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

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.

4. The issuer's annual general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the omission of component units required to be included by governmental accounting standards board statement no. 14.

5. The issuer's annual general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the unaudited financial statements of an included component unit.

6. The issuer's general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the general purpose financial statements for component units whose financial statements are not presented in accordance with generally accepted accounting principles, but which are included in the reporting entity in accordance with governmental accounting standards board statement no. 14.

(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 pro-

cedures mandated by state law or by rule of any state agency, or recommended by any state agency, or equivalent language.

4. With respect to par. (c) 4, the financial statements are prepared in accordance with generally accepted accounting principles, except that the auditor's opinion is qualified with respect to component units required to be included by governmental accounting standards board statement no. 14, or equivalent language.

5. With respect to par. (c) 5, the financial statements are prepared according to generally accepted accounting principles, except that the auditor's opinion is qualified with respect to the unaudited financial statements of an included component unit, or equivalent language.

6. With respect to par. (c) 6, the financial statements are prepared according to generally accepted accounting principles, except that the auditor's opinion is qualified with respect to the general purpose financial statements for component units whose financial statements are not presented in accordance with generally accepted accounting principles, but which are included in the reporting entity in accordance with governmental accounting standards board statement no. 14, 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) The exemption provided under s. 551.22 (7), Stats., relating to the national market system of the national association of securities dealers, inc. is subject to the authority of the commissioner to terminate the exemption for the system or for a specific issue of securities or category of securities designated on the system. The commissioner may, by order, terminate an exemption upon a determination that the system's requirements for designation or maintenance set forth in securities act release No. 6810 (Dec. 18, 1988), 53 Federal Register 52550 (December 28, 1988), as amended in the form adopted April 28, 1990 by membership of the North American Securities Administrators Association, Inc. published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The issuance of any such order by the commissioner shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(b) The Chicago board options exchange is designated as a national securities exchange qualifying for registration exemption status under s. 551.22 (7), Stats., subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), as contained in the Memorandum of Understanding dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(4) (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.

(5) "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.

(6) 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 employes 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 employes copies of the issuer's annual financial statements;

(c) A participating employe 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 employe under the issuer's plan, upon the happening of either of the following events:

1. The employe 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 employe 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 employe'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 employe'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.

(7) Any security issued by a licensed broker-dealer to its officers, partners or employes 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.

(8) 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.

(9) 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.

(10) (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 state-

ments, 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. (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; renum. (3) to (9) to be (4) to (10), cr. (3), Register, December, 1990, No. 420, eff. 1-1-91; renum. (3) to be (3) (a), cr. (3) (b), Register, December, 1991, No. 432, eff. 1-1-92; emerg. cr. (1) (c) 4. to 6., (d) 4. to 6., eff. 5-1-94, cr. (1) (c) 4. to 6., (d) 4. to 6., Register, September, 1994, No. 465, eff. 10-1-94.

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 bylaws, 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.

(b) With respect to a security qualifying under s. 551.23 (3) (d), Stats., the issuer or an applicant files with the commissioner prior to the offering a notice of the proposed sale, including: the prospectus used in the most recent offering of the securities proposed to be sold; a copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect; any information specified in ss. SEC 3.22 and 3.23, and not contained in the filed prospectus; the trust indenture, if any, under which the securities proposed to be sold are issued; the information concerning the public market for the security specified in s. SEC 3.02 (1) (b); a balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing and statements of income and changes in

financial position and analysis of surplus for such fiscal year meeting the requirements of s. SEC 7.06; an undertaking to file with the commissioner within 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purpose) after the end of each fiscal year of the issuer comparable financial statements of the issuer for each such fiscal year; and an undertaking to furnish the commissioner with a written report within 30 days after the happening of any material event affecting the issuer or the securities proposed to be sold. The exemption, unless disallowed by order of the commissioner within 10 days, is effective so long as the information required to be furnished is kept current.

(4) A "financial institution or institutional investor" within the meaning of s. 551.23 (8), Stats., includes:

(a) An endowment or trust fund of a charitable organization specified in section 170 (b) (1) (A) of the Internal Revenue Code;

(b) An issuer which has any class of securities registered under section 12 of the Securities Exchange Act of 1934, and any wholly owned subsidiary thereof;

(c) A venture capital company as a result of meeting any of the following requirements:

1. Operating a small business investment company licensed under the small business investment act of 1958, as amended 15 USC 631.

2. Being a corporation, partnership or association that has been in existence for 5 years or whose net assets exceed $250,000 and either:

a. Whose principal purpose as stated in its articles, bylaws or other organizational instruments is investing in securities; or

b. Whose primary business is investing in developmental stage companies or eligible small business companies as defined in the regulations of the small business administration at 13 CFR 108.2.

(d) Any "qualified institutional buyer" as defined and listed in sec. 230.144A under the securities act of 1933 as amended inclusive to October 22, 1992, whether acting for its own account or the accounts of other qualified institutional buyers that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the qualified institutional buyer.

(e) Any entity, all of the equity owners of which are persons designated in s. 551.23 (8), Stats., or rules thereunder, acting for its own account or the accounts solely of other persons designated in s. 551.23 (8), Stats., or rules thereunder.

(f) Any other person or entity whom the commissioner by order designates.

(g) An "individual accredited investor" for purposes of s. 551.23 (8) (g), Stats., means any of the following:

1. Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

2. Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase exceed $1,000,000; or

3. Any natural person who had an individual income in excess of $200,000 in each of the 2 most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

(5) With respect to an offer or sale of a security exempted under s. 551.23 (10) or (11), Stats.:

(a) Offerees or persons holding directly or indirectly all the issuer's securities include all joint or common owners and all beneficial owners of its securities, and all beneficial owners of any corporation, partnership, association or trust holding any of the issuer's securities and organized in connection with the offer or sale of the securities, provided that any relative or spouse, or any relative of the spouse, taking or holding the securities in joint or common tenancy with and having the same home as the offeree or person, shall not be deemed a separate offeree or person;

(b) Issuers affiliated by reason of direct or indirect control or persons affiliated by reason of direct or indirect control of any issuer are deemed to be a single issuer or person; but use of an exemption for the offer and sale of securities by such affiliated issuer or person shall not be denied on account of such affiliation provided the offer and sale are not part of a common business purpose or plan of offering, or if upon the filing of an application the commissioner so orders. A "common business purpose or plan of offering" is presumed where the offer or sale of securities is not separate and distinct from another offer and sale of securities with respect to (i) the application of proceeds, (ii) the physical proximity of real property or other assets, or (iii) the financial affairs of the business;

(c) A reasonable commission or fee may be paid to a broker-dealer or agent licensed in this state for services rendered in connection with a sale of securities effected under s. 551.23 (10) or (11), Stats.; a commission or fee will be presumed reasonable if it does not exceed the amount permitted under s. SEC 3.01 (1); and

(d) The exemption for any offer or sale under s. 551.23 (11), Stats., is withdrawn with respect to:

1. Except as provided in this subdivision, any offer or sale of interests in a limited partnership, irrespective of the kind of assets held or business engaged in by the partnership, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds $100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption

within 10 days. This subdivision is not applicable to any offer or sale made by a broker-dealer licensed in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control;

2. Any offer or sale of equity securities by or on behalf of any person directly or indirectly controlling an issuer whose equity securities were registered under ch. 551, Stats., or any predecessor law and are held of record by more than 100 shareholders in this state, otherwise than in compliance with sub. (1) (b); and

3. Any offer or sale of securities pursuant to a registration statement under the securities act of 1933 or exempted by regulations A or B thereunder, unless permitted by order of the commissioner in compliance with such conditions as the commissioner may prescribe.

(6) "Class vote" within the meaning of s. 551.23 (13), Stats., includes any vote pursuant to the articles of incorporation or the applicable corporation statute, of the stockholders of a corporation voting as one class, and any vote of stockholders of any class taken in accordance with the provisions of s. 180.1004, Stats., or comparable provisions of the articles of incorporation or of an applicable corporation statute of another state.

(7) (a) "Stock split" within the meaning of s. 551.23 (14), Stats., does not include any action by the corporation which has or may have the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class;

(b) "Stock dividend" within the meaning of s. 551.23 (14), Stats., includes the issuance of shares under a dividend reinvestment plan in which the election by a shareholder to participate in the plan is voluntary and such election may be rescinded at any time upon notice to the issuer.

(8) Notice of an offer of an evidence of debt of a nonprofit corporation exempted under s. 551.23 (15), Stats., shall be filed with the commissioner prior to the offering, and shall include: 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, trust indenture and 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); such additional information as the commissioner may require; and

(a) With respect to an offer qualifying under s. 551.23 (15) (a), Stats., a signed or conformed opinion of counsel for the issuer or other evidence satisfactory to the commissioner with respect to the validity and rank of the lien of the mortgage or deed of trust and evidence satisfactory to the commissioner that the total amount of the securities proposed to be offered does not exceed 50% of the then fair market value of the land and buildings included in the mortgage or deed of trust, less the amount of any unpaid special assessment taxes; or

(b) With respect to an offer qualifying under s. 551.23 (15) (b), Stats., a balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing, and statements of income and changes in financial position and an analysis of surplus of the issuer for each of its 3 immediately preceding fiscal years meeting the requirements of s. SEC 7.06.

(c) In addition, if the 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.

(9) The following transactions are exempted under s. 551.23 (18), Stats., without limiting the commissioner's authority thereunder:

(a) Any isolated issuer transaction relating to redeemable securities of an investment company registered under the investment company act of 1940, effected through a licensed broker-dealer pursuant to an unsolicited order or offer to purchase, provided that the broker-dealer obtains 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 confirms that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. A transaction is presumed to be "isolated" if it is one of not more than 3 such transactions during the prior 12 months.

(b) Any issuance of securities by a corporation in a transaction meeting the requirements of section 368 (a) (1) (B) of the internal revenue code, if the issuer files with the commissioner prior to the offering the reorganization agreement and plan pursuant to which the securities are proposed to be issued and additional information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days from the date of filing.

(c) Any transaction pursuant to an offer to existing security holders of the issuer, other than an entity designated in s. 551.52 (1) (b), Stats., and to not more than 10 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 months preceding the offer pursuant to s. 551.23 (10) or (11), Stats., 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 the issuer files with the commissioner prior to the offering a notice specifying the terms of the offer, including any prospectus, circular or other material to be delivered to offerees in connection with the transaction and such other information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days.

(d) Any transaction incident to a vote of security holders of any issuer other than a corporation, pursuant to its organizational instrument or the applicable statute of any state, on a reorganization or a sale or transfer of assets in consideration of the issuance of securities of another person.

(e) Any offer or sale of securities pursuant to a transaction not involving a public offering under the securities act of 1933 which the commissioner by order exempts upon application filed by the issuer or seller, including such information as the commissioner may require, effected in compliance with such conditions as the commissioner may prescribe.

(f) Any offer or sale of securities to the employes or agents of the issuer or its subsidiaries pursuant to a stock option plan, provided there is filed with the commissioner a notice consisting of a complete description of the plan including any advertising to be published, circulated or used, and the commissioner by order exempts the plan. The commissioner may find the order inappropriate for the protection of investors unless:

1. The plan extends for no longer than 10 years;

2. The total amount of options and the exercise price meet the requirements of s. SEC 3.03 (1) and (2);

3. The issuer files an undertaking to deliver to all participating employes copies of the issuer's annual financial statements;

4. Any provision of the plan providing for installment payments for shares issued upon exercise is not permitted except as authorized by a majority of the disinterested independent outside directors of the issuer;

5. Certificates are issued upon exercise;

6. The plan meets the repurchase standards of s. SEC 2.01 (6) (d);

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

8. If the shares to be issued 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.

(g) Any offer by a licensed broker-dealer pursuant to a preliminary prospectus, provided all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. 551.25 or 551.26, Stats., a filing under s. 551.235, Stats., or a notice filed under s. 551.22 (1) or (8) or 551.23 (12) or (15), Stats.;

2. The preliminary prospectus has been filed with the U.S. securities and exchange commission or the commissioner for a period of 10 days, and the commissioner does not by order deny the exemption; and

3. Before the securities referred to in subd. 1. may legally be sold, no customer funds are received and no customer signs any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

(h) Any transaction, in other than the initial public offering, involving any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States, or any agency or corporate instrumentality of the United States, where the government security is of investment quality rating as determined by the office of the commissioner of banking for the state of Wisconsin or by the comptroller of the currency by virtue of credit worthiness, or any transaction involving any government security dated prior to the effective date of this paragraph.

(i) Any offer or sale of debt securities by an issuer to its employes or agents, provided there is filed with the commissioner prior to any offer or sale a notice as provided in s. SEC 2.03 (1), and the commissioner by order exempts the offering. Without limiting the ability of the commissioner to refuse to issue an order on other grounds, the commissioner may find the issuance of an order inappropriate for the protection of investors unless:

1. The issuer's net earnings for its last fiscal year prior to the offering shall have been at least equal to the interest requirements on its debt securities for that year;

2. The debt securities being offered shall be of a fixed-term nature with maturities varying from not less than 90 days to not more than 2 years from the date of issue;

3. Any provision for renewal of the debt securities shall require that each holder receive 30 days prior written notice of the renewal accompanied by updated information described in subd. 5., that the renewal may not occur unless the holder signs at the time of the renewal a subscription agreement agreeing to the renewal, and that the term of the securities being renewed shall not extend beyond the expiration date of the order of exemption issued under this subdivision;

4. Each purchaser of debt securities shall be required to represent in a subscription agreement for purchase or renewal of the debt securities that the dollar amount of the purchase does not exceed 25% of his or her liquid net worth, excluding equity in his or her house or personal property;

5. An information summary containing at least the following information shall be provided by the issuer to each offeree at the time of the offering:

a. Disclosure of the specific purposes for use of the funds raised from the sale of the debt securities;

b. A statement that the decision of an offeree whether or not to purchase or to agree to any renewal will not have any effect upon that offeree's advancement opportunities, raises or other benefits, nor will impact on the offeree's continued employment or job duties;

c. A representation that the issuer is not contemplating, and is not the subject of, any proposed merger, sale of assets or control of the issuer, receivership or bankruptcy, that it does not have current financial obligations that it is unable to meet, and that it has not been refused credit by any lending institution for the purposes for which the proceeds from sale or renewal of the debt securities will be used; and

d. Financial statements for the issuer's 3 previous fiscal years, or the duration of the issuer's existence, whichever is less, that shall be either audited or, if unaudited, accompanied by the issuer's federal income tax return with supporting schedules for the corresponding years;

6. Offerees shall be provided with a 5-day period following their receipt of any offering materials, information or subscription agreement for purchase of the issuer's securities, before the subscription agreement can be returned to or accepted by the issuer; and

7. The issuer shall provide that upon the death or involuntary termination of employment of the holder, the debt

securities will be redeemed by the issuer within 60 days of receipt by the issuer of a written request for repurchase from the holder or the holder's legal representative. The redemption price shall include principal plus accrued interest to the date of redemption.

(j) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. SEC 2.025 or 2.027.

(k) Offers or sales of a discretionary or managed trading account involving discretion or management provided by a broker-dealer licensed in this state or by an investment adviser licensed in this state.

(l) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the commissioner. In order to be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the commissioner either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application required by the commissioner, the commissioner shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, but are not limited to, gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their business plans and products, or their financing or investment capital needs or proposals.

(m) 1. Any offer, sale or option to purchase equity securities issued by a new Wisconsin business corporation if that offer or sale is made by, or the option is offered by, the issuing corporation to its employes, officers or directors. In this subsection, "new Wisconsin business corporation" means a business incorporated under ch. 180, Stats., with its principal office in this state which, on the date of the offer, sale or issuance of the option, has been operating 5 years or less, has no more than 50 employes and has annual gross receipts of $5,000,000 or less.

2. Prior to any offering made in this state under this paragraph, the corporation shall provide the commissioner with at least 20 days' advance written notice of the offering. The notice shall include a copy of a written disclosure document to be provided to each offeree setting forth, without limitation as to other types of information that can be provided, the amount of funds being raised in the offering; how the proceeds will be expended; basic information about the corporation's business activities and historical operations to date; the identity of its officers, directors and controlling persons; the current ownership levels of the corporation's securities, together with the price per share paid by persons for those shares; and financial statements for the corporation.

(n) Any transaction by the sponsor of a unit investment trust involving the resale of a share of beneficial interest in the trust that meets all of the following conditions:

1. The sponsor acquired the share of beneficial interest in the secondary market.

2. The share of beneficial interest had been sold in the secondary market by a public holder of the share after the initial public offering of shares by the trust had been completed.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; emerg. cr. (11), eff. 11-4-75; cr. (11), Register, February, 1976, No. 242, eff. 3-1-76. Am. (1) (a), (3) (a), and (b), (5) and (6), renum. (9) (10) and (11) to be (10), (11) and (9), am. (9) (10) (intro.) and (11) (a) and (e), r. and recr. (10) (b), cr. (11) (f) and (g), Register, December, 1977, No. 264, eff. 1-1-78; am. (6) (b) and (d) 1, Register, September, 1978, No. 273, eff. 10-1-78; am. (5) (c), (6) (b) and (11) (f) 6., Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (b), (2) and (3) (a) and (b), r. (4), renum. (5) to (11) to be (4) to (10), and am. (5) (a), (c), and (d) 1., (6), (9) and (10), Register, December, 1980, No. 300, eff. 1-1-81; cr. (9) (c) and am. (10) (d), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (10) (h), eff. 5-1-82; cr. (10) (h), Register, September, 1982, No. 321, eff. 10-1-82; am. (3) (a) and (5) (d) 1., cr. (10) (i), Register, December, 1982, No. 324, eff. 1-1-83; cr. (10) (j), Register, August, 1983, No. 332, eff. 9-1-83; am. (1) (a), (5) (d) 1. and (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; emerg. r. (10) (j), eff. 1-1-84; r. (10) (j), Register, May, 1984, No. 341, eff. 6-1-84; am. (10) (g), Register, December, 1984, No. 348, eff. 1-1-85; am. (3) (b) and (10) (f) 4., Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (10) (g) 1., eff. 1-1-86; cr. (10) (j), Register, March, 1986, No. 363, eff. 4-1-86; am. (10) (g) 1., Register, May, 1986, No. 365, eff. 6-1-86; am. (1) (a) and (9) (c), cr. (10) (k), Register, December, 1986, No. 372, eff. 1-1-87; am. (10) (j), Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. (4) (c), am. (10) (j), cr. (10) (l) and (m), Register, December, 1988, No. 396, eff. 1-1-89; am. (4) (c) (intro.), 1. and 2. intro., (5) (c) and (d) 3., Register, December, 1989, No. 408, eff. 1-1-90; r. (6), renum. (4) (d), (7) to (10) to be (4) (e) and (6) to (9) and am. (9) (f) 6., cr. (4) (d), Register, December, 1991, No. 432, eff. 1-1-92; reprinted to correct error in (4) (d) 4., Register, February, 1992, No. 434; am. (4) (d) 4. and (6), renum. (4) (e) to be (4) (f), cr. (4) (e), Register, December, 1992, No. 444, eff. 1-1-93; cr. (4) (g), Register, May, 1994, No. 461, eff. 6-1-94; **r. (4) (d) 1. to 5., renum. (4) (d) (intro.) to be (4) (d) and am., am. (5) (a), (9) (c), (f) 2., cr. (9) (n), Register, December, 1994, No. 468, eff. 1-1-95.**

SEC 2.025 Non-seasoned issuer registration exemption by filing. History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; am. (5) (a) 4., Register, December, 1988, No. 396, eff. 1-1-89; **r. Register, December, 1994, No. 468, eff. 1-1-95.**

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

(1) The securities are sold to not more than 50 persons in this state, excluding:

(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 an 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, its officers, directors, general partners, controlling persons or affiliates, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. 551.23 (19) (c), Stats.

(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed $500,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502 (a) of Regulation D under the securities act of 1933.

(5) If any of the securities being offered and sold in reliance on the exemption in this section are shares of common stock, the offering price of the common stock may be not less than $3 per share.

(6) The duration of the offering period shall not exceed one year, although the issuer may extend the offering for up to an additional one year by filing amended and updated disclosure materials, together with any advertising, with the commissioner in conformance with the requirements of sub. (9). If the disclosure materials provide that a minimum dollar amount of offering subscriptions must be received before the issuer may utilize any of the proceeds, all subscriptions shall be held by a financial institution under an impounding agreement until the required minimum subscription level is reached.

(7) The issuer reasonably believes that all sales made pursuant to this exemption are suitable for the purchaser and that the purchaser either alone or with the purchaser's representative has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment.

(8) An offering document is delivered to each purchaser prior to the sale of the securities that meets one of the following requirements:

(a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form; or

(b) For offerings by any type of issuer, an offering document that complies with the disclosure requirements of rule 502 (b) (2) of Regulation D under the securities act of 1933.

(9) 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 all 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 all material amendments to the offering document, not later than the date of first use of each material amendment in this state.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; r. and recr. Register, December, 1990, No. 420, eff. 1-1-91; am. (3) and (4), Register, December, 1991, No. 432, eff. 1-1-92; **am. (intro.), renum. (6) to (8) to be (7) to (9), cr. (6), Register, December, 1994, No. 468, eff. 1-1-95.**

SEC 2.03 Exemption proceedings. (1) If a notice is required to be filed in order to seek to claim registration exemption status pursuant to s. 551.22 or 551.23, Stats., the notice 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; am. (1), Register, December, 1991, No. 432, eff. 1-1-92.