

Chapter SEC 1

DEALERS AND INVESTMENT ADVISERS

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SEC 1.01 Dealer's and agent's licenses; examination; capital required. (1) No person or company shall be licensed as a dealer and no person shall be licensed as an agent unless satisfactory evidence shall have been furnished to the department of securities of the trustworthiness of the applicant, officers, directors, members, or trustees, and of their competency to engage in the business of dealing in and selling securities. Such evidence shall be in writing or shall be determined by oral or written examination before the department of securities or its duly authorized agents.

(2) No dealer shall permit his or its aggregate indebtedness to all other persons to exceed 2000% of his or its net capital. For the purposes of this paragraph "net capital" shall be determined by deducting from his or its net worth all illiquid and unsecured assets and an amount equal to 30% of all corporate securities and 10% of all government securities, other than United States governments, long or short in the dealer's account.

SEC 1.02 Dealer's statement of assets and liabilities. (1) On or before February 15th of each year, or on or before such other date of each year as the department of securities may in each case otherwise determine, every licensed dealer shall file with the department of securities a verified statement of assets and liabilities as of December 31st preceding or as of such other preceding date as the director in each case may otherwise determine.

(2) The director in his discretion may require that the above financial statements be prepared and certified by a firm of certified public accountants acceptable to the director.

SEC 1.03 Advertising by radio or television. No licensed dealer, licensed agent, or other person, shall in this state broadcast by radio or television any advertising matter or make any representation relative to any security unless a copy of the text of the proposed advertising or representation shall have been filed prior to such broadcast with the department of securities, together with a statement showing the

authorship of the text of said advertising or representation, the time, place and whence the same is proposed to be broadcast. This rule does not apply to quotations of market prices without comment.

SEC 1.04 Advertising; solicited agency transactions. No licensed dealer, licensed agent, or other person shall in this state, circulate or publish any advertising matter, circular or prospectus relative to any security in a solicited agency transaction unless he shall have filed a copy of such advertising matter, circular or prospectus with the department of securities at the time of or prior to the use thereof.

SEC 1.05 Discretionary accounts. (1) No licensed dealer shall effect, with or for any customer's account in respect to which such dealer or his agent or employe is vested with any discretionary power, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(2) No dealer shall effect, with or for any customer's account in respect to which such dealer or his agent or employe is vested with any discretionary power, any transaction of purchase or sale unless immediately after effecting such transaction such dealer makes a record of such transaction which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place.

(3) Each dealer shall keep or preserve for at least two years such records as such dealer may be required to make pursuant to the provisions of subsection (2) of this rule.

SEC 1.06 Confirmations. Every licensed dealer at or before the completion of each transaction with his customer shall give or send to such customer written confirmation disclosing:

(1) Whether such dealer is acting as agent for such customer, as a dealer for his own account, as an agent for some other person, and

(2) In any case in which such dealer is acting as agent for such customer, either the name of the person from whom the security was purchased or to whom it was sold for such customer, and the date and time when such transaction took place or the fact that such information will be furnished upon the request of such customer and the source and amount of any commission or other remuneration received or to be received by such dealer in connection with the transaction.

SEC 1.07 Monthly report of sales. Every licensed dealer shall furnish to this department on or before the 10th of each month, in such form as may be prescribed from time to time, a verified report of all securities sold by such dealer during the preceding month to others than dealers, banks, trust companies and insurance companies; except that sales of securities issued by, or the principal and interest of which are guaranteed by, the United States government need not be so reported.

SEC 1.08 Solicited order for purchase; commission. No dealer shall charge or receive a commission, profit or other compensation in con-

nection with a solicited order for the purchase of securities except in the following cases:

(1) Securities which are exempt or are registered under the provisions of chapter 189, Wis. Stats., and securities as to which such dealer has complied with the provisions of section 189.08 or 189.09, Wis. Stats.

(2) Securities purchased for the issuer thereof or any of its officers or directors or for any dealer, bank, trust company or insurance company or any corporation or association engaged in the business of purchasing or holding securities.

(3) Securities which have been registered under the federal securities act of 1933 as amended and such registrations are effective, and six months have elapsed since the date of the initial offering, or securities, or securities of the same class, which have been outstanding in the hands of the public for a period of at least three years; provided, however, that this subsection (3) shall not apply to oil, gas or mining leases or royalties, preorganization subscriptions or certificates, certificates of interest in a profit-sharing agreement, beneficial interests, shares of investment companies, any interest in the profits of a venture, or the memberships of corporations organized without capital stock:

(4) Securities, or securities of the same class, which have been distributed or issued pursuant to an order of the securities and exchange commission under the public utility holding company act of 1935 or an order of the interstate commerce commission;

(5) Securities which are contracts or rights to purchase or rights to receive, on a when issued or when distributed basis, securities which on issuance will be—

- (a) exempt under the provisions of chapter 189, Wis. Stats., or
- (b) included under subsection (4) of this rule.

SEC 1.09 Solicited agency transactions; report of commissions. Every licensed dealer shall furnish to the department of securities on or before the 10th day of each month, in such form as may be prescribed from time to time, a report of all solicited agency purchase transactions in which the total commission, profit or other compensation charged by such dealer to his customer exceeds:

(1) In the case of common stocks, the equivalent of the commission charged by the New York stock exchange, or one per cent of the price at which the order is executed, whichever is greater;

(2) In the case of preferred stocks, \$1.00 per share;

(3) In the case of evidence of debt, one per cent of the par value thereof;

except that no report of any such transaction need be made unless the total commission, profit or other compensation charged by such dealer to his customer on such transaction shall have exceeded the sum of \$5.

SEC 1.10 Underwriting and other expense; limit. The aggregate of commissions, compensation, or underwriter's discounts, and all other expenses, including statutory fees, paid or payable by the issuer in connection with the registration and sale of securities, whether sold

within or without the state of Wisconsin, shall at all times be reasonable and in no event exceed 15% of the selling price of the security.

SEC 1.11 Records required of dealers. (1) Every licensed dealer shall make and keep current the following books and records relating to his business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(b) Ledgers (or other records) reflecting all assets and liabilities, income, and expense and capital accounts.

(c) Ledger accounts, itemizing separately as to each cash and margin account of every customer and of such dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

1. Securities in transfer;
2. Dividends and interest received;
3. Securities borrowed and securities loaned;
4. Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);
5. Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such dealer, or any employee thereof, shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it is received.

(g) A memorandum of each purchase and sale of securities for the account of such dealer showing the price and, to the extent feasible, the time of execution.

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such dealer.

(i) A record in respect of each cash and margin account with such dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(j) A record of all puts, calls, spreads, straddles and other options in which such dealer has any direct or indirect interest or which such dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(3) The records specified in subsection (1) of this rule shall not be required with respect to any cash transaction of \$100.00 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

SEC 1.12 Records to be preserved by licensed dealers. (1) Every licensed dealer shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required to be made pursuant to this rule.

(2) Every licensed dealer shall preserve for a period of not less than 3 years, the first 2 years in an easily accessible place:

(a) All check books, bank statements, cancelled checks and cash reconciliations.

(b) All bills receivable or payable (or copies thereof), paid or unpaid relating to the business of such dealer as such.

(c) Originals of all communications received and copies of all communications sent by such dealer (including inter-office memoranda and communications) relating to his business as such.

(d) All trial balances, financial statements, branch office reconciliations and internal audit working papers, relating to the business of such dealer as such.

(e) All guarantees of accounts and all power of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolution empowering an agent to act on behalf of a corporation.

(f) All written agreements (or copies thereof) entered into by such dealer relating to his business as such, including agreements with respect to any account.

(3) Every such dealer shall preserve for a period of not less than 6 years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(4) Every such dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(5) After a record or other document has been preserved for 2 years, a photograph thereof on film may be substituted therefor for the balance of the required time.

SEC 1.13 Licensing of investment advisers and examination. (1) No person shall be licensed as an investment adviser unless satisfactory evidence shall have been furnished to the department of securities of the trustworthiness of the applicant, officers, directors, members, managing agents, or trustees thereof, and of their competency to engage in the business of rendering investment advice. Such evidence shall be in writing or shall be determined by oral or written examination before the department of securities or its duly authorized agents.

(2) Any examination required by subsection (1) shall be taken by the principal executive officer, manager or other employe of the applicant, who is actively engaged in and responsible for the conduct and management of applicant's investment advisory business in Wisconsin.

SEC 1.14 Financial statements required of investment advisers. (1) On or before February 15th of each year, or on or before such other date of each year as the department of securities may in each case otherwise determine, every licensed investment adviser shall file with the department a statement of financial condition in such detail as will disclose the nature and amount of assets and liabilities and the net worth of such investment adviser as of a date within 45 days prior to the date on which it is filed.

(2) Unless the department shall require that such financial statements be prepared and certified by an independent public accountant, the statements may be prepared by the licensee and shall be certified to be true and correct by at least 2 executive officers or general partners of the licensee or by the individual licensee as the case may be.

SEC 1.15 Advertising. (1) No licensed investment adviser shall, in this state, publish, give publication to or circulate any notice, circular, advertisement, form or printed letter or other advertising communication for the purpose of soliciting an investment advisory account or client, whether in writing or by radio or television broadcast, unless 2 copies thereof shall have been filed with the department of securities and one copy has been returned with the department's allowance for use noted thereon. All radio and television texts shall be accompanied by a statement showing authorship of the text and the time, place and whence the same is proposed to be broadcast.

(2) This section shall not apply to an advertisement setting forth only the name and address of the investment adviser and a statement identifying the investment adviser or the personnel thereof as such.

SEC 1.16 Records required of investment advisers. (1) Every licensed investment adviser shall maintain and keep current the following books and records:

(a) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(b) A record showing all payments received, including date of receipt, purpose and from whom received; and all disbursements, including date paid, purpose and to whom made.

(c) A record showing all receivables and payables.

(d) Records showing separately for each client the securities purchased or sold and, to the extent it has been made available to the investment adviser, the date and amount of and price at which such purchases or sales were executed. If available to the investment adviser this record should also show the name of the security dealer or broker who handled the transaction.

(e) Records showing separately all securities (other than general or revenue obligations issued by any governmental issuer enumerated in section 189.06 (1), Wis. Stats.,) bought or sold by the clients of the investment adviser and indicating thereon with proper identification of the individual account, the date, amount, and price at which such securities were purchased or sold by or for each client; or, in the alternative, a record showing all such securities bought or sold by or for the accounts of all clients of the investment adviser in each month, the total number of shares or principal amount of each security bought or sold and the lowest and highest price at which such purchases or sales were made during the month.

(f) Copies of dealer's confirmations of all transactions placed by the investment adviser for any account, and such other dealer's confirmations as may be supplied to the investment adviser by a client or dealer.

(g) A list showing all accounts in which the investment adviser is vested with discretionary power, unless the records required by subsections (d) and (e) of this section are maintained in such manner as to disclose which are discretionary accounts;

provided that the provisions of subsections (d) and (e) of this section shall not apply (a) to any securities with respect to which the investment adviser does not render services of a supervisory nature or (b) to any securities or transactions which a client declines to disclose to the investment adviser; and *provided further* that the provisions of subsections (d), (e), (f) and (g) of this section shall not apply to the accounts of any investment adviser where the services consist solely of the distribution of written or printed publications on a subscription basis.

SEC 1.17 Records to be preserved by investment advisers. (1) Every licensed investment adviser shall preserve for a period of not less than 3 years, the first 2 years in an easily accessible place, all records required by section SEC 1.16 and the following additional records which shall also be made available to the department for examination:

(a) All check books, bank statements, cancelled checks and cash reconciliations.

(b) All bills or statements (or copies thereof), paid or unpaid, relating to the business of such investment adviser.

(c) Originals of all communications received and copies of all communications sent, pertaining to services rendered or to be rendered to its clients or customers by such investment adviser, other than interoffice or interdepartmental communications.

(d) All powers of attorney and other evidence of the granting of any discretionary authority in any account, and copies of resolutions empowering an agent to act on behalf of any client.

(e) All written agreements (or copies thereof) entered into by an investment adviser relating to the business of such investment adviser, including agreements with respect to any account, which agreements shall set forth the fees to be charged and the manner of computation and method of payment thereof.

(2) Every licensed investment adviser shall preserve for a period of not less than 3 years after the closing of any client's account, all required records relating to such account.

(3) Every licensed investment adviser shall preserve during the life of the enterprise and of any successor enterprises all partnership articles, or all articles of incorporation or charter, minute books and stock certificate books.

(4) After a record or other document has been preserved for 2 years, a photograph thereof on film may be substituted for the balance of the required time.