

Chapter SEC 3

REGISTRATION REQUIREMENTS AND PROCEDURES

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SEC 3.01 Selling expenses. (1) Except for offerings by issuers specified in subs. (2) and (3), the aggregate amount of selling expenses in an offering 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 Selling Expenses and Selling Security Holders, as adopted effective September 14, 1989, and amended effective October 24, 1991.

Note: The Statement of Policy is published in 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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

(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, unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines For Registration of Periodic Payment Plans, as adopted March 29, 1992, 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.

Note: 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 Register, December, 1992, No. 444

of statutes. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

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; r. and recr. Register, December, 1990, No. 420, eff. 1-1-91; cr. (2) and (3), Register, December, 1991, No. 432, eff. 1-1-92; am. (1) and (3), Register, December, 1992, No. 444, eff. 1-1-93.

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 control-

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ter, December, 1981, No. 312, eff. 1-1-82; r. (1), renum. (2), (3) and (4) to be (1), (2) and (3), Register, December, 1983, No. 336, eff. 1-1-84; am. (1), Register, December, 1984, No. 348, eff. 7-1-85; r. (1), renum. (2) and (3) to be (1) and (2), Register, December, 1988, No. 396, eff. 1-1-89.