

1991 Senate Bill 357

Date of enactment: April 2, 1992
Date of publication*: April 16, 1992

1991 WISCONSIN ACT 145

AN ACT to amend 551.02 (7) (c), 551.22 (1) (a), 551.23 (12), 551.235 (5) (d) 2 and 551.31 (2) (b) 2 of the statutes, relating to: exclusion of agent in the definition of an investment adviser, government-issued revenue obligations eligibility for securities registration exemption, the definition of security holder for purposes of a registration exemption, eligibility conditions for the seasoned issuer securities registration exemption and agent representation of broker-dealers and issuers (suggested as remedial legislation by the office of the commissioner of securities).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the office of the commissioner of securities and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 551.02 (7) (c) of the statutes is amended to read:

551.02 (7) (c) A broker-dealer or agent whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer or agent and who receives no special compensation for them;

NOTE: This provision excludes agents of a broker-dealer from the definition of an investment adviser, if their services in advising others are solely incidental to their business as an agent and if they receive no special compensation for those advisory services. "Investment adviser" is defined in s. 551.02 (7) to mean a person who, for compensation, advises others as to the value of securities or the advisability of investing in securities or issues reports concerning securities.

SECTION 2. 551.22 (1) (a) of the statutes is amended to read:

551.22 (1) (a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the fore-

going; but any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a non-governmental industrial or commercial enterprise is exempted only as provided under par. (b). A security, other than a ~~revenue obligation~~ or security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States and other than a revenue obligation, is exempt under this subsection only if the issuer's financial statements are prepared according to generally accepted accounting principles or guidelines which the commissioner designates by rule.

NOTE: This provision clarifies that revenue obligations of nonfederal governmental issuers of securities are not subject to the financial statement requirement set forth in the securities registration exemption in s. 551.22 (1) (a).

SECTION 3. 551.23 (12) of the statutes is amended to read:

551.23 (12) Any transaction pursuant to an offer to existing security holders of the issuer, other than an entity designated in s. 551.52 (1) (b), or of a corporation which, prior to the offer, owned substantially all of the voting stock of the issuer or whose controlling persons organized the issuer for the purpose of the offer, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state, and if, prior to any offer or sale, the issuer files a notice specifying the terms of the offer, all other information which the commissioner by rule requires and any additional information required

under s. 551.24 (6), and the commissioner does not by order disallow the exemption within 10 days after the date of filing the notice or, if additional information is required under s. 551.24 (6), within 10 days after the date of filing that information. ~~“Security holders” include persons~~ In this subsection, “security holder” includes a person who at the time of the transaction ~~are holders is a holder~~ of convertible securities, ~~or nontransferable warrants or a holder of transferable warrants that are exercisable within not more than 90 days of their issuance but does not include a person who at the time of the transaction is a holder of only transferable warrants that are exercisable for more than 90 days after their issuance.~~

NOTE: This provision clarifies that holders of certain kinds of investment paper are not “security holders” for the purpose of determining whether certain transactions of certain issuers are exempt from the requirement to register the issue with the office of the commissioner of securities under s. 551.21. In general, s. 551.23 (12) exempts transactions by most issuers pursuant to an offer to existing shareholders if no commission (other than a standby commission) is paid, if the issuer files a notice with the commissioner of securities about the terms of the offer and if the commissioner does not disallow the exemption within 10 days. The provision specifically states that a person is not a security holder if the only securities of the issuer held by the person at the time of the transaction are transferable warrants that are exercisable for more than 90 days after their issuance.

SECTION 4. 551.235 (5) (d) 2. of the statutes is amended to read:

551.235 (5) (d) 2. Combined annual interest and dividend expense is calculated for the 365 days following the

date on which the registration statement for the securities being offered is filed under the securities act of 1933, or the date on which a post-effective amendment to the registration statement is filed, whichever is more recent, and the rate for floating rate dividends is determined as of the date on which that registration statement or post-effective amendment is filed.

NOTE: This provision changes the commencement date for the 365-day period for calculating combined annual interest and dividend expense from the date of filing a registration statement for the securities under the federal securities act of 1933 to the federal registration date or the date of a post-effective amendment to the registration statement, whichever is most recent. Providing the ability to use the most recent date establishes a more appropriate time frame for determining the issuer’s income coverage of interest and dividend expenses in “shelf registration” offerings by an issuer, which can be maintained for several years under the federal securities laws.

SECTION 5. 551.31 (2) (b) 2. of the statutes is amended to read:

551.31 (2) (b) 2. More than one broker-dealer or more than one issuer, or both, if an application that complies with par. (c) is filed with the commissioner and ~~approved by the commissioner,~~ in writing, permits the representation.

NOTE: This provision permits an agent to represent more than one securities broker-dealer or more than one securities issuer, or both, as an exception to the general rule that an agent may represent only one broker-dealer or one issuer simultaneously. The provision clarifies the potential scope of an agent’s representational status and the role of the commissioner of securities in the application review process.