investment company that invests more than 80% of its assets in debt securities, may purchase any securities of the classes specified in this subsection, if by reason thereof the value of its aggregate investment in those classes of securities will exceed: 10% of its total assets in securities of issuers which the company is restricted from selling to the public without registration under the securities act of 1933; 10% of its total assets in the securities of one or more real estate investment trusts or in one or more investment companies; 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than 3 years, and equity securities of issuers which are not readily marketable. 2. An investment company may not invest in options, financial futures or stock index futures, other than hedging positions or positions that are covered by cash or securities, if as a result thereof, more than 5% of its assets would be so invested.

(c) No investment company may invest any part of the total assets in real estate or interests in real estate, excluding readily marketable securities; commodities, other than precious metals not to exceed 10% of the investment company's total assets; commodity futures contracts or options thereon other than as permitted by investment companies qualifying for an exemption from the definition of commodity pool operator under 17 CFR 4.5 (c) (2) (i); or interests in commodity pools or oil, gas or other mineral exploration or development programs.

(d) The fundamental investment policies of the company shall be stated in the prospectus in reasonable detail and shall not be materially changed in any respect unless authorized by the vote of a majority of the outstanding voting securities of the company.

(2) The policy stated or followed by any investment company, other than one that invests 80% or more of its assets in debt securities, of engaging in any material respect in any of the following or related speculative activities, whether individually or in combination, and the relatively greater risks or costs involved in those activities, shall be disclosed or clearly referred to in bold face type on the cover of the prospectus or on a prospectus supplement satisfactory in form to the commissioner:

(a) Borrowing money for investment in securities, excluding borrowing for temporary purposes;

(b) Purchasing securities for short-term trading, other than securities issued by the U.S. government;

(c) Purchasing restricted securities as specified in this section;

(d) Purchasing put or call options or combinations thereof; or

(e) Short selling of securities, excluding short selling against the box.

(3) The net assets of an investment company, upon completion of the initial public offering of its securities or within a period of 2 years after the commencement thereof or such additional period as the commissioner may permit, shall not be less than one million.

(4) All payments by an investment company upon redemption of securities of which it is the issuer shall be made in cash, except that the payments in cash by a company which has filed an election pursuant to rule 18f-1 under the Investment Company Act of 1940 may be limited to the amount specified thereunder. The company shall give prompt written notice to the commissioner prior to effecting any redemption in assets other than cash in this state, specifying the manner in which the redemption will be effected and the securities to be distributed upon redemption. The redemption fee payable by any shareholder shall not exceed 1% of the amount receivable upon redemption of his shares, except that if the shares of a company are sold without sales commission, the redemption fee shall not exceed 2% of the amount, subject to such conditions as the commissioner may prescribe.

(5) An investment company shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless the transactions, including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting the transactions, are not unfair or unreasonable to the shareholders of the company. The commissioner may require the company to file periodic reports concerning all such brokerage transactions.

(6) Each registered investment company shall notify the commissioner promptly when it is not in compliance with this section, and its registration statements shall be subject to revocation or suspension.

History: Cr. Register, August, 1972, No. 200, eff. 9-1-72; renum. from SEC 3.11, am. (intro.) and (3), Register, December, 1977, No. 264, eff. 1-1-78; r. (3), renum. (4) to (7) to be (3) to (6), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a), (b) and (c), (2) (intro.) and (e), (4) to (6), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (b) and (c), (2) (intro.) and (b), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.10 Closed-end investment companies. The offer or sale of securities of a closed-end management investment company, as defined in the Investment Company Act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The company shall not at the time of purchase, as to its total assets:

(a) Invest more than 30% in restricted debt securities, unless permitted by the commissioner upon proper justification;

(b) Invest more than 15% in non-liquid investments, including, but not limited to, commodities, real estate, general and limited partnership interests, oil and gas interests, options and warrants, puts, calls, straddles, spreads, and restricted securities, except as provided in par. (a); or

(c) Invest more than 10% in the securities of real estate investment trusts or other investment companies, unless permitted by the commissioner upon a showing that such investments involve no duplication of management or advisory services.

(2) The company shall not invest in securities carrying more than 10% of the voting rights of any issuer;

(3) The company shall not invest in more than 10% of the equity securities of any one issuer;

(4) The company shall not at any time, as to 75% of its total assets, invest more than 5% in the securities of any one issuer, exclusive of government securities.

(5) The company shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless the transactions (including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting the transactions) are not unfair and inequitable to shareholders.

(6) Subsections (1) to (5) notwithstanding, no closed-end investment company which engages in any of the following or related speculative activities may be registered unless appropriate disclosure is made in bold face type on the cover of both the preliminary and final prospectuses, or on a prospectus supplement satisfactory in form to the commissioner, as follows: "These securities may involve a high degree of risk because the fund is authorized:

(a) To engage in short-term trading resulting in portfolio turnover greater than 100% annually (see page ___).

(b) To leverage more than 10% of its total assets (see page ___).

(c) To invest more than 5% of its assets in restricted securities exclusive of debt securities (see page ___).

(d) To engage in short sales, excluding short sales against the box (see page ___).

(e) To invest more than 5% of its total assets in foreign securities as to which the fund pays interest equalization tax (see page ___).

(f) In relation to 85% of its total assets, to invest more than 5% of such assets in any one issuer (see page ___)."

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; r. (7), Register, December, 1979, No. 288, eff. 1-1-80; am. (5) and (6), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 3.11 Real estate programs. The offer or sale of interests in a limited partnership which will engage in real estate syndications may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy regarding real estate programs, adopted April 15, 1980, as amended effective March 30, 1982, April 23, 1983, April 27, 1984 and January 1, 1986, including comments. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in the CCH NASAA Reports pub-

lished by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81; renum. to be (1) and am., cr. (2), Register, April, 1982, No. 316, eff. 5-1-82; am. (1), r. (2), Register, December, 1983, No. 336, eff. 1-1-84; am. Register, December, 1984, No. 348, eff. 1-1-85; am. Register, December, 1986, No. 372, eff. 1-1-87.

SEC 3.12 Oil and gas programs. (1) Except as provided in sub. (2), the offer or sale of interests in a limited partnership which will engage in oil or gas well drilling and exploration activities or the purchase of production from oil and gas wells may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs, adopted September 22, 1976, as amended October 12, 1977, October 31, 1979, April 23, 1983 and April 27, 1984. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

(2) (a) In addition to the provisions of subsection V.B.1. (a) (3) of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs ("NASAA Oil and Gas Program Registration Guidelines"), sponsor compensation, determined on a modified functional allocation basis, where the sponsor pays all capital costs on initial wells in a prospect and pays a corresponding pro-rata percentage of the costs on subsequent wells in a prospect, shall be presumed reasonable only if the aggregate of the costs contributed by the sponsor constitute at least 10% of the total program costs. If the costs contributed by the sponsor constitute at least 10% of the program costs, it shall be presumed reasonable for the sponsor to receive as compensation 25% of the program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs.

(b) In addition to the provisions of subsection V.B.2. (a) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation determined on a carried interest or net profits interest basis shall be presumed reasonable only if:

1. With respect to compensation determined on a carried interest basis for sponsors that bear at least 10% of all program costs as defined in subd. 3., the sponsor receives as compensation not more than 15% of program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs;

2. With respect to compensation determined on a net profits interest basis for sponsors who bear less than 10% of all program costs as defined in subd. 3., the sponsor receives as compensation not more than 15% of the cash actually distributed by the program, plus the same percentage of cash that the sponsor's contributed costs bear to the program's total costs; and

3. For purposes of this paragraph, "program costs" are defined as all costs incurred by a program, including those costs paid from capital contributions, assessments, borrowings and reinvested revenues, but excluding organizational and offering expenses and management fees where the total of such expenses and fees do not exceed 15% of initial program subscription proceeds.

(c) In addition to the provisions of subsection VI.A.1. (4) (i) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation that includes overriding royalty interests in program wells payable to the sponsor, any affiliate or their respective employes, shall be presumed reasonable if the total compensation, including the overriding royalties, does not exceed the presumed reasonable percentages permitted by the sponsor compensation provisions in either the NASAA Oil and Gas Program Registration Guidelines or in any alternative provision in sub. (2). However, an overriding royalty interest paid to a geologist employed by or affiliated with the sponsor shall not be included in the computation of sponsor compensation provided that:

1. The percentage of the overriding royalty is not greater than the percentage customarily charged or received by unaffiliated geologists rendering similar services for comparable prospects in arm's-length transactions with unaffiliated parties in the same geographic area; and

2. The program's interest in the prospect that has overriding royalties paid to a geologist employed by or affiliated with the sponsor is subject to no other overriding royalties other than those payable to landowners or sublessors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81; renum. to be (1) and am., cr. (2), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and (2)(b) 1., Register, December, 1983, No. 336, eff. 1-1-84; am. (1), Register, December, 1984, No. 348, eff. 1-1-85.

SEC 3.13 Cattle feeding programs. The offer or sale of interests in a limited partnership which will engage in cattle feeding operations may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for the Registration of Publicly Offered Cattle Feeding Programs, adopted September 17, 1980. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 3.14 Debt securities issued by a church or congregation. The offer or sale of debt securities issued by a church or congregation, the proceeds of which are to be utilized to finance or refinance the purchase, construction or improvement of buildings or related facilities (including the underlying property) of the issuer may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines for Offerings of Church Bonds, adopted October, 1979. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 3.145 Debt securities issued by a health care facility. (1) Except as provided in sub. (2), the offer or sale of debt securities issued by a hospital or other health care facility, the proceeds of which are to be utilized to finance or refinance the purchase, construction or improvement of buildings or related facilities and equipment, including the underlying prop-

erty, of the issuer may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Health Care Facility Statement of Policy, adopted April 5, 1985. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in the CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

(2) (a) With reference to the provisions of numbered paragraph 1. of the Financial Statement of Policy portion of the Health Care Facility Statement of Policy, the computation of the sufficiency of an issuer's excess of revenues over expenses using the formula in that paragraph may also include an add-back to revenues of the interest on existing indebtedness of the issuer that will remain outstanding after the proposed offering of debt securities by the issuer is completed.

(b) With reference to the provisions of numbered paragraph 4 (b) of the Financial Statement of Policy portion of the Health Care Facility Statement of Policy, the following alternative is provided to the requirement in that paragraph dealing with what a trust indenture shall provide with respect to a trustee's obligation to furnish a list of bondholders upon request. Alternatively, the trust indenture shall provide that if three or more bondholders apply in writting to the trustee under the trust indenture and furnish to the trustee reasonable proof that each bondholder has owned a bond for a period of at least six months preceding the date of the application, and the application states that the bondholders desire to communicate with other bondholders with respect to their rights under the trust indenture or under the bonds and is accompanied by a copy of the form of proxy or other communication which the applicants propose to transmit, then the trustee, within five business days after the receipt of the application shall do either of the following:

1. Afford the applicants access to the information preserved at the time by the trustee; or

2. Inform the applicants of the approximate number of bondholders whose names and addresses appear in the information preserved at the time by the trustee and the approximate cost of mailing to the bondholders the form of proxy or other communication, if any, specified in the application. If the trustee determines not to afford the applicant bondholders access to the information requested, the trustee shall, upon the written request of the applicant bondholders, mail to each bondholder whose name and address appears in the information preserved at the time by the trustee, a copy of the form of proxy or other communication that is specified in the request, with reasonable promptness after a tender to the trustee of the material to be mailed and of payment, or provision for payment, of the reasonable expenses of mailing, unless within five days after the copy of the material to be mailed, a written statement to the effect that, in the opinion of the trustee, the mailing would be contrary to the best interests of the bondholders or would be in violation of applicable law. The written statement shall specify the basis of the trustee's opinion.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.

SEC 3.15 Finance company debt securities. The offer or sale by a finance company of its debt securities may be deemed unfair and inequitable to

purchasers unless the offering complies with the provisions of the Central Securities Administrators Council Statement of Policy on Finance Company Debt Securities, adopted August 12, 1976. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 3.16 Transactions with affiliates. (1) The offer or sale of securities by an issuer that has engaged or has a policy to engage in transactions with officials of the issuer, its controlling persons or affiliates, may be deemed by the commissioner to be unfair and inequitable to purchasers unless the terms of the transactions comply with one or more of the requirements in pars. (a) to (c) of this subsection that are applicable to the facts and circumstances of the transactions, where the transactions are required to be disclosed under sub. (2):

(a) Each transaction, other than a loan transaction, involving officials of the issuer, its controlling persons or affiliates, shall have been authorized at the time of the transaction or shall be subsequently ratified by a majority of the issuer's disinterested directors and shall contain terms no less favorable to the issuer than could have been realized by the issuer in an arm's-length transaction with unaffiliated persons.

(b) 1. For an issuer that is primarily engaged in the business of making loans, each loan transaction involving officials of the issuer, its controlling persons or affiliates shall either:

a. Have been authorized at the time of the transaction or subsequently ratified by vote of a majority of the issuer's disinterested independent outside directors; or

b. Have been made in the ordinary course of the issuer's business, be on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with unaffiliated persons, and in the opinion of management not involve more than the normal risk of collectibility.

2. For any issuer not included under subd. 1., each loan transaction other than primarily for short-term advances for travel, business expense, relocation, and similar ordinary operating expenditures, involving an official of the issuer, its controlling persons or affiliates shall either:

a. Have been authorized at the time of the transaction or subsequently ratified by vote of a majority of the disinterested independent outside directors of the issuer; or

b. Provide in the loan or loan guarantee agreement that it may not be extended or renewed and shall be repaid or retired not later that one year from the date of effectiveness of the registration statement for the offering.

(c) If any of the securities that are the subject of the offering are owned directly or beneficially by a person who has a loan or loan guarantee subject to this section, the disclosure document for the offering shall disclose that the proceeds from the offering inuring to that person shall be used to repay the loan.

(2) (a) If the issuer has engaged in transactions subject to the provisions of sub. (1) with officials of the issuer, its controlling persons or affiliates, the disclosure document for the offering shall contain a description of each of those transactions that are material, including any resolution of issues subject to the provisions of sub. (1).

(b) If the issuer has had in effect prior to the offering a written policy regarding making loans, the disclosure document for the offering shall disclose the terms and conditions of that policy and any changes contemplated in that policy, unless otherwise permitted by the commissioner.

(3) For purposes of this section:

(a) "Affiliate" means any person who is a partner, officer or director of the issuer, or a person occupying a similar status or performing similar functions, or directly or indirectly in control of, controlled by, or under common control with, the issuer. Control may be presumed by ownership of, or the power to vote, more than 10% of the outstanding voting securities of the issuer, either alone or pursuant to an agreement, arrangement or understanding with one or more other persons.

(b) "Controlling person" means any person who directly or indirectly has the power to direct or cause the direction of the management and policies of an issuer, whether through the ownership of voting securities, by contract or by other similar means, or any affiliate of such persons.

(c) "Disinterested director" means a member of the issuer's board of directors who will not receive a direct financial benefit in the outcome of a vote by the board regarding a specific transaction.

(d) "Disinterested independent outside director" means a person who is not employed by the issuer other than in the capacity as director and who will not receive a direct financial benefit in the outcome of a vote by the board regarding a specific transaction.

(e) "Official of the issuer" means an officer, director, or any person performing similar functions, either of the issuer or an affiliate of the issuer.

(f) "Transaction" means an act, including but not limited to, loans, leases, or contractual arrangements which has transpired or may transpire between an issuer and an official of the issuer, its controlling persons, or affiliates.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (a), Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.17 Real estate investment trusts. The offer or sale of securities of a corporation, trust or association, other than a real estate syndication, engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate, or both, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Real Estate Investment Trusts, adopted April 28, 1981, and amended effective January 1, 1986. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in the CCH NASAA Reports published by Commerce Clearing House

and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. Register, December, 1986, No. 372, eff. 1-1-87.

SEC 3.18 Commodity pool programs. The offer or sale of interests in a limited partnership which will engage in the buying and selling of and trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Registration of Commodity Pool Programs, adopted September 21, 1983. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4. The Statement of Policy is published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporters and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; am. Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.19 Equipment programs. The offer or sale of interests in a limited partnership which will engage in the acquisition of ownership of equipment for lease or operation may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy for Equipment Programs, adopted April 23, 1983. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of $4. The Guidelines are published in Volume 1 of the Commerce Clearing House Blue Sky Law Reporter and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84.

SEC 3.20 Other causes for denial, suspension or revocation. (1) The enumeration of causes stated in ss. SEC 3.01 to 3.17, is not exclusive, and the commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement for any cause stated in s. 551.28(1), Stats., whether similar to or different from the causes enumerated in these sections, when necessary or appropriate in the public interest and for the protection of purchasers.

(2) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement filed pursuant to s. 551.26, Stats., if the sale of securities pursuant to the registration statement is or would be in violation of the securities act of 1933 or the investment company act of 1940.

History: Renum. from SEC 3.10 and 3.12 and am. Register, December, 1977, No. 264, eff. 1-1-78; renum. from SEC 3.13 and am. Register, December, 1980, No. 300, eff. 1-1-81; renum. from SEC 3.17 and am. (1), Register, December, 1981, No. 312, eff. 1-1-82.

SEC 3.21 Registration by coordination. A registration statement under s. 551.25, Stats., shall be submitted on Form U-1, shall contain the following information and be accompanied by the following documents, in addition to the information specified in ss. 551.25(2) and 551.27(2), Stats., and the consent to service of process on Form U-2 required by s. 551.65(1), Stats.:

(1) (a) Copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture meeting the requirements of s. SEC 3.24, unless the security is a face amount certificate registered under the investment company act of 1940 or unless the requirement to furnish a trust indenture relating to the securities is waived by the commissioner for good cause shown; and