

Chapter SEC 32

EXEMPTION AND REGISTRATION OF FRANCHISES

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History: Emergency rules covering general subject matter were adopted effective July 1, 1972.

SEC 32.01 Requirement for exemption of franchises. Franchisors desiring to offer to sell or sell their franchises in this state pursuant to the exemption provided by section 553.22, Wis. Stats., shall, prior to making such offers to sell or sales in this state, 1) advise the commissioner of their plans to offer to sell or to sell franchises in the state of Wisconsin, 2) include in such advice a showing of qualifications under section 553.22 (1) and (2), Wis. Stats., and Wis. Adm. Code SEC 31.01 (4) and 31.01 (1) respectively, and 3) shall file with the commissioner a copy of any advertising and offering material which is used by the franchisor as the basis of information required to be disclosed under section 553.22 (3), Wis. Stats., to prospective investors, together with a consent to service of process as required by 553.22 (4), Wis. Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.02 Transitional measures with regard to registration of franchises. (1) In connection with offers to sell or sales of franchises in this state;

(a) All applications for registration under section 553.26, Wis. Stats., filed on or after September 18, 1972, but before October 31, 1972, shall become effective 30 days after the date of filing of such application for registration unless a stop order or other order under section 553.28, Wis. Stats., with respect to such application has been issued by the commissioner.

(b) All applications for registration filed under section 553.26, Wis. Stats., between November 1, 1972, and November 16, 1972, shall become effective on December 1, 1972, unless a stop order or other order under section 553.28, Wis. Stats., with respect to such application has been issued by the commissioner.

(2) Nothing in this rule shall, during the periods specified in subsection (1) of this rule, prevent the commissioner from exercising his authority under section 553.28, Wis. Stats., for violations of provisions in this chapter other than sections 553.22, 553.23, 553.26 and 553.27; and, with respect to offers to sell and sales of franchises exempted under sections 553.25, Wis. Stats., under this rule or under

Wis. Adm. Code section SEC 32.06, from exercising his authority under section 553.28 (1) (a), (b), (c), (e), (f) or (h), Wis. Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.03 Periodic reports required for exempt franchisors. (1) Franchisors, their agents, or representatives offering to sell or selling franchises in this state under sections 553.22, 553.23 or 553.25, Wis. Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years a copy of their annual report and audited certified financial statements or unaudited financial statements prepared by a certified public accountant if the requirement for submission of audited financial statements has been waived by the commissioner under Wis. Adm. Code, section SEC 35.05 (1) (b) 2.

(2) Franchisors, their agents, or representatives offering to sell or selling franchises in this state under section 553.22 or 553.23, Wis. Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years graphic representations of all exclusive areas sold to franchisees in Wisconsin in the last fiscal year.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.04 Material events or material changes affecting exempted franchisors and their franchisees. Franchisors whose franchisees are exempted under sections 553.22, 553.23, or 553.25, Wis. Stats., shall be required, as a condition of maintenance of such exemption after confirmation thereof as required by Wis. Adm. Code, section SEC 32.01, to notify the commissioner in writing within 30 days after the happening of any material event or material change within the meaning of Wis. Adm. Code, section SEC 31.01 (3), affecting the exempted franchisees or the franchisor.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.05 Exemption information filings. If any information is reasonably required by the commissioner to establish an exemption under sections 553.22, 553.23, or 553.25, Wis. Stats., and such request is communicated by the commissioner to the applicant or interested person in any form within 10 days of the date of receipt by the commissioner of such application, the effective date of any such exemption will not commence until the information so required is received by the commissioner and a reasonable period of time, not to exceed 10 days thereafter, shall have expired, unless a shorter period of time is permitted by the commissioner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.06 Exemptions by the commissioner. (1) The following transactions, in addition to those transactions exempted under Wis. Adm. Code section SEC 32.02, shall, pursuant to section 553.25, Wis. Stats., be exempted from section 553.21, Wis. Stats.;

(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchises where 1) the franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature, or 2) a franchisee or prospective franchisee of a govern-

mental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired. Any offer to sell or sale of a franchise which is within the scope of this particular exemption shall not be subject to the provisions of Wis. Adm. Code section SEC 34.02.

(b) Any offer to sell or sale of a franchise which includes payment by a person for the right to participate in a distribution or marketing plan where such payment, computed on an annual basis, does not exceed \$100 in excess of the bona fide wholesale price for such product or service in wholesale transactions.

(c) Any offer to sell or sale of an interest in a franchise by a person, whether or not a franchisor, a franchisee, a subfranchisor or a subfranchisee, to any person.

(2) Unless otherwise specified, nothing in this rule shall be construed so as to make inapplicable the provisions of Wis. Adm. Code section SEC 34.02 nor shall this rule prevent the commissioner from exercising his authority under sections 553.28 (1) (a), (b), (c), (e), (f) or (h), Wis. Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.07 Prospectus or offering circular requirements. (1) As a condition of registration under section 553.21, Wis. Stats., a prospectus or offering circular meeting the requirements of sections 553.26 (1) through 553.26 (22), Wis. Stats., shall be sent or given to each person to whom an offer is made at least 48 hours prior to the consummation of any franchise agreement or the taking of any consideration or investment by the franchisor or any affiliate thereof or their agents or representatives, including consideration for payment by the franchisee for any property (tangible or intangible, real or personal) to be utilized or required to be utilized under the franchise.

(2) The *outside front cover of the prospectus*, unless otherwise permitted by the commissioner, shall contain substantially the following information:

(a) Name and location of franchisor and its type of organization.

(b) Designation of franchises offered.

(c) Franchise fee or explanation for the absence thereof including a short summary of required capital and equipment inventory or real estate purchases to commence the franchise business.

(d) The name of the franchise sales organization if other than the franchisor.

(e) The date of the prospectus.

(f) The following statement in bold face type:

THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE WISCONSIN FRANCHISE INVESTMENT LAW. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF WISCONSIN OR A FINDING BY THE SAME COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE WISCONSIN FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION

WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE INVESTOR, AT LEAST 48 HOURS PRIOR TO THE EXECUTION BY THIS INVESTOR OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST 48 HOURS PRIOR TO THE RECEIPT OF ANY CONSIDERATION, WHICHEVER OCCURS FIRST, A COPY OF THIS PROSPECTUS, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE. THIS PROSPECTUS CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

(g) A sample of the business trademark, patent, brand, logotype, name or commercial label or symbol utilized by the franchisor under which his products or services are marketed and under which the franchisee will conduct his business.

(3) *The body of the prospectus* or offering circular shall state substantially the following information in the following sequence;

(a) *With regard to the franchisor*: set forth in summary form:

1. The name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any parent or affiliated company that will engage in business transactions with the franchisee or with whom the franchisees will be required to deal as a condition of the franchise agreement, and

2. The franchisor's principal business address and the name and address of its agent in the State of Wisconsin authorized to receive process, and

3. The business form of the franchisor, whether corporate, partnership or otherwise, and the form of the franchisee's business, if any, required under the terms of the franchise agreement, and

4. The prior business experience of the franchisor including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, has granted franchises for such businesses, has granted franchises in other lines of businesses and, if so, a description of these other lines of businesses and the number of franchises that the franchisor has sold of the type offered, both in Wisconsin and the United States, as of the date of the prospectus.

5. The existence of any litigation naming the franchisor or any affiliate thereof as a party, including but not limited to, class actions and a summary of the allegations made in such litigation together with a statement of opinion of counsel to the franchisor of the position of the franchisor with respect to such allegations.

(b) *With regard to the identity of and business experience of persons affiliated with the franchisor*: set forth in summary form; the officers, directors, trustees and/or general partners, as the case may be, and the general managers, principal executives and other persons who will be charged with the business activities and operations of the franchisor and their present titles and offices together with their social security numbers, birthdates and principal occupations during the last 5 years, and state whether, as referred to in section 553.26 (5), Wis. Stats., any such person has been subject to a criminal conviction, civil judgment, relevant administrative order, or is subject to any injunctive action.

(c) *With regard to the fees and charges payable by the franchisee:* set forth in summary form;

1. The franchise fee or initial payment, if any, charged upon the signing of the franchise agreement or the manner including, but, not limited to, royalties, rental payments, or prices for goods, services, equipment inventory or real estate, by which compensation to the franchisor or affiliates thereof will be charged over a period of time, and

2. Any other charges associated with preparation for entrance into the business of the franchisee whether or not a franchise agreement or other contract must be executed prior thereto, and

3. Any payments or fees other than franchise fees, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of an independent third party or parties, and which the franchisee must make by way of a goods, services, equipment, inventory, or real estate purchase for the purpose of going into business as a franchisee, and

4. The extent to which franchisees will be required to provide funds or will be obligated to repay loans incurred for construction of business facilities, installation of fixtures and equipment, initial inventory and working capital for operating expenses.

(d) *With regard to renewal, termination, and assignment rights of the franchisee under the franchise agreement:* set forth in summary form;

1. The term of the franchise and the conditions under which the franchise agreement may be renewed or extended, and

2. The conditions under which the franchise agreement may be terminated, modified or renewal refused with a statement in bold face, if the case may be, that no specification of cause is required for exercise by the franchisor of the right of termination or of failure to renew by virtue of the provisions of the franchise agreement, and

3. The terms under which the franchise agreement or an interest therein may be sold or assigned by the franchisee either to the franchisor or to a third party or purchased by the franchisor, whether or not by right of first refusal or at the option of the franchisor and, in the case of the latter, whether or not there will be an independent appraisal of the franchise and recognition of goodwill or other intangibles associated therewith in such repurchase price to be given to the franchisee upon purchase by the franchisor.

(e) *With regard to obligations of the franchisee or subfranchisors thereof to purchase items from designated sources:* set forth in summary form;

1. The obligations of the franchisee or subfranchisor, whether arising by the terms of the franchise agreement or by other device or practice, to purchase from the franchisor or his designee or affiliate services, supplies, products, fixtures or other goods, equipment, inventory or real estate relating to the establishment or operation of the franchise business together with a description thereof and a statement or schedule of the franchisor's cost where a similar product is reasonably available elsewhere and comparative cost data for such similar product is available and the cost to the franchisee together with the prevailing market prices, if any, for such products and, if none, a statement explaining the absence of such market price, and

2. With regard to such required purchases, a description of the frequency and the amounts thereof.

(f) *With regard to limitations on goods and services which the franchisee may offer to his customers:* set forth in summary form; a statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee is limited in any way in the goods or services which he may offer to his customers.

(g) *With regard to the terms of purchase of the franchise:* set forth in summary form; the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or its agent or affiliate and any past or present practice or any intent of the franchisor, its agent or affiliate to sell, assign or discount to a third party any note, contract or other obligation arising out of the franchise sale transaction, and the identity of such transferees.

(h) *With regard to other franchises of the franchisor:* set forth in summary form; the numbers of franchises of a type substantially similar to those offered presently operating, the number of such franchises operating in Wisconsin, and the number of such franchises proposed to be sold in the State of Wisconsin for the one-year period following the date of the prospectus.

(i) *With regard to arrangements with public figures or celebrities and their endorsements:* describe in summary form;

1. All compensation or other benefit given or promised to a public figure or celebrity arising, in whole or in part, from the use of the public figure in the name or commercial symbol of the franchise or the endorsement or recommendation of the franchise by the public figure in advertisements, and

2. The ability of the franchisee to use the name of a public figure or celebrity in his promotional efforts and advertising.

(j) *With regard to an exclusive or nonexclusive area or territory given to the franchisee:* state or describe in summary form; whether franchisees or subfranchisors receive, with regard to the marketing of any product or service, an exclusive area or territory for distribution. If such exclusive area or territory is granted, give a graphic representation thereof with sufficient clarity to permit visual comprehension thereof by the prospective franchisee; if an exclusive area is not granted, set forth in the offering prospectus the Wisconsin locations for which he has sold identical or similar franchises.

(k) *With regard to obligations of the franchisor:* describe in summary form; the specific obligations required to be performed by the franchisor both prior to the opening of the franchise business and during the operation of the franchise business and whether such obligations must be completed by certain dates or within a specified time period and, in the absence of such performance, the right of the franchisees, if any, to any refund of monies paid or any other rights to rescind the franchise sale or other transactions related thereto.

(l) *With regard to financial statements of the franchisor:* set forth in the manner appropriate for certified financial statements with audit and opinion, the financial statements required by section 553.26 (7), Wis. Stats., in such form as required by Wis. Adm. Code, section SEC 35.05. If the need for audited statements is waived by the commissioner under Wis. Adm. Code section SEC 35.05 (1) (b) 1., set forth the unaudited statements in accordance with Wis. Adm. Code section SEC 35.05 (2).

(m) *With regard to estimated or projected operations of franchisees:* set forth in summary form; wherever the use of projections

or estimates are made, a statement of the basis and data upon which such projections or estimates are based and a statement as to the extent to which such projections or estimates relate to other franchisees of a substantially similar type in the State of Wisconsin, to other franchisees of a substantially similar type in the United States, and a statement of whether any portion of the bases for such projections or estimates relate to the performance of any franchisees other than that of a substantially similar type offered.

(n) Such other information, as the commissioner may permit or reasonably require or, if of a reasonable amount, data that the franchisor may desire to present under section 553.26 (21), Wis. Stats., but with respect to the latter, such information shall be stated separately and immediately after that required in subsections (a) through (m) of this rule.

(4) The prospectus shall contain a full disclosure of all material facts relating to the franchisor and its affiliates and the offering and sale of the registered franchises.

(5) Pursuant to any renewal of a registration under section 553.30, Wis. Stats., or to any amendment to a registration statement under section 553.31, Wis. Stats., the prospectus and its contents must reflect current operations of the franchisor and its franchisees. Financial statements required to be submitted under Wis. Adm. Code, section SEC 32.08, must be dated within 6 months of the date of the expiration of the registration statement to be renewed or within 6 months of the date of the proposed amendment to the registration statement. Information about principals in the business of the franchisor and items other than financial statements required to be disclosed under section 553.26, Wis. Stats., shall be current to within 3 months of the same dates.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.08 Renewal or amendment of registration statements. (1) A registration renewal statement under section 553.30, Wis. Stats., shall be filed on a form prescribed by the commissioner not less than 15 days prior to the end of one year from the effective date of the registration statement, and shall be accompanied by the latest form of prospectus or offering circular, meeting the requirements of Wis. Adm. Code, section SEC 32.07, used in connection with the sale of the registered franchises together with a balance sheet of the franchisor as of a date within 120 days of such proposed renewal date and an income statement and analysis of surplus of the franchisor for its last fiscal year preceding the date of such balance sheet and for the period between the close of the franchisor's last fiscal year and the date of such balance sheet, all meeting the requirements of Wis. Adm. Code, section SEC 35.05. If no stop order or other order under section 553.28, Wis. Stats., 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) An application to amend a registration statement under section 553.31, Wis. Stats., shall be filed on a form prescribed by the commissioner at any time during the effectiveness of a registration statement under section 553.29, Wis. Stats. The commissioner may take, upon such filing, action appropriate in the public interest or for the protection of investors under sections 553.26 (20) or 553.28,

Wis. Stats. The registration statement or registration renewal statement filed with the commissioner remains in effect while an application to amend such registration statement or registration renewal statement is being reviewed by the commissioner. If the commissioner does not require additional information pursuant to section 553.26 (20), Wis. Stats., or if no stop order or other order under section 553.28, Wis. Stats., is in effect, the amendment to the registration statement or registration renewal statement becomes effective 15 days after receipt by the commissioner of the application to amend the registration statement or registration renewal statement or at such earlier time as the commissioner determines. In the case of an application for registration or a registration renewal statement, the effective date of the original application for registration or, as the case may be, registration renewal statement shall remain the date from which time is measured for purposes of renewal of registration statements under Wis. Adm. Code section SEC 32.08 and the filing of periodic reports under Wis. Adm. Code section SEC 32.09.

(3) In the absence of the filing of a registration renewal statement under section 553.30, Wis. Stats., or of an application to amend a registration statement under section 553.31, Wis. Stats., the commissioner may by order extend the offering period of a registration statement subject to conditions as he may prescribe for the protection of investors.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.09 Periodic reports for franchisors or franchise registrants.

(1) Each franchisor or registrant of franchises under section 553.29 (2), Wis. Stats., shall file with the commissioner quarterly commencing 90 days after the effective date of its registration statement a report, on a form prescribed by the commissioner, specifying the number of franchises sold in the state pursuant to such registration statement, the selling prices of each of such franchises, and graphic representations of the exclusive areas, if any, sold to such franchisees.

(2) Each franchisor or registrant of franchises under section 553.29 (2), Wis. Stats., shall file with the commissioner such additional reports of sales of franchises and financial statements as may be specified by order, and shall furnish the commissioner, pursuant to section 553.31 (1), Wis. Stats., with written notice within 30 days after the happening of any material event or material change affecting the franchisor or the franchises registered.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.10 Registration proceedings. If, in connection with the examination of any application for registration under section 553.26, Wis. Stats., any information is reasonably required by the commissioner prior to the effective date of an application for registration under section 553.29 (1), Wis. Stats., and such request is communicated by the commissioner to the applicant or interested person in any form within the 15-day period specified in section 553.29 (1), Wis. Stats., which period shall commence on the date of receipt by the commissioner of the application for registration, the filing of such an application for registration is made when the additional information so required is received by the commissioner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.11 Underscoring changes. If any registration renewal statement under section 553.30, Wis. Stats., or any application for amendment to a registration statement under section 553.31, Wis. Stats., alters the text of the prospectus or offering circular, or of any item, exhibit or other document previously filed as a part of the application for registration under section 553.26, Wis. Stats., the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.12 Signing of applications. An application for registration under section 553.26, Wis. Stats., a registration renewal statement under section 553.30, Wis. Stats., or an application to amend a registration statement under section 553.31, Wis. Stats., should be signed by an officer or general partner of the applicant, as the case may be, however, it may be signed by another person holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, should include, as an additional exhibit, a copy of said power of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.13 Escrow of franchise fees and other consideration. (1) In a case where the applicant has failed, within the meaning of section 553.27 (2), Wis. Stats., to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the commissioner may impose, as a condition to the registration of a franchise offering, an escrow of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

(2) When an escrow condition is imposed under subsection (1) of this rule, 100% of franchise fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of such funds, be placed with the depository until the commissioner takes further action pursuant to subsection (1) of this rule. All checks shall be made payable to the depository.

(3) When an escrow condition is imposed under subsection (1) of this rule, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt, in a form approved by the commissioner. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor.

(4) Funds subject to an escrow condition imposed under subsection (1) of this rule, shall be placed in a separate trust account with a national bank located in Wisconsin or a Wisconsin bank or trust company. A written consent of the depository to act in such capacity shall be filed with the commissioner.

(5) (a) The commissioner shall authorize the depository to release to the franchisor such amounts of the escrowed funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement

or that for other reasons the escrow is no longer required for the protection of franchisees.

(b) An application for an order of the commissioner authorizing the release of escrowed funds to the franchisor shall be verified and shall contain:

1. A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound or escrow condition;

2. A statement of the depository signed by an appropriate officer setting forth the aggregate amount of escrow funds placed with the depository;

3. The names of each franchisee (or subfranchisor) and the amount held in the escrow for the amount of each franchisee (or subfranchisor);

4. A showing that the franchisor, with respect to each franchise the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training or other items, as the case may be; and

5. Such other information as the commissioner may reasonably require.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.

SEC 32.14 Surety bond in lieu of escrow. In lieu of the imposition of an escrow condition under section 553.27 (2), Wis. Stats. and Wis. Adm. Code section SEC 32.13, a franchisor may post a surety bond in such amount as shall be required by the commissioner. Such bond shall be issued by a corporate surety authorized to transact business in the State of Wisconsin, conditioned upon the completion by the franchisor of his obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.