



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 52
[2013 Assembly Bill 350]

Wisconsin Securities Exemptions

Generally, 2013 Wisconsin Act 52 modifies the definition of “institutional investor” and creates a new definition of “certified investor” as those terms relate to securities exemptions, creates new “limited Wisconsin offeree” and “limited Wisconsin securities holder” exemptions from Wisconsin securities registration requirements, and creates two new securities exemptions related to “crowd-funding,” a type of capital funding under which relatively small amounts of capital are raised through sales of small amounts of securities to a large number of purchasers. One of the crowd-funding exemptions relates to transactions conducted through an Internet site registered with the Department of Financial Institutions (DFI). The other crowd-funding exemption relates to offers and transactions conducted using more traditional methods.

CERTIFIED INVESTORS

Act 52 creates a new class of investor titled, “certified investor.” Under the Act, a certified investor is defined as an individual who is a resident of Wisconsin and satisfies one of the following tests:

- The individual has an individual net worth, or joint net worth with his or her spouse of \$750,000, including the individual’s primary residence as an asset and any debt associated with the residence as a liability.
- The individual has individual income in excess of \$100,000, or joint income in excess of \$150,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.

The Act creates a new securities exemption for sales of securities to a certified investor, or a person whom the issuer reasonably believes is a certified investor at the time of the sale or offer, if the transaction meets the requirements of the federal exemption for intrastate offerings.

INSTITUTIONAL INVESTORS

The Act lowers the asset threshold for entities of an institutional character to \$2,500,000.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

EXEMPTIONS FOR LIMITED WISCONSIN OFFEREES AND LIMITED WISCONSIN SECURITIES HOLDERS

Act 52 creates two new securities exemptions for limited offerees and limited securities holders involving Wisconsin residents. The first new exemption relates to transactions completed pursuant to an offer directed to not more than 100 Wisconsin residents, excluding institutional, accredited, and certified investors.

In order to qualify for the first exemption, the issuer must be a business entity organized under Wisconsin law and authorized to do business in the state, and must have its principal office in the state and a majority of its full-time employees must work in the state. No commissions may be paid in connection with the offer or sale of securities unless the person receiving the commission is registered as a broker-dealer or agent under ch. 551, Stats. Additionally, no general solicitation or general advertising may be made in connection with the offer or sale of securities unless permitted by DFI.

The second new exemption applies to sales of securities by an issuer to a Wisconsin resident, if certain conditions apply, including the following:

- The issuer must be a business entity organized under Wisconsin law and authorized to do business in the state, and must have its principal office in the state and a majority of its full-time employees must work in the state.
- The aggregate number of persons holding the issuer's securities after the sales are completed does not exceed 100, excluding institutional, accredited, and certified investors.
- No commissions are paid for soliciting any person in connection with the offer to sell, except to broker-dealers and agents licensed by the state.
- No advertising is published in connection with the offer to sell unless permitted by DFI.

CROWD-FUNDING EXEMPTIONS

Act 52 creates two new, related exemptions to securities registration requirements. Each exemption relates to the concept of "crowd-funding," a type of capital funding under which relatively small amounts of capital are raised through sales of small amounts of securities to a large number of purchasers.

Under the first exemption created by the Act, the offer or sale of securities is exempt from registration if the following requirements are satisfied:

- The issuer is a business entity organized under Wisconsin law and authorized to do business in the state.
- The transaction meets SEC requirements for intrastate securities offerings.
- Generally, the amount of money received for sales of securities does not exceed \$1,000,000, or \$2,000,000, if the issuer has made a financial audit available. Calculation of the sale amounts excludes sales to accredited and institutional investors. DFI may adjust these sale amounts for inflation.
- The issuer does not accept more than \$10,000 from any single purchaser who is not an accredited, certified, or institutional investor.
- The offering is made exclusively through an internet site registered with DFI.

- The issuer pays a \$50 fee and files notice and information relating to the offering with DFI at least 10 days before commencing the offering.
- The issuer is not an investment company or an SEC reporting company.
- The issuer provides disclosure to all prospective purchasers of the unregistered nature of the securities.
- The issuer obtains evidence from each purchaser that he or she is a resident of Wisconsin.
- All payments for purchase of securities are held, pursuant to escrow agreement, by the issuer in a financial institution chartered in Wisconsin.
- Disclosure statements provided to DFI are also provided to each prospective investor at the time of offer.
- The issuer has not made an offer or sale of other securities pursuant to this exemption or the exemption discussed below in the previous 12 months.

Following sales of securities pursuant to the exemption, the issuer must file a quarterly report with DFI, and make the report available to investors, for as long as securities issued under the exemption are outstanding.

Additionally, the internet sites used to facilitate the above transactions must be registered with DFI. The Act also includes provisions relating to registration of the Internet site operators as broker-dealers and the potential classification of Internet site operators as funding portals under future rules adopted by the Securities and Exchange Commission.

The second exemption created by Act 52 permits securities to be offered and sold without registration if similar criteria to the above exemption are satisfied; this exemption applies to more traditional manners of sale rather than the internet-based offering contemplated by the first exemption. In particular, the offer or sale of securities is exempt from registration under the second exemption created by the draft if the following requirements are satisfied:

- The issuer is a business entity organized under Wisconsin law and authorized to do business in the state.
- The transaction meets SEC requirements for intrastate securities offerings.
- Generally, the amount of money received for sales of securities does not exceed \$1,000,000, or \$2,000,000, if the issuer has made a financial audit available. Calculation of the sale amounts excludes sales to accredited and institutional investors. DFI may adjust these sales amounts for inflation.
- The issuer does not accept more than \$10,000 from any single purchaser who is not an accredited, institutional, or certified investor.
- No commission is paid for any person's participation in the offer or sale of securities unless the person is registered as a broker-dealer or securities agent.
- No general solicitation or advertising is made for the securities, unless approved by DFI.
- All payments for purchase of securities are deposited by the issuer in a financial institution chartered in Wisconsin and used in accordance with representations made to investors.
- The issuer pays a \$50 fee and files notice and information relating to the offering with DFI before the 101st sale of securities.

- The issuer is not an investment company or an SEC reporting company.
- The issuer provides disclosure to all prospective purchasers of the unregistered nature of the securities.
- The issuer has not made an offer or sale of other securities pursuant to this exemption or the exemption discussed above in the previous 12 months.

FINANCIAL INSTITUTION HOLDING COMPANIES

Act 52 specifies certain disclosure requirements applicable to financial institution holding companies. Generally, under the Act, a financial institution holding company may not be required to prepare or distribute financial statements, information, or reports to its shareholders or to DFI, except the report to shareholders required by s. 180.1620, Stats., and the report to DFI required by s. 180.1622, Stats. Except as required by s. 180.1620, Stats., financial statements required of a financial institution holding company are not required to be prepared in accordance with generally accepted accounting principles and are not required to be examined, reported upon, reviewed, or compiled by a certified public accountant.

RULE 506 “BAD ACTOR” PROVISIONS

The Act applies certain “bad actor” provisions from federal rule 506 to the new exemptions created by the Act. Generally, under the “bad actor” provisions, a securities transaction is disqualified from exemption if the issuer, its executives or management, or significant owners of the issuer’s securities have been convicted of crimes or subject to regulatory enforcement actions relating to securities fraud.

Effective date and Initial Applicability: Act 52 took effect on November 9, 2013. Provisions of the Act relating to the crowd-funding exceptions first apply to securities sold on June 1, 2014.

Prepared by: Scott Grosz, Senior Staff Attorney

January 16, 2014

SG:jb:jal