

Chapter DFI-Sec 3

REGISTRATION REQUIREMENTS AND PROCEDURES

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Note: Chapter SEC 3 was renumbered chapter DFI-Sec 3 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI-Sec 3.01 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. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division for good cause shown; and

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

(2) 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 division, the requirement in s. 551.25 (3) (a) 2., Stats., that a registration statement be on file with the division for at least 10 days is reduced to a requirement that the registration statement be on file with the division 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; renum. from SEC 3.21, Register, December, 1996, No. 492, eff. 1-1-97; am. (1) (a), r. (2), Register, December, 1998, No. 516, eff. 1-1-99; correction made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1998, No. 516.

DFI-Sec 3.02 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 signifi-

cant 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; 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. DFI-Sec 3.04, unless the requirement to furnish a trust indenture relating to the securities is waived by the division 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 purchasers 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. DFI-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 division may require.

(2) The division may permit the omission of the filing of any information or document specified in sub. (1) if the division 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. DFI-Sec 3.03, 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 rec. (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; renum. from SEC 3.22, Register, December, 1996, No. 492, eff. 1-1-97; am. (1) (h), (m), Register, December, 1998, No. 516, eff. 1-1-99.

DFI-Sec 3.03 Prospectus requirements. (1) As a condition of registration, a prospectus, offering circular, or similar document meeting the requirements of subs. (2), (3), (4) and (5) 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 division, 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 division 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 under the securities act of 1933 that receives full review by the U.S. securities and exchange commission, shall not be subject to disclosure adequacy review or comment by the division. If the offering is being made 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, the form U-7 disclosure document as adopted by the North American Securities Administrators Association, Inc. may be used.

(4) The disclosure-related provisions of the following guidelines or statements of policy of the North American Securities Administrators Association or other state securities organization listed, may be used by the division for purposes of reviewing the adequacy of disclosure in the prospectus filed with the registration application:

(a) The North American Securities Administrators Statement of Policy Regarding Selling Expenses and Selling Security Holders, as adopted effective September 14, 1989, and amended effective October 24, 1991.

(b) The North American Securities Administrators Association Statement of Policy Regarding Options and Warrants, as adopted effective October 24, 1992.

(c) The North American Securities Administrators Association Statement of Policy on Promotional Shares, adopted September 3, 1987.

(d) The North American Securities Administrators Association Statement of Policy Regarding Unequal Voting Rights, as adopted October 24, 1991.

(e) The North American Securities Administrators Association Statement of Policy regarding real estate programs, adopted April 15, 1980, as amended through August 27, 1990, including comments.

(f) The North American Securities Administrators Association Guidelines for the Registration of Oil and Gas Programs, adopted September 22, 1976, as amended through April 27, 1984.

(g) The North American Securities Administrators Association Guidelines for the Registration of Publicly Offered Cattle Feeding Programs, adopted September 17, 1980.

(h) The North American Securities Administrators Association Guidelines for Offerings of Church Bonds, adopted October 1979.

(i) The North American Securities Administrators Association Health Care Facility Statement of Policy, adopted April 5, 1985.

(j) The Central Securities Administrators Council Statement of Policy on Finance Company Debt Securities, adopted August 12, 1976.

(k) The North American Securities Administrators Association Statement of Policy Regarding Affiliated Transactions, as adopted effective September 14, 1989, and amended effective October 24, 1991.

(L) The North American Securities Administrators Association Statement of Policy on Real Estate Investment Trusts, as adopted April 28, 1981, and amended through September 29, 1993.

(m) 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.

(n) The North American Securities Administrators Association Statement of Policy for Equipment Programs, adopted September 21, 1983, as amended April 22, 1988.

Note: All of the NASAA 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.

(5) Unless otherwise permitted by the division, 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.

(6) 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 division.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; renum. from DFI-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) (j) to be (2) (i), 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; renum. from SEC 3.23, renum. (4) and (5) to be (5) and (6), am. (3), cr. (4), Register, December, 1996, No. 492, eff. 1-1-97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; am. (3), Register, December, 1998, No. 516, eff. 1-1-99.

DFI-Sec 3.04 Trust indenture requirements. Trust indentures required under ch. 551, Stats., and chs. DFI-Sec 1 to 9, shall meet the requirements of the trust indenture act of 1939, whether or not exempt under that act, unless the division 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; renum. from SEC 3.24, Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 3.05 Registration proceedings. (1) If any information is reasonably required by the division 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 division.

(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 division may issue a stop order denying effectiveness to such registration statement.

(3) The division 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; renum. from SEC 3.25, Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 3.06 Amendment of registration statements. (1) All applications for amendment of a registration statement shall be filed in the form prescribed by the division.

(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; renum. from SEC 3.26, Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 3.07 Extension of registration statements.

(1) Application for an extension of the offering period of a registration statement, except one relating to securities of a finance company licensed under s. 138.09, Stats., shall be filed in the form prescribed by the division 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. DFI-Sec 3.03 (6), 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. DFI-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 division determines.

(2) A registration statement relating to 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 division issues a stop order suspending or revoking its effectiveness pursuant to s. 551.28, Stats., if the issuer files with the division 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. DFI-Sec 3.03 (6), 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. DFI-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; renum. from SEC 3.27, Register, December, 1996, No. 492, eff. 1-1-97; am. Register, December, 1998, No. 516, eff. 1-1-99.

DFI-Sec 3.08 Periodic reports. Each issuer or registrant of securities registered under s. 551.26, Stats., shall file with the division such additional reports of sales and financial statements as may be specified by order, and shall furnish the division 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; renum. from SEC 3.28, r. (1), renum. (2), Register, December, 1996, No. 492, eff. 1-1-97.