

Chapter SEC 2

REGISTRATION EXEMPTIONS

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SEC 2.01 Exempt securities. (1) (a) 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 nongovernmental industrial or commercial enterprise, is exempted under s. 551.22 (1), Stats., if:

1. The enterprise is a public utility described under s. 551.22 (6), Stats., having securities registered under section 12 of the securities exchange act of 1934, or is a wholly-owned subsidiary of one or more of such utilities.

2. Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale or loan arrangement, are exempt under s. 551.22 (7), Stats., or meet the conditions of s. 551.235 (1) to (4) and (5) (c) 1.2. and 3a., Stats.; or

3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for the enterprise meeting the requirements of s. SEC 3.22 (1) (p) and subject to the standards in s. SEC 3.06 (2), and additional information as the commissioner may require, and the commissioner does not by order deny the exemption within 20 days of the date the notice is filed.

(b) Any guarantee of, or any put option or similar agreement to purchase from a holder of, any security exempt under s. 551.22(1), Stats., is exempted from s. 551.21, Stats.

(c) For purposes of the registration exemption provision of s. 551.22 (1), Stats., requiring the financial statements of certain issuers to be prepared according to generally accepted accounting principles or guidelines which the commissioner of securities designates by rule, a security is exempted from registration thereunder if:

1. The issuer's annual financial statements for fiscal years commencing on or after January 1, 1982, are prepared according to generally accepted accounting principles as established by the National Council on Governmental Accounting, Statement 1, "Governmental Accounting and Financial Report Principles" (March 1979) or other rule-making body designated under rule 203 of The Professional Ethics Code of the American Institute of Certified Public Accountants; or

2. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1990, are prepared according to generally accepted accounting principles as provided in subd. 1., but where the auditor's opinion is qualified with respect to the fixed asset account group; or

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3. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1990, are prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency.

(d) Determination of accounting principles or guidelines. Whether financial statements meet the requirements of par. (c), shall be conclusively determined by the last available auditor's opinion relating to the issuer's financial statements for a fiscal year ending not more than 21 months prior to the offering. The auditor's opinion may be conclusively relied upon by third parties for purposes of such determination. The opinion shall meet the requirements of rule 2.02 of regulation S-X of the U.S. securities and exchange commission in 17 CFR H210.2-02 and provide that:

1. With respect to par. (c) 1, the financial statements are prepared in accordance with generally accepted accounting principles, or equivalent language;

2. With respect to par. (c) 2, the financial statements are prepared in accordance with generally accepted accounting principles, but qualified with respect to the fixed asset account group, or equivalent language;

3. With respect to par. (c)3, the financial statements are prepared on the basis of accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency, or equivalent language.

(2) For purposes of s. 551.22 (3), Stats., an issuer or a guarantor is "subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority" if that governmental authority has authority to regulate the issuer's or guarantor's business and the terms of the particular securities to be offered and sold.

(3) (a) Any evidence of debt issued by a domestic non-profit corporation to persons other than its members is exempted under s. 551.22 (8), Stats., if the issuer or a licensed broker-dealer files a notice of the proposed issuance with the commissioner prior to the offering, including: a trust indenture meeting the requirements of s. SEC 3.24, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. SEC 3.23 (1); and such additional information as the commissioner may require; and the commissioner does not by order deny or revoke the exemption within 10 days. In addition, if the domestic non-profit corporation is or operates as a church, the offering shall meet the requirements of s. SEC 3.14, and if the domestic non-profit corporation is or operates as a health care facility, the offering shall meet the requirements of s. SEC 3.145.

(b) A person does not become a "member" for purposes of s. 551.22 (8), Stats., solely by reason of the purchase of the issuer's securities.

(4) "Commercial paper" exempted under s. 551.22(9), Stats., means any note, draft or bill of exchange, which:

(a) Evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, any renewal of the paper which is likewise limited, or any guarantee of the paper or the renewal;

(b) Is offered or sold through a broker-dealer that is in compliance with s. 551.31 (1), Stats., or an institution described in s. 551.22(3), Stats., or a state or any agency or political subdivision thereof, whether the person is acting for itself or for the account of a customer;

(c) Is not offered or sold to the general public by means of the publication or circulation of any advertising; and

(d) Is issued to finance liquid current assets (including inventories and receivables) or current operating expenses.

(5) A notice filed under s. 551.22(10), Stats., shall consist of a complete description of the plan, including any advertising to be published, circulated or used. The exemption may be denied if the plan is unfair or inequitable to purchasers of securities thereunder. If the plan involves purchases of the employer's securities, a plan may be deemed unfair or inequitable unless:

(a) The formula price at which employees may purchase shares is calculated at least annually, and is not less than 85% of the fair market value of the stock at the beginning of the one-year purchase period or the end of the purchase period, whichever is lower, and shares purchased are fully paid for at the end of each period, stock certificates are issued and no fractional shares are issued;

(b) The issuer files an undertaking to deliver to all participating employees copies of the issuer's annual financial statements;

(c) A participating employee has the right to withdraw from the plan at any time without penalty;

(d) If there is no adequate public market for the issuer's shares as defined in s. SEC 3.02 (1) (b), the issuer offers to repurchase the shares at a price determined by the same formula pursuant to which the shares were purchased by the employee under the issuer's plan, upon the happening of either of the following events:

1. The employee ceases to be employed by the issuer (or a subsidiary), and a written request for repurchase is received by the issuer within 180 days after termination of employment; or

2. The employee experiences severe financial hardship due to illness or death in the immediate family, major uninsured casualty loss or other unforeseen events, and delivers to the issuer a written irrevocable election to have the issuer repurchase the shares, including a statement in reasonable detail as to the nature of the employee's financial hardship, and within 20 days the issuer's board of directors does not determine that no severe financial hardship exists.

(e) All funds contributed to the plan for the purchase of shares are protected from claims of creditors of the issuer;

(f) Any withholding from an employee's compensation is limited to not more than 10% of the compensation each pay period;

(g) All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of s. SEC 3.07; and

(h) If the securities to be purchased under the plan are not registered under the securities act of 1933, the issuer files a satisfactory opinion of counsel as to its exempt status under that act.

(6) Any security issued by a licensed broker-dealer to its officers, partners or employees is exempted under s. 551.22 (14), Stats., if:

(a) The issuer files with the commissioner prior to the offering a notice of the proposed issuance and such additional information as the commissioner requires, and the commissioner does not by order disallow the exemption within 10 days; or

(b) The security evidences a temporary subordinated borrowing by a broker-dealer that is a member of a national securities exchange, which is made in accordance with the rules of that exchange.

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted under s. 551.22 (17), Stats.

(8) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted under s. 551.22 (17), Stats., if it is a security which matures within 16 months of date of issue and the issuer has levied a direct annual irrepealable tax under Art. XI, s. 3, Wis. Const. or otherwise pledged levied taxes sufficient in amount to pay the interest on the securities as it falls due and also to pay and discharge the principal on the securities at maturity.

(9) (a) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted under s. 551.22 (17), Stats., if a notice of the proposed offering containing the information in par. (b) is filed with the commissioner prior to the offering and the commissioner does not by order deny the exemption within 10 days of the date the notice is filed.

(b) A notice filed under par. (a) shall include the following information:

1. The nature and cost of the project to be financed with the borrowed funds;

2. A statement of any other funds which may be needed to complete the project;

3. Reference to the statutory authority for issuance of the securities;

4. Whether the securities are general obligations of the issuer secured by a constitutionally mandated irrepealable tax levy;

5. Equalized value and, if available, assessed value relating to the property located in the geographical boundaries of the issuer for the preceding 5 years;

6. The issuer's debt limit and the aggregate amount of existing constitutional debt and unused borrowing margin;

7. The most recent U.S. census population and current estimated population within the geographic boundaries of the issuer;

8. The issuer's net tax rate for the last 5 years based upon equalized value and, if available, upon assessed value;

9. The dollar amount of tax levies of the issuer for the last 5 years;

10. A statement relating to any pending litigation which may have a material adverse financial impact upon the issuer or upon the securities;

11. The 5 largest employers in the relevant geographic area;

12. The 5 largest taxpayers in the issuer's geographic boundaries;

13. The executive officers of the issuer;

14. The issuer's financial statements for the preceding 3 years for which such statements are available. If the date of the financial statements for the issuer's most recent fiscal year is more than 180 days prior to the date of a filing for exemption under this subsection, the financial statements shall be updated by providing interim statements, that may be unaudited, to within 180 days of the date of filing;

15. The issuer's current general fund and debt service fund balances as at the end of the month preceding the filing of the notice; and

16. Whether the securities will be accompanied at delivery by an opinion of bond counsel to the effect that the securities are validly authorized and issued and are exempt from present federal income taxes.

(c) The requirements of par. (b) may be satisfied by an Official Statement or other disclosure document relating to the securities being offered containing at least the information required in par. (b).

(d) A notice filed under par. (a) shall be accompanied by:

1. A copy of any proposed resolution or resolutions of the governing body of the issuer relating to the authorization and issuance of the securities;

2. An opinion of bond counsel, or counsel to the issuer, to the effect that all appropriate steps to date necessary for the sale of the securities have been duly taken;

3. A proposed form of the securities;

4. A copy of the notice of sale, if applicable, relating to the securities or a reference to the same indicating where it may be located;

5. A consent to service of process and resolution relating to the same, certified by the secretary or clerk of the issuer;

6. A copy of the disclosure document for the offering to be provided to offerees containing the information required in par. (b);

7. A cross-reference sheet indicating where each information item listed in par. (b) can be found in the Official Statement or disclosure document for the offering;

8. The fee prescribed by s. SEC 7.01 (2); and

9. Such additional information as the commissioner may require.

History: Cr. Register, December 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; cr. (6), Register, October, 1974, No. 226, eff. 11-1-74; r. (1), renum.

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(6) to be (1) and am., renum. (2) to (5) to be (3) to (6), am. (3) and (4), r. and recr. (5), cr. (2) and (7), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), r. (3), renum. (4), (5) and (7) to be (3), (4) and (5), am. (3)(a), cr. (7) and (8), Register, September, 1978, No. 273, eff. 10-1-78; emerg. am. (1) (a) 2., eff. 10-1-78; am. (1) (a) 2., Register, January, 1979, No. 277, eff. 2-1-79; am. (7) (d) and (h), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a) 1. to 3., (3) (a), (4) (a) and (b), (5) (f), (6) (a) and (7) (a) and (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (a) 3. and (3) (a), cr. (7m), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (1) (c) and (d), (10), (11) and (12), eff. 5-1-82; cr. (1) (c) and (d), (9), (10) and (11), Register, September, 1982, No. 321, eff. 10-1-82; am. (7) (d), Register, December, 1982, No. 324, eff. 1-1-83; am. (1)(a) 3., Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (a) 3., r. (10), renum. (11) to be (10), Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (1) (a), r. (7), eff. 1-1-86; r. (7), renum. (8) to (10) to be (7) to (9), Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a), Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (1) (c) 3., eff. 7-1-86; am. (1) (b), (c) 2. and 3., (3) (a) and (4) (b), r. (7m), Register, December, 1986, No. 372, eff. 1-1-87; emerg. am. (1) (c) 3., eff. 7-1-88; am. (1) (c) 3. and (9) (b) 14., Register, December, 1988, No. 396, eff. 1-1-89.

SEC 2.02 Exempt transactions. (1), An “isolated nonissuer transaction” within the meaning of s. 551.23 (1), Stats., includes:

(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; but if the sale is effected through a broker-dealer, the transaction is deemed isolated only if it is one of not more than 3 such transactions effected by or through the broker-dealer in this state during the prior 12 months; and

(b) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers’ transactions in accordance with section 4 (4) of the Securities Act of 1933 and rule 144 thereunder; or pursuant to any other transaction not effected through a broker-dealer and not involving a distribution if the sale, including any other sales by the person of securities of the same class during the prior 12 months, does not exceed 1% of the outstanding shares or units of that class.

(2) In any nonissuer transaction effected by or through a licensed broker-dealer under s. 551.23 (2), Stats., pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the purchaser a written acknowledgment that the purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. This exemption includes only transactions between a broker-dealer and a purchaser of a security.

(3) Any sale of an outstanding security is exempted under s. 551.23 (3), Stats., if:

(a) With respect to a security qualifying under s. 551.23 (3) (c), Stats., the issuer or a licensed broker-dealer files a notice of the proposed sale with the commissioner prior to the offering, including the latest prospectus filed under the securities act of 1933 describing the securities proposed to be sold, a copy of the issuer’s articles of incorporation and by-laws, or equivalents, as currently in effect, and the information concerning the public market for the security specified in s. SEC 3.02 (1) (b). The exemption, unless denied or revoked by order of the commissioner within 10 days, is effective so long as the issuer is filing periodic information, documents and reports under section 15 (d) of the securities exchange act of 1934.

(3) **SPECIFIC REQUIREMENTS FOR THE OFFERING.** (a) The common stock being offered shall have a public offering price of at least \$5.00 per share.

(b) The aggregate amount of the offering shall be \$1 million or more.

(c) Neither the issuer, any qualified managing underwriter, nor any officer, director, controlling person or affiliate of the foregoing, is subject to disqualification under s. 551.23 (19) (c), Stats.

(d) For an offering that is the initial public offering by an issuer under the securities act of 1933, the registration statement filed under sub. (1) receives full review by the U.S. securities and exchange commission.

(4) **FAIRNESS TO INVESTOR STANDARDS.** (a) *Promoters equity investment.* If the offering is by a corporation in the promotional or developmental stage, the existing capital of the corporation shall be at least 10% of the aggregate offering price of the securities to be sold in the offering. As used in this subdivision, a "promotional or developmental stage" corporation means a corporation that has had no positive earnings from operations for any fiscal year during the 3 fiscal years immediately preceding the filing of the federal registration statement in sub. (1) or the shorter period of its existence. As used in this subdivision, "Existing capital" means the total of all amounts contributed to the corporation in cash and the reasonable value of all tangible assets contributed to the corporation as determined by independent appraisal, and as adjusted by the corporation's retained earnings.

(b) *Promotional stock.* The total amount of promotional stock held of record or beneficially by all promoters of the corporation shall not exceed 40% of the amount of the corporation's common stock to be outstanding upon completion of the offering. As used in this paragraph, "promotional stock" means all stock issued during the 3 years preceding the filing of the federal registration statement in sub. (1), other than those shares for which the promoters paid an amount per share equal to the public offering price in cash or the reasonable value of tangible assets contributed to the corporation as determined by independent appraisal. As used in this paragraph, "promoter" means any officer or director of the corporation or any person owning of record or beneficially 5% or more of the outstanding voting securities of the issuer, or affiliates of any of the foregoing.

(c) *Options and warrants.* The corporation shall represent in writing to the commissioner that during the 12 month period following the offering, options and warrants to purchase the common stock of the issuer held by its officers and directors will not exceed 10% of the outstanding common stock of the corporation. The exercise price of any options and warrants to purchase common stock of the corporation shall be at not less than 85% of the fair market value of the common stock on the date of grant.

(5) **FILING REQUIREMENTS.** (a) *Materials to be filed.* The issuer or applicant shall file with the commissioner:

1. A copy of the registration statement filed with the U.S. securities and exchange commission for the securities being offered;

2. A notarized original consent to service of process signed by a person authorized by the issuer;

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3. A written statement specifying how the requirements for use of the exemption in this section are met;

4. A fee of \$200; and

5. An undertaking signed by a person authorized by the issuer or applicant to file promptly all pre-effective amendments to the registration statement, to notify promptly the commissioner by telephone or wire of the date and time when the federal registration statement becomes effective, and to file promptly with the commissioner 2 copies of the final prospectus.

(b) *Time for filing.* The documents and fee prescribed in par. (a) shall be filed with the commissioner not later than the earlier of the date of the first use of the preliminary or final offering document in this state or the first sale in this state.

(6) **NONAVAILABILITY FOR CERTAIN ISSUERS OF SECURITIES.** The registration exemption under this section is not available for offers or sales of common stock by the following issuers of securities:

(a) A corporation that has had a class of its securities registered under section 12 of the securities exchange act of 1934 for each of its 5 fiscal years immediately preceding the filing of the federal registration statement in sub. (1).

(b) An open-end or closed-end management company, or a face amount certificate company as defined in the investment company act of 1940.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (5) (a) 4., Register, December, 1988, No. 396, eff. 1-1-89.

SEC 2.027 Wisconsin issuer registration exemption by filing. If all the following conditions are met other than any condition or conditions waived by the commissioner upon a showing of good cause, a transactional registration exemption is available under s. 551.23 (18), Stats., for any offer or sale of common stock of an issuer having, both before and upon completion of the offering, its principal office and a majority of its full-time employees located in this state:

(1) The securities sold in this state in the offering are purchased by not more than 50 persons described in s. 551.28 (7), Stats. The following are excluded in counting the 50 persons:

(a) Persons described in s. 551.23 (8), Stats.;

(b) Accredited investors as defined in rule 501(a) of Regulation D under the securities act of 1933; and

(c) Members of the immediate family of any executive officer or director of the issuer who have the same permanent residence as the officer or director.

(2) No commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state in reliance on the exemption in this section, except to broker-dealers and agents licensed in this state.

(3) Neither the issuer nor any broker-dealer offering or selling the securities is or would be disqualified under s. 551.23 (19) (c), Stats.

(4) The securities being offered have an offering price of not less than \$5 per share.

(5) An offering document meeting the disclosure requirements of rule 502 (b) (2) of Regulation D under the securities act of 1933 is delivered to each purchaser or prospective purchaser prior to the sale of the securities.

(6) The offering document provides that at least 80% of the net proceeds from the offering shall be used in connection with the operations of the issuer in this state.

(7) The issuer or applicant files with the commissioner:

(a) The offering document to be used in connection with the offer and sale of the securities not later than the date of the first use of the document in this state, together with a fee of \$200; and

(b) A copy of any advertising, other than the offering document, to be used in connection with the offer and sale of the securities not later than the date of its first use in this state, and a copy of any material amendment to the offering document, not later than the date of first use of the material amendment in this state.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SEC 2.028 Foreign issuer secondary trading exemption. History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; r. Register, December, 1988, No. 396, eff. 1-1-89.

SEC 2.03 Exemption proceedings. (1) A notice of exemption pursuant to s. 551.22 or 551.23, Stats., shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. SEC 7.01 (2), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the commissioner prior to the effective date of an exemption, in connection with the examination of any notice filed pursuant to s. 551.22 or 551.23, Stats., the notice is not deemed filed until the information so required is filed with the commissioner.

(3) An order of the commissioner disallowing an exemption with respect to a specified security or transaction pursuant to s. 551.22 or 551.23 Stats., has the same effect as an order denying or revoking an exemption pursuant to s. 551.24, Stats.

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, 1977, No. 264, eff. 1-1-78; r. and recr. (1), Register, December, 1981, No. 312, eff. 1-1-82; am. (1), Register, December, 1982, No. 324, eff. 1-1-83.