

Chapter SEC 3

REGISTRATION REQUIREMENTS AND PROCEDURES

SEC 3.01	Selling expenses (p. 23)	SEC 3.16	Transactions with affiliates (p. 37)
SEC 3.02	Offering price (p. 24)	SEC 3.17	Real estate investment trusts (p. 37)
SEC 3.03	Options and warrants (p. 25)	SEC 3.18	Commodity pool programs (p. 37)
SEC 3.04	Promotional or cheap stock (p. 27)	SEC 3.19	Equipment programs (p. 38)
SEC 3.05	Promoters' investment (p. 27)	SEC 3.20	Other causes for denial, suspension or revocation (p. 38)
SEC 3.06	Preferred stock and debt securities (p. 27)	SEC 3.21	Registration by coordination (p. 38)
SEC 3.07	Voting rights (p. 29)	SEC 3.22	Registration by qualification (p. 39)
SEC 3.08	Capitalization (p. 30)	SEC 3.23	Prospectus requirements (p. 43)
SEC 3.09	Open-end investment companies (p. 31)	SEC 3.24	Trust indenture requirements (p. 45)
SEC 3.10	Closed-end investment companies (p. 32)	SEC 3.25	Registration proceedings (p. 45)
SEC 3.11	Real estate programs (p. 33)	SEC 3.26	Amendment of registration statements (p. 46)
SEC 3.12	Oil and gas programs (p. 34)	SEC 3.27	Extension of registration statements (p. 46)
SEC 3.13	Cattle feeding programs (p. 35)	SEC 3.28	Periodic reports (p. 46-1)
SEC 3.14	Debt securities issued by a church or congregation (p. 35)		
SEC 3.145	Debt securities issued by a health care facility (p. 36)		
SEC 3.15	Finance company debt securities (p. 37)		

**SEC 3.01 Selling expenses.** (1) Except for offerings by issuers specified in subs. (2) and (3), the aggregate amount of selling expenses in an offering may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy Regarding Selling Expenses and Selling Security Holders, adopted effective September 14, 1989.

Note: The Statement of Policy is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

(2) With respect to redeemable securities of investment companies registered under the investment company act of 1940, the maximum selling commission or discount is presumed reasonable if it does not exceed 9% of the selling price of the securities, including the percentage amount of any redemption fee payable upon redemption of the securities.

(3) With respect to investment company shares or face amount certificates sold pursuant to a contractual plan or program payable in installments, 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; am. (1), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. Register, December, 1990, No. 420, eff. 1-1-91; cr. (2) and (3), Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 3.02 Offering price.** The offering price of any security shall be fair and equitable to purchasers. With respect to common stock, unless the offering is made pursuant to a firm commitment underwriting by a bro-

Register, December, 1991, No. 432

ker-dealer that is not affiliated with the issuer by means of direct or indirect common control and where the offering price of the common stock is at least \$5 per share, the offering price shall be reasonably related to the existing public market for the stock or to the net earnings of the issuer as stated in the prospectus.

(1) With respect to common stock of issuers not in the promotional or developmental stage, the offering price may be deemed unfair or inequitable to purchasers unless it meets the requirements of par. (a), (b) or (c) of this subsection.

(a) The price for the stock does not exceed 25 times the issuer's net earnings per share for the last fiscal year, or does not exceed 25 times its average annual net earnings per share for the last 3 years prior to the proposed offering date, or does not exceed such other multiple of net earnings as the commissioner may prescribe.

(b) Information is filed with the commissioner showing there exists an adequate public market for the stock, provided that a public market will be presumed adequate if:

1. The stock is traded on a national or regional stock exchange registered under the securities exchange act of 1934;

2. The stock is quoted on the national association of securities dealers automated quotation system; or

3. Each of the criteria in this subdivision are met, consisting of there having been at least 500 holders of the stock at the beginning and end of the 6-month period preceding the date of the filing, at least 200,000 shares of the stock are publicly outstanding (exclusive of shares held by officers, directors, or 5% shareholders), at least 2 broker-dealers regularly make a market in the stock, at least one financial publication regularly quotes the market price, and trading of the issuer's stock in the 6-month period preceding the date of the filing averaged at least 100 transactions or at least 5% of the outstanding shares (not including shares held by officers, directors or 5% shareholders) per month.

(c) If no adequate public market exists, information satisfactory to the commissioner is filed justifying the proposed offering price-earnings ratio in relation to price-earnings ratios of companies comparable to the issuer in terms of size, history of operations, industry and products, and other relevant factors; such information may be contained in an underwriter's memorandum on the issuer prepared in connection with the proposed offering.

(2) With respect to common stock of issuers in the promotional or developmental stage as defined in sub. (3), the offering price shall be reasonably related to the price paid for the stock by promoters or controlling persons of the issuer in transactions effected prior to the public offering, except as permitted under s. SEC 3.04.

Next page is numbered 25

(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; am. (1) (a), Register, December, 1981, No. 312, eff. 1-1-82; am. (intro.), Register, December, 1982, No. 324, eff. 1-1-83; am. (intro.), (1)(a) and (b), Register, December, 1983, No. 336, eff. 1-1-84.

**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, as well as the amounts and kinds of options and warrants issued or reserved for issuance at the date of the public offering, shall be reasonable. Options and warrants are presumed reasonable if they satisfy the following conditions:

(1) With respect to 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.

(4) (a) Except as provided in par. (b), the total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding options and warrants issued to financing institutions, other than underwriters, and excluding those issued to an entity being acquired, 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 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.

(b) The total amount of options and warrants issued or reserved for issuance at the date of the public offering by a Wisconsin corporation having its principal office in Wisconsin, excluding options and warrants issued to financing institutions, other than underwriters, and excluding those issued to an entity being acquired, does not exceed 20% of the shares to be outstanding upon completion of the offering, with options and warrants not to exceed 10% for any one person, or 20% 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 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 85% of 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; am. (intro.) and (4), Register, December, 1981, No. 312, eff. 1-1-82;

Register, December, 1991, No. 432

am. (1), renun. (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.

(2) If an escrow of shares of promotional or cheap stock is required as a result of application of the Statement of Policy in sub. (1), the terms and conditions of the escrow shall comply with the provisions of the North American Securities Administrator's Association Model Security Escrow Agreement adopted effective September 14, 1989.

Note: The Model Agreement is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes. Copies of the Model Agreement are available from the commissioner's office for a prepaid fee of \$4.

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; cr. (2), Register, December, 1990, No. 420, eff. 1-1-91.

**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 Promoters' Investment, 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; am. Register, December, 1991, No. 432, eff. 1-1-92.

**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

Register, December, 1991, No. 432

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, 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:

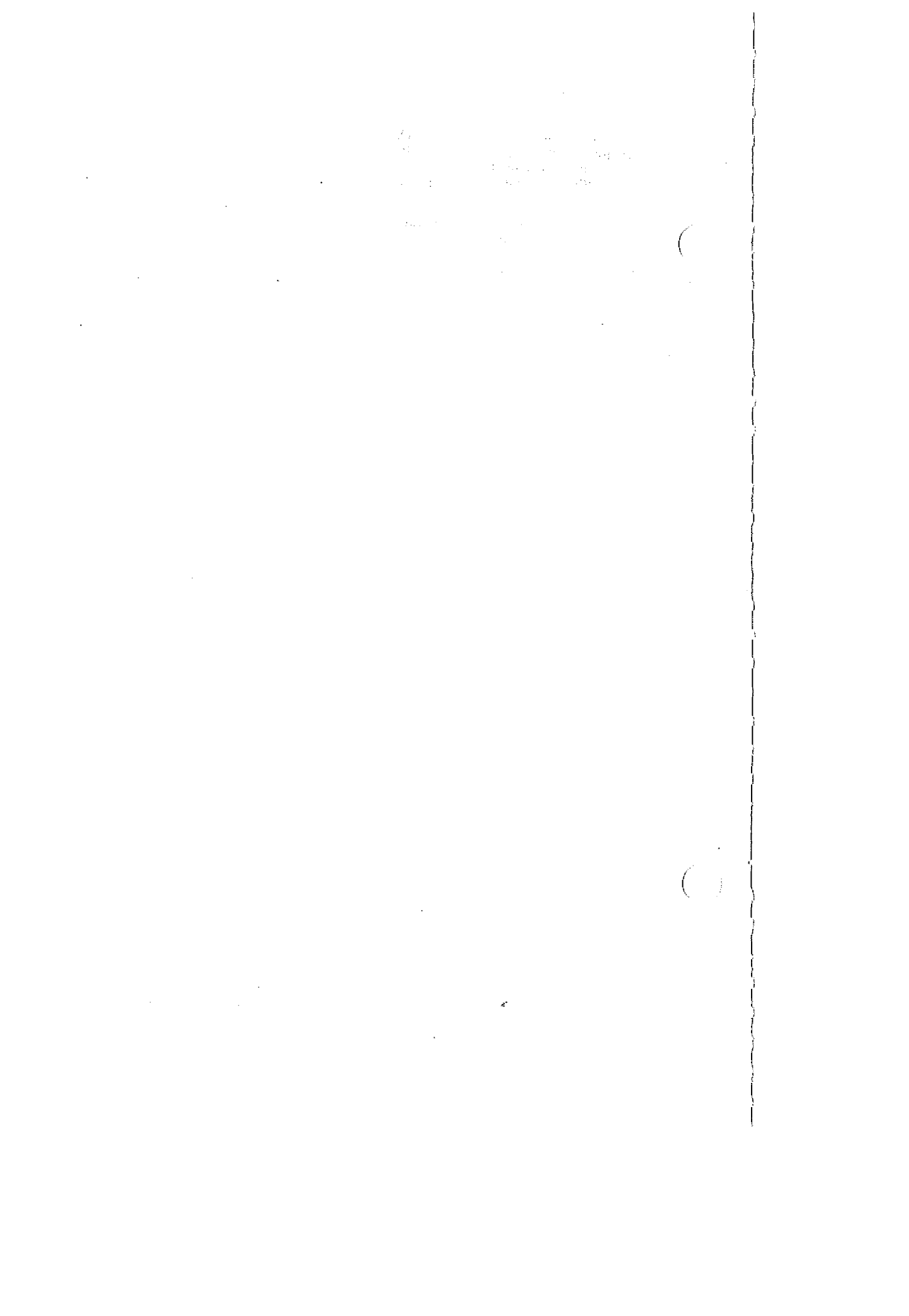
1. "Net earnings" means income before income taxes, extraordinary items and interest expense.

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 publicly-held debt securities outstanding at the time repurchase is made un-

Next page is numbered 29





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

(6) Subsections (1) to (5) notwithstanding, no closed-end investment company which engages in any of the following or related speculative activities may 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 \_\_\_\_\_)."

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 syndications 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, as amended effective March 30, 1982, April 23, 1983, April 27,

Register, December, 1991, No. 432

1984, January 1, 1986, January 1, 1988, and August 27, 1990, including comments. 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 the 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, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81; renum. to be (1) and am., cr. (2), Register, April, 1982, No. 316, eff. 5-1-82; am. (1), r. (2), Register, December, 1983, No. 336, eff. 1-1-84; am. Register, December, 1984, No. 348, eff. 1-1-85; am. Register, December, 1986, No. 372, eff. 1-1-87; am. Register, December, 1988, No. 396, eff. 1-1-89; am. Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 3.12 Oil and gas programs.** (1) Except as provided in sub. (2), the offer or sale of interests in a limited partnership which will engage in oil or gas well drilling and exploration activities or the purchase of production from oil and gas wells 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, October 31, 1979, April 23, 1983 and April 27, 1984. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4.

Note: The Guidelines are published in CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

(2) (a) In addition to the provisions of subsection V.B.1. (a) (3) of the North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs ("NASAA Oil and Gas Program Registration Guidelines"), sponsor compensation, determined on a modified functional allocation basis, where the sponsor pays all capital costs on initial wells in a prospect and pays a corresponding pro-rata percentage of the costs on subsequent wells in a prospect, shall be presumed reasonable only if the aggregate of the costs contributed by the sponsor constitute at least 10% of the total program costs. If the costs contributed by the sponsor constitute at least 10% of the program costs, it shall be presumed reasonable for the sponsor to receive as compensation 25% of the program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs.

(b) In addition to the provisions of subsection V.B.2. (a) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation determined on a carried interest or net profits interest basis shall be presumed reasonable only if:

1. With respect to compensation determined on a carried interest basis for sponsors that bear at least 10% of all program costs as defined in subd. 3., the sponsor receives as compensation not more than 15% of program revenues plus the same percentage of revenues that the sponsor's contributed costs bear to the program's total costs;

2. With respect to compensation determined on a net profits interest basis for sponsors who bear less than 10% of all program costs as defined in subd. 3., the sponsor receives as compensation not more than 15% of the cash actually distributed by the program, plus the same percentage of cash that the sponsor's contributed costs bear to the program's total costs; and

Register, December, 1991, No. 432

3. For purposes of this paragraph, "program costs" are defined as all costs incurred by a program, including those costs paid from capital contributions, assessments, borrowings and reinvested revenues, but excluding organizational and offering expenses and management fees where the total of such expenses and fees do not exceed 15% of initial program subscription proceeds.

(c) In addition to the provisions of subsection VI.A.1. (4) (i) of the NASAA Oil and Gas Program Registration Guidelines, sponsor compensation that includes overriding royalty interests in program wells payable to the sponsor, any affiliate or their respective employees, shall be presumed reasonable if the total compensation, including the overriding royalties, does not exceed the presumed reasonable percentages permitted by the sponsor compensation provisions in either the NASAA Oil and Gas Program Registration Guidelines or in any alternative provision in sub. (2). However, an overriding royalty interest paid to a geologist employed by or affiliated with the sponsor shall not be included in the computation of sponsor compensation provided that:

1. The percentage of the overriding royalty is not greater than the percentage customarily charged or received by unaffiliated geologists rendering similar services for comparable prospects in arm's-length transactions with unaffiliated parties in the same geographic area; and

2. The program's interest in the prospect that has overriding royalties paid to a geologist employed by or affiliated with the sponsor is subject to no other overriding royalties other than those payable to landowners or sublessors.

History: Cr. Register, December, 1977, No. 264, eff. 1-1-78; am. Register, December, 1980, No. 300, eff. 1-1-81; renum. to be (1) and am., cr. (2), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) and (2)(b) 1., Register, December, 1983, No. 336, eff. 1-1-84; am. (1), Register, December, 1984, No. 348, eff. 1-1-85; am. (1), Register, December, 1988, No. 396, eff. 1-1-89.

**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.

Note: The Guidelines are published in CCH NASAA Reports published by Commerce Clearing House 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; am. Register, December, 1988, No. 396, eff. 1-1-89.

**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 of \$4.

Register, December, 1991, No. 432

## SEC 3

Note: The Guidelines are published in CCH NASAA Reports published by Commerce Clearing House 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; am. Register, December, 1988, No. 396, eff. 1-1-89.

**SEC 3.145 Debt securities issued by a health care facility.** (1) Except as provided in sub. (2), the offer or sale of debt securities issued by a hospital or other health care facility, the proceeds of which are to be utilized to finance or refinance the purchase, construction or improvement of buildings or related facilities and equipment, 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 Health Care Facility Statement of Policy, adopted April 5, 1985. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4. The Guidelines are published in the CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

(2) (a) With reference to the provisions of numbered paragraph 1. of the Financial Statement of Policy portion of the Health Care Facility Statement of Policy, the computation of the sufficiency of an issuer's excess of revenues over expenses using the formula in that paragraph may also include an add-back to revenues of the interest on existing indebtedness of the issuer that will remain outstanding after the proposed offering of debt securities by the issuer is completed.

(b) With reference to the provisions of numbered paragraph 4 (b) of the Financial Statement of Policy portion of the Health Care Facility Statement of Policy, the following alternative is provided to the requirement in that paragraph dealing with what a trust indenture shall provide with respect to a trustee's obligation to furnish a list of bondholders upon request. Alternatively, the trust indenture shall provide that if three or more bondholders apply in writing to the trustee under the trust indenture and furnish to the trustee reasonable proof that each bondholder has owned a bond for a period of at least 6 months preceding the date of the application, and the application states that the bondholders desire to communicate with other bondholders with respect to their rights under the trust indenture or under the bonds and is accompanied by a copy of the form of proxy or other communication which the applicants propose to transmit, then the trustee, within 5 business days after the receipt of the application shall do either of the following:

1. Afford the applicants access to the information preserved at the time by the trustee; or

2. Inform the applicants of the approximate number of bondholders whose names and addresses appear in the information preserved at the time by the trustee and the approximate cost of mailing to the bondholders the form of proxy or other communication, if any, specified in the application. If the trustee determines not to afford the applicant bondholders access to the information requested, the trustee shall, upon the written request of the applicant bondholders, mail to each bondholder whose name and address appears in the information preserved at the time by the trustee, a copy of the form of proxy or other communication that is specified in the request, with reasonable promptness after a tender to the trustee of the material to be mailed and of payment, or provision

for payment, of the reasonable expenses of mailing, unless within 5 days after the copy of the material to be mailed, a written statement to the effect that, in the opinion of the trustee, the mailing would be contrary to the best interests of the bondholders or would be in violation of applicable law. The written statement shall specify the basis of the trustee's opinion.

History: Cr. Register, December, 1986, No. 372, eff. 1-1-87.

**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 Transactions with affiliates.** The offer or sale of securities by an issuer that has engaged or has a policy to engage in transactions with affiliates, may be deemed to be unfair and inequitable to purchasers unless the terms of the transactions comply with the provisions of the North American Securities Administrators Association Statement of Policy Regarding Affiliated Transactions, adopted effective September 14, 1989.

Note: The Statement of Policy is published in CCH NASAA Reports published by Commerce Clearing House and is on file at the offices of the Wisconsin secretary of state and the revisor of statutes. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of \$4.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; r. and rec. Register, December, 1983, No. 336, eff. 1-1-84; am. (2) (a), Register, December, 1985, No. 360, eff. 1-1-86; r. and rec. Register, December, 1990, No. 420, eff. 1-1-91.

**SEC 3.17 Real estate investment trusts.** The offer or sale of securities of a corporation, trust or association, other than a real estate syndication, engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate, or both, 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 Real Estate Investment Trusts, adopted April 28, 1981, and amended effective January 1, 1986. 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 the 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, 1981, No. 312, eff. 1-1-82; am. Register, December, 1986, No. 372, eff. 1-1-87.

**SEC 3.18 Commodity pool programs.** The offer or sale of interests in a limited partnership which will engage in the buying and selling of and trading in, commodity futures contracts, options thereon, commodity forward contracts or similar instruments, may be deemed unfair and inequitable to purchasers unless the offering complies with the provisions of the North American Securities Administrators Association Statement

Register, December, 1991, No. 432

## SEC 3

of Policy on Registration of Commodity Pool Programs, adopted September 21, 1983, as amended effective August 30, 1990. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4.

Note: The Guidelines are published in CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1982, No. 324, eff. 1-1-83; am. Register, December, 1985, No. 360, eff. 1-1-86; am. Register, December, 1988, No. 396, eff. 1-1-89; am. Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 3.19 Equipment programs.** The offer or sale of interests in a limited partnership which will engage in the acquisition of ownership of equipment for lease or operation 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 for Equipment Programs, adopted September 21, 1983, as amended April 22, 1988. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$4.

Note: The Guidelines are published in CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

History: Cr. Register, December, 1983, No. 336, eff. 1-1-84; am. Register, December, 1988, No. 396, eff. 1-1-89.

**SEC 3.20 Other causes for denial, suspension or revocation.** (1) The enumeration of causes stated in ss. SEC 3.01 to 3.17, 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 and 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; renum. from SEC 3.17 and am. (1), Register, December, 1981, No. 312, eff. 1-1-82.

**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) (a) Copies of the articles of incorporation and by-laws or equivalents currently in effect, any agreements with or among underwriters, any instrument governing the issuance of the security to be registered, a specimen of the security and, if the security to be registered is a note, bond, debenture or other evidence of indebtedness, a trust indenture meeting the requirements of s. SEC 3.24, unless the security is a face amount certificate registered under the investment company act of 1940

Register, December, 1991, No. 432

or unless the requirement to furnish a trust indenture relating to the securities is waived by the commissioner for good cause shown; and

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

(2) A registration statement filed by coordination relating to the securities of an open-end management company, unit investment trust or face amount certificate company, as defined in the investment company act of 1940, shall provide for an indefinite amount of securities to be registered.

(3) In any offering for which a registration statement on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 has been filed by coordination with the commissioner, the requirement in s. 551.25 (3) (a) 2, Stats. that a registration statement be on file with the commissioner for at least 10 days is reduced to a requirement that the registration statement be on file with the commissioner for at least 7 days.

History: Renum. from SEC 2.04 and am. Register, December, 1977, No. 264, eff. 1-1-78; am. (Intro.), Register, December, 1979, No. 238, eff. 1-1-80; cr. (3), Register, December, 1980, No. 300, eff. 1-1-81; renum. (1) to be (1) (a) and am., renum. (2) and (3) to be (1) (b) and (2), Register, December, 1982, No. 324, eff. 1-1-83; cr. (3), Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 3.22 Registration by qualification.** (1) A registration statement under s. 551.26, 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 s. 551.27 (2), Stats., and the consent to service of process on Form U-2 required by s. 551.65 (1), 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: the person's name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by the person, 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 the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the

Next page is numbered 41