

Chapter SEC 7

GENERAL PROVISIONS

SEC 7.01 Fees
 SEC 7.02 Advertising
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Note: Renumbered from SEC 6, Register, December, 1977.

SEC 7.01 Fees. The following fees, prescribed for the examination of various matters arising under ch. 551, Stats., are chargeable to the applicant, registrant or licensee, and are payable, unless otherwise provided by the commissioner, at the time an application or notice is filed:

(1) Registration matters:

(a) Application for post-effective amendment of a registration statement \$200.

(b) Application for extension of effectiveness of a registration statement \$200.

(c) Field examination pursuant to s. 551.27 (5), Stats., of application for registration under s. 551.25 or 551.26, Stats. \$100 per day per examiner plus, if the examination is conducted outside of Wisconsin, each of the following costs incurred:

1. Reasonable transportation costs that may not exceed coach class air fare;

2. Ground transportation costs that on a per day basis may not exceed the daily rate charged by a national car rental agency in that locale for a compact-sized car; and

3. If the examination involves any overnight stay, hotel and meal costs not to exceed the per diem amounts prescribed for state agency reimbursement purposes by the department of employment relations at the time the examination is made.

(2) Exemption matters:

(a) Application for order of exemption under s. 551.22 or 551.23, Stats. \$200.

(b) Notice filing for purposes of claiming registration exemption status under s. 551.22 or 551.23, Stats., or rules promulgated thereunder \$200.

(c) Application for an opinion confirming a registration exemption or an exclusion from a definition \$500.

(3) Licensing matters:

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(a) Application for an initial license of a broker-dealer or investment adviser or a successor under s. 551.32 (1) or (3), Stats. \$200.

(b) Application for an order waiving a licensing provision \$200.

(c) Examination of an agent applicant or a person representing an investment adviser under s. 551.32 (4), Stats. \$50.

(d) Field examination of applicant for initial license as broker-dealer or investment adviser under s. 551.32 (2), Stats. \$100 per day per examiner plus, if the examination is conducted outside of Wisconsin, each of the following costs incurred:

1. Reasonable transportation costs that may not exceed coach class air fare;

2. Ground transportation costs that on a per day basis may not exceed the daily rate charged by a national car rental agency in that locale for a compact-sized car; and

3. If the examination involves any overnight stay, hotel and meal costs not to exceed the per diem amounts prescribed for state agency reimbursement purposes by the department of employment relations at the time the examination is made.

(e) Periodic examination of a broker-dealer or investment adviser under s. 551.33 (4), Stats. \$100 per day per examiner plus, if the examination is conducted outside of Wisconsin, each of the following costs incurred:

1. Reasonable transportation costs that may not exceed coach class air fare;

2. Ground transportation costs that are on a per day basis may not exceed the daily rate charged by a national car rental agency in that locale for a compact-sized car; and

3. If the examination involves any overnight stay, hotel and meal costs not to exceed the per diem amounts prescribed for state agency reimbursement purposes by the department of employment relations at the time the examination is made.

(4) Advertising:

(a) Advertising filed with a notice or application under s. 551.22, 551.23, 551.25 or 551.26, Stats. No charge.

(b) Advertising filed under s. 551.53, Stats. \$10 per item.

(c) Prospectus filed by a registered finance company under s. SEC 3.27 (2)..... \$50.

(5) Other matters:

(a) Issuance of a certificate under s. 551.64 (4), Stats., relating to the existence or non-existence of documents or entries on file or contained in the records of the commissioner's office..... \$50 plus \$1 per page for copies included with the certificate.

(b) Application for issuance of an interpretive opinion under s. 551.64 (5), Stats. \$500.

(c) Application for exclusion from a definition by order \$200.

(d) Small corporate offering registration and prospectus disclosure form on printed Form U-7 or on 3½" computer diskette, IBM compatible, running "Word Perfect" 5.0 software with a minimum of 720K capacity \$5.

(e) Filing of a notice under s. SEC 6.05 \$200.

(6) Photocopying fee \$.25 per page for the first 10 pages and \$.10 per page for any additional pages.

(7) Delinquent or materially deficient filings:

(a) Delinquent filing of broker-dealer or investment adviser license renewal application \$100.

(b) Delinquent filing of broker-dealer or investment adviser transfer of control \$100.

(c) Delinquent filing of broker-dealer or investment adviser annual financial statements \$100.

(d) Delinquent filing of notice of broker-dealer or investment adviser branch office registration, renewal, relocation or closing \$100.

(e) Delinquent filing of agent termination notice on Form U-5..... \$100.

(f) Delinquent filing of broker-dealer agent or agent for issuer license renewal, or of investment adviser representative renewal \$100.

(g) Delinquent filing of change of broker-dealer or investment adviser designated supervisor \$100.

(h) Delinquent filing of investment company report of sales on Form RS-1C..... \$100.

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(i) The commissioner may by order require the payment of a fee of no more than \$200 for delinquent or materially deficient filings of information or documents required to be filed in connection with the examination of any matter under chs. SEC 2 to 6.

(8) (a) Pamphlet copy of chs. 551, 552 and 553, Stats. \$4.

(b) Pamphlet copy of rules of the commissioner of securities under chs. 551 to 553, Stats. \$4.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; emerg. cr. (1)(g), eff. 6-16-74; emerg. am. (1)(a) and (b), eff. 7-5-74; am. (1)(a) and (b), cr. (1)(g) and (h), Register, October, 1974, No. 226, eff. 11-1-74; r. and recr. Register, December, 1977, No. 264, eff. 1-1-78; emerg. cr. (8), eff. 6-19-78; am. (2)(b) and cr. (8), Register, September, 1978, No. 273, eff. 10-1-78; am. (2)(a) and (b), Register, December, 1979, No. 288, eff. 1-1-80; am. (2)(b) and (d), r. (2)(f), renum. (2)(g) to be (2)(f), am. (3)(a), r. (3)(c), renum. (3)(d) to (f) to be (3)(c) to (e) and am., r. and recr. (7), Register, December, 1980, No. 300, eff. 1-1-81; am. (2)(d), renum. (7) and (8) to be (8) and (9), cr. (7), Register, December, 1981, No. 312, eff. 1-1-82; emerg. am. (2)(f), eff. 5-1-82; am. (2)(f), Register, September, 1982, No. 321, eff. 10-1-82; am. (1)(c), (2)(a) and (e), (3)(b) and (5)(b), r. (7), renum. (8) to be (7), Register, December, 1982, No. 324, eff. 1-1-83; cr. (2)(g), Register, August, 1983, No. 332, eff. 9-1-83; am. (3)(e), Register, December, 1983, No. 336, eff. 1-1-84; emerg. am. (2)(e) and r. (2)(g), eff. 1-1-84; am. (2)(e) and r. (2)(g), Register, May, 1984, No. 341, eff. 6-1-84; am. (4)(d) and r. (9), Register, December, 1984, No. 348, eff. 7-1-85; am. (2)(c) and (d), (5)(b), Register, December, 1985, No. 360, eff. 1-1-86; am. (1)(c), (2)(e) and (f), (3)(d) and (e), Register, December, 1986, No. 372, eff. 1-1-87; r. and recr. (1)(intro.), (a) and (b), (2), (3)(a) to (c), (4) to (7), Register, December, 1988, No. 396, eff. 1-1-89; renum. (7)(f) to be (7)(i), cr. (5)(d), (7)(f) to (h) and (8), am. (7)(a) to (c) and (e), r. and recr. (7)(d), Register, December, 1989, No. 408, eff. 1-1-90; r. and recr. (5)(a), cr. (5)(e), Register, December, 1990, No. 420, eff. 1-1-91; am. (5)(d) and (7)(d), Register, December, 1991, No. 432, eff. 1-1-92; am. (5)(d), Register, December, 1992, No. 444, eff. 1-1-93.

SEC 7.02 Advertising. (1) The following advertising used in connection with the offer, sale or purchase of any security in this state is exempted from filing under s. 551.53, Stats.:

(a) A prospectus published or circulated in connection with either:

1. An offering of a security for which a registration statement has been filed under s. 551.25 or 551.26, Stats., that has not become effective; or

2. An offering of a security for which a notice or application for exemption, including the prospectus, has been filed under s. 551.22 or 551.23, Stats.

(b) Advertising published or circulated relating to a security exempted under s. 551.22, Stats., except under s. SEC 2.01 (4) (a); or relating to a transaction exempted under s. 551.23 (4), (5), (6), (7) or (8), Stats.; or relating to a transaction exempted under s. 551.23(12), (13) or (14), Stats., if the issuer has any securities registered under section 12 of the securities exchange act of 1934 or exempted from registration by section 12(g) (2) (G) thereof or is an investment company registered under the investment company act of 1940; or relating to a transaction exempt from registration under s. SEC 2.027 where the advertising has been filed with the commissioner under s. SEC 2.027 (7); or relating to a transaction subject to the filing requirements of section 14(d) of the securities exchange act of 1934; provided the transaction is not subject to the filing requirements of s. SEC 6.05 (1).

(c) Advertising which does no more than state from whom a prospectus may be obtained, identify the security offered for sale and state the price thereof and the names of broker-dealers having an interest in the Register, December, 1992, No. 444

sale thereof, or advertising meeting the requirements of rule 134 under the securities act of 1933;

(d) Advertising published or circulated by a broker-dealer or investment adviser licensed in this state relating to the licensee's own services, business or operations, or by a broker-dealer licensed in this state relating to securities that have been registered under ch. 551, Stats., or relating to securities transactions exempt under s. 551.23(3) (a), (c) or (d), Stats., or by an investment company registered under ch. 551, Stats., unless the commissioner otherwise provides by order.

(e) Advertising, including but not limited to annual reports and proxy statements, published by an issuer specified in s. 551.22(3), (4), (5) or (6), Stats., or registered under section 12 of the securities exchange act of 1934, or exempted from registration by section 12 (g) (2) (G) thereof, relating to transactions exempted under s. 551.23, Stats.; provided that with respect to any of the foregoing, the transaction does not and cannot have either of the effects described in s. SEC 6.05 (2); and

(f) Any other advertising which the commissioner may specify by order.

(2) All advertising required to be filed by any person shall be filed in duplicate not less than 10 days prior to the date of use or such shorter period as the commissioner may permit, and shall not be used in this state until the commissioner has allowed its use.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; am. (1) (a) and (b), Register, August, 1972, No. 200, eff. 9-1-72; emerg. am. (1)(b) and (e), eff. 11-4-75; am (1)(b), and (e), Register, February, 1976, No. 242, eff. 3-1-76; am. Register, December, 1977, No. 264, eff. 1-1-78; am. (1)(b), Register, September, 1978, No. 273, eff. 10-1-78; am. (1) (a), Register, December, 1980, No. 300, eff. 1-1-81; am. (2), Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (d), Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (b), Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a), Register, December, 1990, No. 420, eff. 1-1-91; am. (1) (b), Register, December, 1992, No. 444, eff. 1-1-93.

SEC 7.03 Civil liabilities. (1) For purposes of s. 551.59 (1) and (2), Stats., any person who places an order or effects a transaction involving the purchase or sale of a security for the account of a customer pursuant to discretionary authority is deemed to be offering or selling or purchasing a security.

(2) An offer to repurchase securities under s. 551.59 (6) (a), Stats., by a licensed broker-dealer and not relating to violation of s. 551.41, Stats., may provide that the period within which the offer may be accepted by the offeree is not less than 15 days after the date of receipt thereof.

(3) Every offer to repurchase or return securities made pursuant to s. 551.59 (6) (a) or (b), Stats., shall include, in addition to the information specified in those paragraphs, the price at which the security was sold or purchased, the price of the security on the date the offer is made and such additional information as the commissioner may require in connection with specific offers.

(4) The commissioner may require any person named in any administrative order issued under s. 551.60 (2), Stats., to satisfy any civil liabilities arising under s. 551.59, Stats., in connection with the matters set forth in the order, prior to registering any securities offered for sale by

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the person or licensing the person as a broker-dealer, agent, or investment adviser.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; cr. (4), Register, August, 1972, No. 200, eff. 9-1-72; renum. to be 7.03, Register, December, 1977, No. 264, eff. 1-1-78; am. (2) to (4), Register, December, 1980, No. 300, eff. 1-1-81, am. (2), Register, December, 1983, No. 336, eff. 1-1-84.

SEC 7.04 Annual reports. Unless otherwise required by rule or order of the commissioner, every issuer whose securities have been registered under ch. 551, Stats., or any predecessor law and are held of record by 100 or more persons in this state, but none of whose securities are registered under section 12 of the securities exchange act of 1934 or exempted from registration by section 12 (g) (2) (B) or (G) thereof, shall distribute to the security holders not more than 120 days after the end of each fiscal year of the issuer a balance sheet of the issuer as of the end of such fiscal year and statements of income and changes in financial position and an analysis of surplus for the fiscal year meeting the requirements of s. SEC 7.06, and shall concurrently file copies of those financial statements with the commissioner.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; renum. to 7.04 and am. Register, December, 1977, No. 264, eff. 1-1-78.

SEC 7.05 Files and records. (1) Except as otherwise provided by law or as specified in sub. (2), any record or document in the commissioner's possession or control of which the commissioner is the legal custodian, may be inspected or copied by any person during regular business hours.

(2) The following records may be excluded from disclosure under this section if the commissioner finds the public interest in nondisclosure outweighs the benefits of open access:

(a) Personnel files of office employees, former employees and job applicants;

(b) Communications with legal counsel;

(c) Records obtained under a pledge or reasonable expectation of confidentiality;

(d) Memoranda and work papers of employees, the commissioner or the deputy commissioner prepared with the reasonable expectation of confidentiality.

(e) A record that is a part of a current investigation that may result in administrative, legal or criminal action, or that relates to any such pending action.

(f) A record whose disclosure would unduly damage a person's reputation so as to outweigh the public interest in disclosure.

(3) With respect to records described in sub. (2)(c) the commissioner shall, and with respect to any other records the commissioner may, prior to producing the records for inspection or copying, call a hearing (with notice to interested persons) for the purpose of determining whether the records should be produced.

(4) A request for records shall be addressed to the commissioner, who shall produce the records or a written refusal with specific reasons there-

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for within ten business days after the request is received (except records described in sub. (2)(c) as to which a hearing has been called).

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; renum. from SEC 6.06 and r. and rec. Register, December, 1977, No. 264, eff. 1-1-78; cr. (2) (e) and (f), Register, December, 1988, No. 396, eff. 1-1-89.

SEC 7.06 Financial statements. (1) All financial statements required by ch. 551, Stats., or these rules shall be:

(a) Prepared in accordance with generally accepted accounting principles; and

(b) Examined and reported upon by an independent certified public accountant, provided that this requirement may be waived by the commissioner and does not apply to interim financial statements or to financial statements of investment advisers that are prepared in compliance with s. SEC 5.04 (1) (a), unless otherwise required by the commissioner in particular cases. The accountant's report shall meet the requirements of rule 2-02 of regulation S-X of the U.S. securities and exchange commission and shall accompany the financial statements included in the prospectus.

(2) Financial statements meeting the requirements of regulation S-X are deemed to satisfy the requirements of sub. (1).

(3) The commissioner may permit the omission of one or more of the statements required under this section or the filing in substitution therefor of appropriate statements of comparable character. The commissioner may also require the filing of other statements when necessary or appropriate for an adequate presentation of the financial condition of any issuer or person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(4) (a) Financial statements and financial information that have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement that has been filed with the commissioner under s. 551.25 or 551.26, Stats., on U.S. securities and exchange commission Form F-7, F-8, F-9 or F-10 and that complies with the following conditions applicable to the type of form being used for the offering:

1. The securities that are the subject of a registration statement designated as Form F-7 by the U.S. securities and exchange commission are offered for cash upon the exercise of rights granted to existing securityholders.

2. The securities that are the subject of a registration statement designated as Form F-8 by the U.S. securities and exchange commission are securities to be issued in an exchange offer, merger or other business combination.

3. The securities that are the subject of the registration statement designated as Form F-9 by the U.S. securities and exchange commission are either non-convertible preferred stock or non-convertible debt that are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

4. The securities that are the subject of a registration statement designated as Form F-10 by the U.S. securities and exchange commission are

offered and sold pursuant to a prospectus in which the U.S. securities and exchange commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented.

(b) For purposes of this subsection, preferred stock and debt securities that are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of par. (a) 3.

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 6.07 and am. Register, December, 1977, No. 264, eff. 1-1-78; am. (1) (b) and (3), Register, December, 1980, No. 300, eff. 1-1-81; emerg. am. (1) (b), cr. (1) (c), eff. 1-1-82; am. (1) (b), Register, December, 1990, No. 420, eff. 1-1-91; cr. (4), Register, December, 1991, No. 432, eff. 1-1-92.