

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.

(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 sec. 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, by-laws 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 of the following "qualified institutional buyer" entities, whether acting for its own account or the accounts of other qualified institutional buyers listed in sec. 230.144A under the securities act of 1933, 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 entity:

1. Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees.

2. Any employe benefit plan within the meaning of title I of the Employment Retirement Income Security Act of 1974.

3. Any business development company as defined in section 202 (1) (22) of the investment advisers act of 1940 or in section 2 (a) (48) of the investment company act of 1940.

4. Any organization described in section 501 (c) (3) of the internal revenue code [.] corporation (other than a bank as defined in section 3 (a) (2) of the securities act of 1933 or a savings and loan association or other institution referenced in section 3 (a) (5) (A) of the securities act of 1933 or a foreign bank or savings and loan association or equivalent institution).

5. Any partnership or Massachusetts or similar business trust.

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

(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

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.

## SEC 2

(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 employees, 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 employees 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.

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 (4) 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.

**SEC 2.025 Non-seasoned issuer registration exemption by filing.** Except as provided in sub. (6) a transactional registration exemption is available under s. 551.23 (18), Stats., for any offer or sale of common stock that meets the conditions set forth in subs. (1) to (5) unless a condition or conditions is waived by the commissioner upon a showing of good cause.

(1) **FEDERAL REGISTRATION STATEMENT.** A registration statement for the securities shall have been filed under the securities act of 1933 and, prior to any sale in this state, the registration statement shall have been declared effective by the U.S. securities and exchange commission.

(2) **UNDERWRITING.** The offering shall be made pursuant to a firm commitment underwriting by one or more qualifying managing underwriters. As used in this subsection, "qualifying managing underwriter" means a managing or co-managing underwriter of the offering, not affiliated with the issuer, or the sponsor or controlling person of the issuer, by means of direct or indirect common control, who either meets each of the conditions in par. (a) 1 to 5 or receives a designation by letter from the commissioner under par. (b).

Register, February, 1992, No. 434