

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

SEC 3.04 Promotional or cheap stock. (1) The offer or sale of equity securities or securities convertible into equity securities may be deemed unfair and inequitable to purchasers and to involve unreasonable amounts of promoters' profits or participations if the issuer has issued promotional or cheap stock that fails to comply with the provisions of the North American Securities Administrators Association Statement of Policy on Promotional Shares, adopted September 3, 1987. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

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.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2) and (4), Register, August, 1972, No. 200, eff. 9-1-72; am. (1), (3)(c) and (4), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), (3) (a) and (b), (4) (intro.), (a) 2., (b) (intro.), (d) and (e), Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. Register, December, 1983, No. 336, eff. 1-1-84; am. Register, December, 1988, No. 396, eff. 1-1-89.

SEC 3.05 Promoters' investment. The offer or sale of securities of an issuer in the promotional or developmental stage may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy on Existing Capitalization, adopted April 23, 1983, as amended effective January 1, 1988. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

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.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (2) (a) and (3), Register, August, 1972, No. 200, eff. 9-1-72; am. (1), (2) (a) and (6), r. (3), Register, December, 1977, No. 264, eff. 1-1-78; am. (1), (2) (intro.) and (2) (a), Register, December, 1980, No. 300, eff. 1-1-81; r. and recr. Register, December, 1983, No. 336, eff. 1-1-84; am. Register, December, 1988, No. 396, eff. 1-1-89.

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

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

shall be adjusted for any debt securities to be redeemed with the proceeds of the offering. The commissioner may waive the requirement under this subsection upon evidence showing a sufficient future net earnings capability including, but not limited to, evidence set forth in a financial forecast examined by an independent certified public accountant in accordance with the Guide for Prospective Financial Statements as promulgated by the American Institute of Certified Public Accountants.

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

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

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

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

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

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

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

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

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

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

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

2. Limit on repurchases from one person. The issuer may not, in any 6-month period, repurchase from any person, including all joint, common and beneficial owners with the person, more than one percent of the pub-

licly-held debt securities outstanding at the time repurchase is made until all other pending requests for repurchase of one percent or less have been satisfied. This limitation does not apply to the repurchase of securities held as of August 2, 1973, by persons who as of that date held more than one percent of the outstanding debt securities.

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

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

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

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

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

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

SEC 3.07 Voting rights. (1) If the issuer is a corporation or business trust having more than one class of equity securities authorized or out-

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standing, the offer or sale may be deemed unfair and inequitable to purchasers if the class of equity securities offered or sold to the purchasers:

(a) Has no voting rights; or

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

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

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

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

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

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

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

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

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

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

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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 s. SEC 7.06; provided that if the date of any of the financial statements specified in this paragraph 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, the statements shall be updated (which may be done without audit) to within the 120-day or 180-day requirement specified in this paragraph; 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 sub. (1) if the commissioner determines that the information or document is not required for the protection of investors.

(3) Any information specified in sub. (1) may be included in a prospectus meeting the requirements of s. SEC 3.23, if a cross-reference table is filed showing where the information appears in the 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; emerg. am. (1)(h), eff. 6-19-78; am. (1)(h), Register, September, 1978, No. 273, eff. 10-1-78; am. (1) (intro.), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (b) to (g), (n) to (p), (2) and (3), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (c) and (m), Register, December, 1982, No. 324, eff. 1-1-83.

SEC 3.23 Prospectus requirements. (1) As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of subs. (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 the person, otherwise than by means of public advertisement;

(b) Confirmation of any sale to the person;

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

(d) Delivery of the security pursuant to any sale to the 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;

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(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 that receives full review by the U.S. securities and exchange commission is deemed to satisfy the requirements of this subsection.

(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 may 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; am. (1) (a) to (d) and (5) (3), Register, December, 1980, No. 300, eff. 1-1-81; am. (3), Register, December, 1985, No. 360, eff. 1-1-86.

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SEC 3.24 Trust indenture requirements. Trust indentures required under ch. 551, Stats., and chs. SEC 1 to 9, 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 s. 551.25 or 551.26, 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 s. 551.28 (1) (a), Stats., and the commissioner may issue a stop order denying effectiveness to such registration statement.

(3) The commissioner may institute a proceeding under s. 551.28, Stats., and may issue a stop order suspending or revoking the effectiveness of any registration statement filed under s. 551.25 or 551.26, 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 in the form prescribed by the commissioner.

(2) A registration statement relating to securities issued by a finance company licensed under s. 138.09, 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; am. (2), Register, September, 1978, No. 273, eff. 10-1-78; am. (1), Register, December, 1979, No. 288, eff. 1-1-80.

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 issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or securities of a finance company licensed under s. 138.09, Stats., shall be filed in the form prescribed by the commissioner not less than 30 days prior to the end of one year from the effective date of the registration statement or an order of extension, whichever is most recent. The application shall be accompanied by a prospectus updated in accordance with s. 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 s. 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 exclu-

sively for religious, educational, benevolent or charitable purposes) prior to the date of the extension of the registration statement, the statements shall be updated (which may be done without audit) to within the 120-day 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 issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or securities of a finance company licensed under s. 138.09, Stats., is deemed to include an application for the continuous offering of the securities. The offering period of the 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 s. 551.28, Stats., if the issuer files the reports required under s. SEC 3.28 (1), and 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 s. SEC 3.23 (5), a balance sheet of the issuer as of the end of the fiscal year, and a statement of income and change in financial position and analysis of surplus of the issuer for the fiscal year meeting the requirements of s. 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; 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; am. (2), Register, December, 1984, No. 348, eff. 1-1-85; am. Register, December, 1985, No. 360, eff. 1-1-86.

SEC 3.28 Periodic reports. (1) 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.

(2) 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; am. (1), Register, 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.