Chapter SEC 3

REGISTRATION REQUIREMENTS AND PROCEDURES

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SEC 3.001 Limitation on applicability of certain registration requirements in this chapter. The requirements in ss. SEC 3.01 to 3.20 are applicable except with respect to a registration statement filed under s. 551.25 or 551.26, Stats., relating to an offering that meets the requirements in any of the following subs. (1) to (4):

(1) An offering of equity securities, including warrants or subscription rights, of an issuer having equity securities that meets the requirements in one of the subdivisions in par. (a) and meets the requirements in one of the subdivisions in par. (b):

(a) The issuer's equity securities of the same class are either of the following:

1. Traded on any national securities exchange registered under the securities exchange act of 1934.

2. Designated for inclusion in the national association of securities dealers automated quotation system established under the securities exchange act of 1934 for national market system issuer securities.

(b) The equity securities are the subject of one of the following:

1. A registration statement filed for registration under the securities act of 1933, and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

2. An offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in a offering statement qualified by the U.S. securities and exchange commission.

(2) An offering of debt securities of any issuer that, together with any predecessor, has been in continuous operation for at least 5 years, provided there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer or predecessors with a fixed maturity or a fixed interest or dividend provision, and provided that the debt securities are either:

(a) The subject of a registration statement filed for registration under the securities act of 1933, and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission; or

(b) The subject of an offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in an offering statement qualified by the U.S. securities and exchange commission.

(3) An offering of the securities of any issuer with its principal office in Wisconsin and the securities are any of the following:

(a) The subject of a registration statement under the securities act of 1933 and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

(b) The subject of an offering statement filed for qualification under Regulation A under section 3(b) of the securities act of 1933, and sales cannot be made until there is a final offering circular contained in an offering statement qualified by the U.S. securities and exchange commission.

(c) Exempt from registration pursuant to Rule 504 under Regulation D of the securities act of 1933 and are the subject of a registration statement filed under s. 551.26, Stats., and sales cannot be made until the registration statement is declared effective by the commissioner.

(4) An offering of the redeemable securities issued by an open–end management investment company registered under the investment company act of 1940, provided that the securities are the subject of a registration statement under the securities act of 1933 and sales cannot be made until the registration statement is declared effective by the U.S. securities and exchange commission.

History: Cr. Register, December, 1995, No. 480, eff. 1–1–96.

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, as adopted effective September 14, 1989, and amended effective October 24, 1991.

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, unless the offering complies with the provisions of the North American Securities Administrators Association Guidelines For Registration of Periodic Payment Plans, as adopted March 29, 1992, 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.

Note: 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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

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; am. (1) and (3), Register, December, 1992, No. 444, eff. 1–1–93.

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 broker–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).

(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.

(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. (1) Except as provided in sub. (2), 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 may be deemed unfair and inequitable unless the offering complies with the provisions of the North American Securities Administrators Association Statement of Policy Regarding Options and Warrants, as adopted effective October 24, 1992.

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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

(2) 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 does not exceed either of the amounts in this subsection during the period the registration statement is effective.

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; 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; r. and recr. Register, December, 1992, No. 444, eff. 1–1–93.

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 Administrators 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 3.045 Impoundment of proceeds. In any offering that the commissioner determines impoundment of offering proceeds is required as a condition of registration, the commissioner may require that the terms and conditions of the impoundment comply with the provisions of the North American Securities Administrators Association Statement of Policy regarding the Impoundment of Proceeds, as adopted effective October 24, 1991.

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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.

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 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.

(d) Preferred stock of an issuer that is senior to, or of substantially equal rank with, other securities of the same issuer which are listed, designated, or approved for listing or designation on the exchanges or trading markets specified in s. 551.22 (7), Stats., or rules promulgated thereunder.

(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 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 begin-

ning 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; am. (5) (c), Register, December, 1989, No. 408, eff. 1–1–90; cr. (5) (d), Register, December, 1992, No. 444, eff. 1–1–93.

SEC 3.07 Voting rights. If the issuer is a corporation or business trust having more than one class of equity securities authorized or outstanding, the offer or sale 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 Unequal Voting Rights, as adopted October 24, 1991.

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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

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; renum. (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; r. and recr. Register, December, 1992, No. 444, eff. 1–1–93.

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

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

SEC 3.09 Open–end investment companies. Except as limited under sub. (7), the offer or sale of redeemable securities of an open–end management investment company, as defined in the investment company act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The investments of the company shall be restricted in the following respects:

(a) At least 75% of the value of the total assets of a diversified investment company shall be in cash or cash items including receivables, government securities, securities of other investment companies, and other securities, and for each single issuer within the 75%, the investment may not exceed 5% of the value of the total assets of the diversified investment company and may not exceed 10% of the outstanding voting securities of the issuer.

(b) 1. No investment company, other than an investment company that invests more than 80% of its assets in debt securities, may purchase any securities of the classes specified in this subsection, if by reason thereof the value of its aggregate investment in those classes of securities will exceed: 10% of its total assets in securities of issuers which the company is restricted from selling to the public without registration under the securities act of 1933, excluding restricted securities eligible for resale pursuant to Rule 144A under the securities act of 1933 that have been determined to be liquid by the company's board of directors or trustees based upon the trading markets for the securities; 10% of its total assets in the securities of one or more real estate investment trusts or in one or more investment companies; 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than 3 years, and equity securities of issuers which are not readily marketable.

2. An investment company may not invest in options, financial futures or stock index futures, other than hedging positions or positions that are covered by cash or securities, if as a result thereof, more than 5% of its assets would be so invested.

(c) No investment company may invest any part of the total assets in real estate or interests in real estate, excluding readily marketable securities; commodities, other than precious metals not to exceed 10% of the investment company's total assets; commodity futures contracts or options thereon other than as permitted by investment companies qualifying for an exemption from the definition of commodity pool operator under 17 CFR 4.5 (c) (2) (i); or interests in commodity pools or oil, gas or other mineral exploration or development programs.

(d) The fundamental investment policies of the company shall be stated in the prospectus in reasonable detail, except that fundamental investment policies which will involve 5% or less of the company's assets may be disclosed in the Statement of Additional Information prepared by the company under the investment company act of 1940. The fundamental investment policies of the company may not be materially changed in any respect unless authorized by the vote of a majority of the outstanding voting securities of the company.

(2) The policy stated or followed by any investment company, other than one that invests 80% or more of its assets in debt securities, of engaging in any material respect in any of the following or related speculative activities, whether individually or in combination, and the relatively greater risks or costs involved in those activities, shall be disclosed or clearly referred to in bold face type on the cover of the prospectus or on a prospectus supplement satisfactory in form to the commissioner:

(a) Borrowing money for investment in securities, excluding borrowing for temporary purposes;

(b) Purchasing securities for short–term trading, other than securities issued by the U.S. government;

(c) Purchasing restricted securities as specified in this section;

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

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

(3) The net assets of an investment company, upon completion of the initial public offering of its securities or within a period of 2 years after the commencement thereof or such additional period as the commissioner may permit, shall not be less than one million.

(4) All payments by an investment company upon redemption of securities of which it is the issuer shall be made in cash or in kind. The redemption fee payable by any shareholder may not exceed 1% of the amount receivable upon redemption of his or her shares, except that if the shares of a company are sold without sales commission, the redemption fee may not exceed 2% of the

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

(5) An investment company shall not effect any brokerage transactions in its portfolio securities with any broker–dealer affiliated directly or indirectly with its investment adviser or manager, unless 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 or unreasonable to the shareholders of the company. The commissioner may require the company to file periodic reports concerning all such brokerage transactions.

(6) Each registered investment company shall notify the commissioner promptly when it is not in compliance with this section, and its registration statements shall be subject to revocation or suspension.

(7) (a) For the purposes of par. (b), an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

(b) Subsections (1) to (4) are not applicable to the redeemable securities issued by an open–end management investment company, as described in the investment company act of 1940, which represents in writing incident to the filing of an application for registration of its securities, or incident to the filing of an extension of its registration under s. SEC 3.27 (2), that it meets the requirements in subds. 1. and either 2. or 3.:

1. The issuer is advised by an investment adviser that is a depository institution exempt from registration under the investment advisers act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the investment advisers act of 1940 for at least 3 years next preceding the date of filing the application for registration or for extension of the registration; and

2. The adviser has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least 3 years next preceding the date of filing the application for registration or for extension of the registration; or

3. The issuer has a sponsor that has at all times throughout the 3 years before the date of filing the application for registration or for extension of the registration, sponsored one or more registered investment companies, the aggregate total assets of which have exceeded $100 million.

History: Cr. Register, August, 1972, No. 200, eff. 9–1–72; renum. from SEC 3.11, am. (intro.) and (3), Register, December, 1977, No. 264, eff. 1–1–78; r. (3), renum. (4) to (7) to be (3) to (6), Register, December, 1979, No. 288, eff. 1–1–80; am. (1) (a), (b) and (c), (2) (intro.) and (c), (4) to (6), Register, December, 1980, No. 300, eff. 1–1–81; am. (1) (b) and (c), (2) (intro.) and (b), Register, December, 1985, No. 360, eff. 1–1–86; r. and recr. (1) (a), am. (1) (d) and (4), Register, December, 1987, No. 384, eff. 1–1–88; am. (1) (b) 1., Register, December, 1990, No. 420, eff. 1–1–91; reprinted to restore dropped copy in (1) (b), Register, August, 1991, No. 428; am. (intro.), cr. (7), Register, December, 1994, No. 468, eff. 1–1–95.

SEC 3.10 Closed–end investment companies. The offer or sale of securities of a closed–end management investment company, as defined in the Investment Company Act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The company shall not at the time of purchase, as to its total assets:

(a) Invest more than 30% in restricted debt securities, unless permitted by the commissioner upon proper justification;

(b) Invest more than 15% in non–liquid investments, including, but not limited to, commodities, real estate, general and limited partnership interests, oil and gas interests, options and warrants, puts, calls, straddles, spreads, and restricted securities, except as provided in 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, 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

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 employes, 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.

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, as adopted effective September 14, 1989, and amended effective October 24, 1991.

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 recr. Register, December, 1983, No. 336, eff. 1–1–84; am. (2) (a), Register, December, 1985, No. 360, eff. 1–1–86; r. and recr. Register, December, 1990, No. 420, eff. 1–1–91; am. Register, December, 1992, No. 444, eff. 1–1–93.

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, as adopted April 28, 1981, and amended effective January 1, 1986, October 24, 1991, and September 29, 1993.

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. Copies of the Statement of Policy are available from the commissioner's office for a prepaid fee of $4.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; am. Register, December, 1986, No. 372, eff. 1–1–87; am. Register, December, 1992, No. 444, eff. 1–1–93; am. Register, December, 1994, No. 468, eff. 1–1–95.

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 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 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. 288, 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 issuer or any significant subsidiary effected within the past 3 years or proposed to be effected;

(c) With respect to persons covered by par. (b), the remuneration paid directly or indirectly during the past 12 months, and estimated to be paid during the next 12 months if materially different, by the issuer (together with all predecessors, parents, subsidiaries and affiliates) to all those persons in the aggregate; and the name of each such person receiving remuneration in excess of $50,000, and the amount of remuneration for each;

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

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

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

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

(h) The kind of securities and the amount to be offered (which, in the case of redeemable securities of an open–end management company, unit investment trust and face amount certificate company, as defined in the investment company act of 1940, shall be indefinite); the proposed offering price or the method by which it is to be computed; and variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

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

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

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

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

(m) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or equivalents, as currently in effect; 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 or unless the requirement to furnish a trust indenture relating to the securities is waived by the commissioner for good cause shown;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, stating whether the security when sold will be legally issued, fully paid, and nonassessable; and, if a debt security, a binding obligation of the issuer; and if the issuer is a partnership, association or trust, whether the pur-

chasers will be liable for the obligations of the issuer; and that the offer and sale of the security being registered is exempt from registration under the securities act of 1933, if that is the case, specifying the basis for the exemption;

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

(p) A balance sheet of the issuer as of the end of its most recent fiscal year, and a comparative statement of income and changes in financial position and analysis of surplus for each of the 3 most recent fiscal years (or for the period of the issuer's and any predecessor's existence if less than 3 years), all meeting the requirements of 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;

(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) If the offering is the subject of a registration statement under the securities act of 1933, the following statements in bold–face type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION 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) (2), 3. (a) (4), 3. (a) (11) or 4 (2) of the securities act of 1933, and a filing is required to be made under s. 551.26, 551.22 (1) (b), 551.22 (8) or 551.23 (15), Stats., or rules promulgated thereunder, each of the following 2 statements in bold–face type, as applicable to the offering:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(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, or a prospectus or offering circular relating to the debt or equity securities of an issuer that meets the requirements in s. SEC 3.001(1), (2) or (3)(a) or (b), shall not be subject to disclosure adequacy review or comment by the commissioner. A prospectus meeting the requirements of form N–1A or form S–6 and subsequent post–effective amendments as filed under the securities act of 1933, or the investment company act of 1940, or both, by a registration applicant or an existing registrant that qualifies under s. SEC 3.09(7)(b) or s. SEC 3.001(4) shall not be subject to disclosure adequacy review or comment by the commissioner. If the offering is being made for federal purposes pursuant to use of either Rule 504 of Regulation D under the securities act of 1933 or rule 147 under section

3(a)(11) of the securities act of 1933, a disclosure document in compliance with the North American Securities Administrators Association, Inc. form U–7 is an acceptable disclosure format and shall be subject to disclosure adequacy review and comment by the commissioner.

(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; am. (2) (g) and (3), renum. (2) (i) to be (2) (j), cr. (2) (i), Register, December, 1989, No. 408, eff. 1–1–90; r. (2) (h), renum. (2) (i) and (j) to be (2) (h) and (i) and am. (2) (h), Register, December, 1990, No. 420, eff. 1–1–91; am. (2) (h), Register, December, 1992, No. 444, eff. 1–1–93; am. (2) (h), (3), Register, December, 1994, No. 468, eff. 1–1–95; am. (3), Register, May, 1995, No. 473, eff. 6–1–95; **am. (3), Register, December, 1995, No. 480, eff. 1–1–96.**

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 extended period of effectiveness for the registration statement, 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 exclusively 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. If no order specifying a different effectiveness period is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at such earlier time as the commissioner determines.

(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 complies with s. 551.52 (1) (b), Stats., which may involve the filing of form RS–IC as referred to in s. SEC 9.01, and if the issuer files with the commissioner not less than annually during the offering period, within 120 days of the end of its fiscal year, a prospectus updated in accordance with 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; am. (2), Register, December, 1989, No. 408, eff. 1–1–90; am. (1), Register, December, 1994, No. 468, eff. 1–1–95.

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.

SEC 3.29 Investor financial suitability standards. (1) The investor financial suitability standards established for persons for purposes of s. 551.28 (7), Stats., are either of the following:

(a) A person having an annual gross income of at least $45,000 and a net worth of at least $45,000 exclusive of the person's principal residence and its furnishings and personal use automobiles; or

(b) A person having a net worth of at least $150,000, exclusive of the person's principal residence and its furnishings and personal use automobiles.

(2) In the case of sales to fiduciary accounts, the standards in sub. (1) shall be met by the beneficiary, the fiduciary account, or by the donor or grantor who directly or indirectly supplies the funds to purchase the securities if the donor or grantor is the fiduciary.

History: Cr. Register, August, 1994, No. 464, eff. 9–1–94.