

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 sub. (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. Register, 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.

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(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 the 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) 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 s. 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 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.

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 employees for incentive purposes, including employee 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.

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(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 (other than underwriters) 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; 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.

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) In this section, "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 the 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 the securities, in the absence of any public market for the 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 those 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 those persons, does not exceed 10% of the amount of

(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 syndication 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. 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, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81.

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 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 and October 31, 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, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81.

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

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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 3.15 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 Loans to company officials. The offer or sale of securities by an issuer may be deemed unfair and inequitable to purchasers if the issuer or its affiliates have made, or may make, loans or forbearances that fail to comply with the Central Securities Administrators Council Statement of Policy on Loans to Company Officials, as amended April 22, 1978. 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 3.17 Other causes for denial, suspension or revocation. (1) The enumeration of causes stated in ss. SEC 3.01 to SEC 3.16, Wis. Adm. Code, 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 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 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.

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) 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

of surplus of the issuer for the fiscal year meeting the requirements of s. SEC 7.06, Wis. Adm. Code.

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; emerg. am. eff. 6-19-78; am. Register, September, 1978, No. 273, eff. 10-1-78; am. (1) and (2), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 3.28 Periodic reports. (1) Each issuer or registrant of securities registered under ss. 551.25 or 551.26, 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 the appropriate form designated in s. SEC 9.01 (1), Wis. Adm. Code, specifying the number of shares or units of securities sold in this state pursuant to the registration statement and the aggregate selling price thereof, unless the issuer or registrant has paid the maximum filing fee for the registration statement and the securities are registered under the securities act of 1933.

(2) Every open-end management company, unit investment trust, and face amount certificate company, as defined in the investment company act of 1940, having an effective registration statement under this chapter relating to an indefinite amount of its redeemable securities shall, within 2 months after the end of any fiscal year during which the registration statement was effective, and within 2 months after the registration is terminated, file form RS-IC reporting the amount of securities sold in this state during the fiscal year (or portion thereof if filed after termination), and shall pay the additional fee for the securities computed in accordance with s. 551.52 (1) (b), Stats. and Wis. Adm. Code s. SEC 7.01 (8), Wis. Adm. Code. Failure to file form RS-IC and pay the proper additional fee shall be cause for issuance of a stop order pursuant to s. 551.28 (1), Stats.

(3) Each finance company licensed under s. 138.09, 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 the quarter.

(4) Each issuer or registrant of securities registered under s. 551.26, 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; emerg. renum. (2) and (3) to be (3) and (4), cr. (2) and am. (3), eff. 6-19-78; renum. (2) and (3) to be (3) and (4) and am. (3), cr. (2), Register, September, 1978, No. 273, eff. 10-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80.