Chapter SEC 3

REGISTRATION REQUIREMENTS AND PROCEDURES

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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 subsection (2), is presumed reasonable if it does not exceed 10% of the aggregate selling price of the securities of if, when added to the other expenses paid or payable in connection with the offering and sale of the securities, the total of commissions and other expenses does not exceed 15% of the aggregate selling price of the securities.

(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. Reigster, August, 1972, No. 200, eff. 9-1-72.

SEC 3.02 Offering price. The offering price of any security shall be fair and equitable to purchasers. With respect to common stock, 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:

(a) The price for the stock does not exceed 25 times the issuer's net earnings per share for the last 12 months, and 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; or

(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: there were at least 500 holders of such stock at the beginning and end of the 6-month period preceding the date of the filing; 200,000 shares of the stock are publicly outstanding (exclusive of shares held by officers, directors, or 5% shareholders); 2 broker-dealers regularly make a market in the stock; one financial publication regularly quotes the market price if the stock is not listed on a national securities exchange; and trading of the issuer's stock in the 6-month period preceding the date of the filing averaged at least 100 transactions or 5% of the outstanding shares (not including shares held by officers, directors or 5% shareholders) per month; or

(c) Where 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 Wis. Adm. Code section SEC 3.02 (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 Wis. Adm. Code section SEC 3.04.

(3) For purposes of 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.

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, shall be reasonable. Options and warrants are presumed reasonable if they satisfy the following conditions:

(1) With respect to restricted or qualified 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 said 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 such 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 where 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 such 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) The total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding those issued to financing institutions and those issued in connection with acquisitions, 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 files an undertaking or 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 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.

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 unreasonable amounts of promotional or cheap stock have been issued or sold prior to the offering.

(2) For the purpose of this rule, "promotional or cheap stock" includes any equity or convertible securities issued or sold at any time prior to the public offering date by any issuer in the promotional or developmental stage on that date, or within 2 years prior to the public offering date by any other issuer, to any persons who were at the time of such sale or issuance or are at the time of the public offering underwriters, promoters, finders, officers, directors, or controlling stockholders of the issuer, at a price lower than or at a conversion rate or for a consideration not reasonably related to the public offering price of such securities, in the absence of any public market for such equity securities or any substantial change in the earnings or financial position of the issuer.

(3) The issuance of promotional or cheap stock is presumed reasonable if any of the following conditions are satisfied:

(a) The issuer was organized less than 2 years prior to the public offering date and is in the promotional or developmental stage, the promotional or cheap stock was issued at or shortly after the date of organization, and the amount of promotional or cheap stock issued to persons subject to this rule, when added to the number of shares of stock subject to unexercised options and warrants issued to such persons, does not exceed 25% of the amount of stock to be outstanding on completion of the offering or outstanding during the period the registration statement is effective.

(b) The amount of promotional or cheap stock issued to persons subject to this rule, when added to the amount of unexercised options and warrants issued to such persons, does not exceed 10% of the amount of stock to be outstanding on completion of the offering or outstanding during the period the registration statement is effective.

(c) The proposed offering price of the equity securities does not exceed the multiple of earnings prescribed in Wis. Adm. Code section SEC 3.02 (1) (a) for each of the last 2 years prior to the public offering date, after taking into account the promotional or cheap stock issued.

(4) Whether or not the amount of promotional or cheap stock is presumed reasonable within the meaning of subsection (3), the commissioner may require as a condition of registration that all or any part of the promotional or cheap stock be deposited in escrow pursuant to such conditions as the commissioner may prescribe, including:

(a) Stock subject to the escrow agreement may not be released until such time as the company has demonstrated by financial statements examined and reported by an independent certified public accountant, that earnings per share, before extraordinary items, were 5% per year of the public offering price per share for any 3 years ending after the public offering, 2 of which must be consecutive; if within 5 years after the date of the escrow agreement, the escrowed shares have not been released from the escrow requirements, the owners of the escrowed shares shall collectively elect to:

1. Return to the issuer and cancel a sufficient number of escrowed shares to cause the issuer's aggregate pro forma earnings per share for the 5 years to have been 12% of the public offering price per share, in which case the escrow agreement shall be terminated and the remaining shares released from escrow; or

2. Submit to the commissioner a proposal for extension or modification of the escrow agreement, provided that notice of the proposal is given to all of the shareholders in such form as the commissioner requires and a hearing thereon may be called by the commissioner; the burden of justifying an extension or modification of the escrow agreement shall be on the owners of the escrowed shares; after notice and opportunity for hearing, the commissioner may order extension or modification of the escrow agreement upon such terms as are deemed fair and equitable; if the escrow agreement is not so extended or modified, the owners of the escrowed shares shall return shares to the issuer for cancellation as specified in subparagraph 1. of this section;

(b) The foregoing notwithstanding, shares in escrow may be:

1. Released if the public offering is terminated and no securities were sold, or if the holders of ⅔ of the unescrowed shares join in petitioning for release of the shares from escrow;

2. Transferred by will or pursuant to the laws of descent and distribution, without the consent of the commissioner, but shall remain in escrow; and

3. Transferred if the commissioner grants a request to permit the release, which request is in writing, states the reason and proposed consideration for the transfer, and that the transferee shall agree to redeposit the shares in escrow under the same terms;

(c) The shares held under an escrow agreement pursuant to a public offering shall not have any right, title, interest, or participation in the assets of the issuer in the event of dissolution, liquidation, merger, consolidation, reorganization, sale of assets, exchanges or any transaction or proceeding which contemplates or results in the distribution of the assets of the issuer, until the holders of all unescrowed shares sold in the offering have been paid, or had irrevocably set aside for them an amount equal to the purchase price per share in the public offering, adjusted for stock splits and stock dividends; subsequently, the escrowed shares shall be entitled to receive an amount equal to the tangible consideration furnished for the shares, and thereafter, all shareholders shall participate ratably;

(d) Shares held under an escrow agreement shall continue to have all voting rights to which those shares are entitled, provided any dividends paid on such shares shall be paid to the escrow agent and held pursuant

to the terms of the agreement; may be used to satisfy the requirements of subsection (c); and in the event any shares held under an escrow agreement are returned to the issuer for cancellation, all dividends paid on such shares and held in escrow shall also be returned to the issuer;

(e) The escrow agreement shall include provisions to permit the commissioner, upon a finding of a violation of this chapter, and where necessary for the protection of security holders and in the public interest, after prior notice and opportunity for hearing, to order the return of escrowed shares to the issuer for cancellation in whole or in part; and

(f) The terms and conditions of the escrow agreement may be terminated, revoked, modified, or released only upon the written consent of the commissioner.

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.

SEC 3.05 Promoters' investment. (1) 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 fair value of the equity investment of the officers, directors, and promoters of such issuer, determined as of the offering date, equals at least 10% of the total equity investment resulting from the sale of all the securities which are the subject of the proposed offering.

(2) For the purpose of this rule:

(a) The "fair value of the equity investment of the officers, directors and promoters" means the total of all amounts paid to the issuer in cash and the reasonable value of all tangible assets paid to the issuer, as determined by independent appraisal or otherwise, and as adjusted by the retained earnings of the issuer subsequent to the dates of such payments.

(b) "Total equity investment" means the total of the par or stated value of all securities of the issuer outstanding or offered or proposed to be offered, and the amounts of any additional capital (paid in and other) and as adjusted by retained earnings.

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.

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 foregoing requirement upon evidence of a sufficient future net earnings capability.

(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 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 foregoing requirement upon evidence of a sufficient future net earnings capability.

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

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

(a) Debt securities by a nonprofit issuer under section 551.23(15), Wis. 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 such 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 subsection (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. "Net earnings" means income before income taxes, extraordinary items, and interest expense. "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 subdivision 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 such person, more than 1% of the publicly-held debt securities outstanding at the time repurchase is made until all other pending requests for repurchase of 1% or less have been satisfied. This limitation shall not apply to the repurchase of securities held as of

August 2, 1973, by persons who as of such date held more than 1% 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. "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 shall mean total assets less (i) property and equipment, net of depreciation; (ii) unamortized debt expense; and (iii) 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 shall mean total liabilities unless (i) non-current maturities of long-term debt, and (ii) 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 such month during which repurchases were made, and a statement as to (i) the total amount of repurchases made during the month; (ii) the total amount of repurchase requests which were not met; and (iii) 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, such 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 to, the limitations set forth above, 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 must 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.

SEC 3.07 Voting rights. (1) If the issuer is a corporation 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 such 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 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 herein upon the written request of 10% of the outstanding amount of limited partnership interests;

(c) Each limited partner shall have 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 such 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.

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 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 investments of the company shall be restricted in the following respects:

(a) No diversified investment company shall 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) No investment company shall purchase any securities of the classes herein defined, if by reason thereof the value of its aggregate investment in such 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; 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than three years, and equity securities of issuers which are not readily marketable; or 5% of its total assets in puts, calls, straddles, spreads, and any combination thereof.

(c) No investment company shall invest any part of its total assets in real estate or interests therein, excluding readily marketable securities; commodities or commodity futures contracts; or interests in 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 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 such 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;

(c) Purchasing restricted securities as herein defined;

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

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

(3) The aggregate annual expenses of every character paid or incurred by an investment company, including management and advisory fees but excluding interest, taxes, brokerage commissions and extraordinary expenses, whether such expenses are payable by the company or its shareholders, calculated at least quarterly on a basis consistently applied, shall not exceed 2% of the first $10 million of its average net assets, 1½% of the next $20 million of the average net assets, and 1% of any additional net assets. The investment adviser or manager shall reimburse the investment company not less than annually for the amount by which such aggregate annual expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbursement is made, prior to publication of the company's annual report, and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of

any extraordinary expenses. The commissioner may require the investment adviser or manager to maintain financial resources reasonably sufficient to enable it to meet its reimbursement obligation hereunder.

(4) 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.

(5) 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 such 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 such amount, subject to such conditions as the commissioner may prescribe.

(6) 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 such transactions, including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting such 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.

(7) Each registered investment company shall notify the commissioner promptly when it is not in compliance with any of the above requirements, 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.

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 (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 such transactions (including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting such transactions) are not unfair and inequitable to shareholders.

(6) The foregoing notwithstanding, no closed-end investment company which engages in any of the following or related speculative activities shall 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 ___)."

(7) The aggregate annual expenses of the company shall be limited as in Wis. Adm. Code section SEC 3.09 (3).

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.11 Real estate programs. The offer or sale of interests in a limited partnership which will engage in real estate syndication may be deemed unfair and inequitable to purchasers unless such offering complies with the provisions of the Midwest Securities Commissioners Association Statement of Policy regarding real estate programs, adopted February 28, 1973, as amended February 26, 1974 and July 22, 1975.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.12 Oil and gas programs. The offer or sale of interests in a limited partnership which will engage in oil or gas programs may be deemed unfair and inequitable to purchasers unless such 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.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.13 Other causes for denial, suspension or revocation. (1) The enumeration of causes stated in Wis. Adm. Code sections SEC 3.01 through SEC 3.12 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 section 551.28(1), Wis. Stats., whether similar to or different from the causes enumerated in these sections, when necessary or appropriate in the public interest or 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 section 551.26, Wis. Stats., if the sale of securities pursuant to such 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.

SEC 3.21 Registration by coordination. A registration statement under section 551.25, Wis. Stats., shall contain the following information and be accompanied by the following documents, in addition to the information specified in sections 551.25(2) and 551.27(2), Wis. Stats., and the consent to service of process required by section 551.65(1), Wis. Stats.:

(1) Copies of the articles of incorporation and by-laws or their substantial equivalents currently in effect, any agreements with or among underwriters, any indenture or other instrument governing the issuance of the security to be registered, and a specimen of the security; and

(2) Any other information or copies of any documents required to be filed under form U-1.

History: Renum. from SEC 2.04 and am. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.22 Registration by qualification. (1) A registration statement under section 551.26, Wis. Stats., shall contain the following information and be accompanied by the following documents, in addition to the information specified in section 551.27 (2), Wis. Stats., and the consent to service of process required by section 551.65 (1), Wis. Stats.:

(a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; a description of the business done or intended to be done by the issuer, and the location and history of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past 5 years; the amount of

securities of the issuer held by him, of record or beneficially, as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

(c) With respect to persons covered by subsection (1) (b), the remuneration paid directly or indirectly during the past 12 months, and estimated to be paid during the next 12 months if materially different, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate; and the name of each such person receiving remuneration in excess of $40,000, and the amount thereof for each;

(d) With respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection (1) (b) other than his occupation;

(e) With respect to every promoter if the issuer was organized within the past 3 years: the information specified in subsection (1) (b), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;

(f) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of his reasons for making the offering;

(g) The capitalization (on both a current and a pro forma basis) of the issuer and the debt of any subsidiary (if such debt is held by other than the issuer), including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities;

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; and variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group

agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(j) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsection (1) (b), (d), (e), (f), or (h) and by any person who holds or will hold 10% or more in the aggregate of any such options;

(k) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);

(l) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(m) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and by-laws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, stating whether the security when sold will be legally issued, fully paid, and nonassessable; and, if a debt security, a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the purchasers will be liable for the obligations of the issuer; and that the offer and sale of the security being registered is exempt from registration under the securities act of 1933, if such is the case, specifying the basis for such exemption;

(o) The written consent of any independent accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(p) A balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of Wis. Adm. Code section SEC 7.06; provided that if the date of any of the above financial statements is more than 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes) prior to the date of effectiveness of the registration statement, such statements shall be updated (which may be done without audit) to within the 120 or 180 day requirement above; and provided that if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements shall be filed which would be required if that business were the registrant; and

(q) Such additional information as the commissioner may require.

(2) The commissioner may permit the omission of the filing of any information or document specified in subsection (1) if he determines that such information or document is not required for the protection of investors.

(3) Any information specified in subsection (1) may be included in a prospectus meeting the requirements of Wis. Adm. Code section SEC 3.23 if a cross-reference table is filed showing where the information appears in such prospectus.

History: Renum. from SEC 2.05, am. (1) (c) and (g) and (3), and r. and recr. (1) (p), Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.23 Prospectus requirements. (1) As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of subsections (2), (3) and (4) shall be sent or given to each person to whom an offer is made by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription as a participant in the distribution. The document shall be sent or given either before or concurrently with the earlier of any of the following:

(a) Any written offer made to such person, otherwise than by means of public advertisement;

(b) Confirmation of any sale to such person;

(c) Payment pursuant to any sale to such person; or

(d) Delivery of the security pursuant to any sale to such person.

(2) The outside front cover of the prospectus, unless otherwise permitted by the commissioner, shall meet the requirements of any form under the securities act of 1933 or shall contain substantially the following information:

(a) Name and location of issuer and its type of organization;

(b) Designation of securities offered;

(c) Per share or unit and aggregate public offering price, underwriting or selling commissions and discounts and net proceeds to offeror;

(d) Name of managing underwriter or broker-dealer or statement that the securities are being offered by the issuer;

(e) A statement describing the anticipated secondary market for the securities being offered, including the identity of anticipated market makers;

(f) Date of prospectus;

(g) The following statement in bold-face type:

THE REGISTRATION OF THESE SECURITIES BY THE WISCONSIN COMMISSIONER OF SECURITIES DOES NOT SIGNIFY THAT THE COMMISSIONER HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.;

(h) If the offering is exempt under section (3) (a) (11) of the securities act of 1933, the following statement in bold-face type:

THESE SECURITIES ARE OFFERED ONLY TO BONA FIDE RESIDENTS OF THE STATE OF WISCONSIN PURCHASING FOR INVESTMENT AND NOT FOR RESALE.; and

(i) Such other information as the commissioner may permit or require.

(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements of form S-1 under the securities act of 1933 is deemed to satisfy the requirements of this rule.

(4) Unless otherwise permitted by the commissioner, the body of the prospectus and all notes to financial statements and other tabular data included therein shall be in roman or gothic type at least as large and as legible as 10-point modern type, except that financial statements and other tabular data, including tabular data in notes, may be in roman or gothic type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(5) At the end of each period of not more than one year from the effectiveness of the registration statement, or in the event of any material change relating to the issuer or the securities subsequent to the filing of a prospectus, an amended prospectus shall be filed reflecting any such changes, and a current disclosure of all material facts relating to the issuer and the securities, including financial statements. No further solicitations or sales of the securities shall be made thereafter until such amended prospectus has been filed with the commissioner.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; renum. from. SEC 2.06, r. and recr. (1), r. (2), renum. (3) and (4) to be (2) and (3), renum. (2) (e) to (h) to be (2) (f) to (i), cr. (2) (e) and (4), Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.24 Trust indenture requirements. Trust indentures required under chapter 551, Wis. Stats., and these rules shall meet the requirements of the trust indenture act of 1939, whether or not exempt under that act, unless the commissioner otherwise permits or requires.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; cr. (3), Register, August, 1972, No. 200, eff. 9-1-72; renum. from SEC 2.07, am. (1) and r. (2) and (3), Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.25 Registration proceedings. (1) If any information is reasonably required by the commissioner prior to the effective date of a registration statement filed under sections 551.25 or 551.26, Wis. Stats., in connection with the examination of such registration statement, the registration statement is deemed filed when the information so required is filed with the commissioner.

(2) Any registration statement which a registrant fails to complete or withdraw within one year from the date of filing shall be deemed materially incomplete under section 551.28 (1) (a), Wis. Stats., and the commissioner may issue a stop order denying effectiveness to such registration statement.

(3) The commissioner may institute a proceeding under section 551.28, Wis. Stats., and may issue a stop order suspending or revoking the effectiveness of any registration statement filed under sections 551.25 or 551.26, Wis. Stats., at any time during the period that the registration statement is effective and within one year thereafter.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; renum. from SEC 2.11 and SEC 3.09, Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.26 Amendment of registration statements. (1) All applications for amendment of a registration statement shall be filed on forms prescribed by the commissioner.

(2) A registration statement relating to redeemable securities of an investment company registered under the investment company act of 1940 or to securities issued by a finance company licensed under section 138.09, Wis. Stats., may be amended after its effective date so as to increase the specified amount of securities proposed to be offered in this state.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; renum. from SEC 2.10, am. (2), Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.27 Extension of registration statements. (1) Application for an extension of the offering period of a registration statement, except one relating to redeemable securities of an investment company registered under the investment company act of 1940 for which the maximum filing fee prescribed by statute has not been paid, or securities of a finance company licensed under section 138.09, Wis. Stats., shall be filed in the form prescribed by the commissioner not less than 30 days prior to the end of one year from (a) the effective date of the registration statement; (b) an order of amendment increasing the amount of securities offered in this state; or (c) an order of extension, whichever is most recent. Such application shall be accompanied by a prospectus updated in accordance with Wis. Adm. Code section SEC 3.23 (5), a balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the

issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of Wis. Adm. Code section SEC 7.06; provided that if the date of any of the above financial statements is more than 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes) prior to the date of such extension of the registration statement, such statements shall be updated (which may be done without audit) to within the 120 or 180 day requirement above. Any extension of the offering period of a registration statement shall be by order of the commissioner, subject to such conditions as may be prescribed.

(2) A registration statement relating to redeemable securities of an investment company registered under the investment company act of 1940, for which the maximum filing fee prescribed by statute has not been paid, or securities of a finance company licensed under section 138.09, Wis. Stats., is deemed to include an application for the continuous offering of such securities. The offering period of such registration statement is automatically extended until it is permitted to be withdrawn or the commissioner issues a stop order suspending or revoking its effectiveness pursuant to section 551.28, Wis. Stats., provided that the issuer files with the commissioner not less than annually during the offering period, within 120 days of the end of its fiscal year, a prospectus updated in accordance with Wis. Adm. Code section SEC 3.23 (5), a balance sheet of the issuer as of the end of such fiscal year, and a statement of income and change in financial position and analysis of surplus of the issuer for such fiscal year meeting the requirements of Wis. Adm. Code section SEC 7.06.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; am. Register, October, 1974, No. 226, eff. 11-1-74; renum. from SEC 2.08, am. (1) and (2), Register, December, 1977, No. 264, eff. 1-1-78.

SEC 3.28 Periodic reports. (1) Each issuer or registrant of securities registered under sections 551.25 or 551.26, Wis. Stats., except an issuer or registrant specified in subsection (2), shall file with the commissioner promptly after each 90-day period in which securities have been sold during the effectiveness of the registration statement, a report on a form prescribed by the commissioner specifying the number of shares or units of securities sold in this state pursuant to such registration statement and the aggregate selling price thereof, unless such issuer or registrant has paid the maximum filing fee for such registration statement and the securities are registered under the securities act of 1933.

(2) Each investment company registered under the investment company act of 1940 issuing redeemable securities which has not paid the maximum filing fee prescribed by statute, and each finance company licensed under section 138.09, Wis. Stats., issuing securities registered in this state shall file with the commissioner within 45 days following the end of each calendar quarter, a report on a form prescribed by the commissioner specifying the number of shares or units of securities sold in this state or the aggregate selling price thereof during such quarter.

(3) Each issuer or registrant of securities registered under section 551.26, Wis. Stats., shall file with the commissioner such additional reports of sales and financial statements as may be specified by order, and shall furnish the commissioner with written notice within 30 days after

the happening of any material event affecting the issuer or the securities registered.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2), Register, October, 1974, No. 226, eff. 11-1-74; renum. from SEC 2.09, and am. (1) and (2), Register, December, 1977, No. 264, eff. 1-1-78.