

Chapter DFI-Sec 32

EXEMPTION AND REGISTRATION OF FRANCHISES

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History: Emergency rules covering general subject matter were adopted effective July 1, 1972. Chapter SEC 32 was renumbered chapter DFI-Sec 32 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI-Sec 32.03 Material events or material changes affecting exempted franchisors and their franchisees. Franchisors whose franchisees are exempted under s. 553.25, Stats., shall be required, as a condition of maintenance of the exemption, to notify the division in writing within 30 days after the happening of any material event or material change within the meaning of s. DFI-Sec 31.01 (2), affecting the exempted franchisees or the franchisor.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from DFI-Sec 32.04 and am., Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December, 1988, No. 396, eff. 1-1-89; am. Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 32.05 Exemptions by the division. (1) The following transactions shall be exempted from s. 553.21, Stats., pursuant to s. 553.25, Stats.:

(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchisees where:

1. The franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature; or

2. A franchisee or prospective franchisee of a governmental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired.

(b) Any offer to sell or sale of a franchise which includes payment by a person for the right to participate in a distribution or marketing plan where such payment, computed on an annual basis, does not exceed \$1,000 in excess of the bona fide wholesale price for such product or service in wholesale transactions.

(c) Any offer to sell or sale of a franchise to any of the following:

1. The franchisor of the franchise;

2. A bank, trust company, credit union or savings and loan association purchasing a franchise for its own account.

(d) The offer or sale to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this state and where the franchise business will not be operated in this state, and provided that the offer, sale and purchase of the franchise is effected in compliance with any applicable franchise law of the state in which the franchise business will be operated or the franchisee is domiciled.

(e) The offer or sale to an existing franchisee of an additional franchise that is the same as a franchise that the franchisee is operating at the time of the offer or sale.

(f) The offer or sale of a franchise or interest in a franchise which also constitutes a security that is either registered or exempt from registration pursuant to ch. 551, Stats.

(g) Any modification or amendment of an existing franchise agreement if there is no interruption in the operation of the franchise business and there is no material change in the franchise relationship. For purposes of this paragraph, an interruption in the operation of the franchise business solely for the purpose of relocating that business shall not be considered a material change in the franchise relationship or an interruption in the operation of the franchise business.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from DFI-Sec 32.06, Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (intro.), Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (a) and (2), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (b), r. and recr. (1) (c), cr. (1) (d), Register, December, 1985, No. 360, eff. 1-1-86; am. (1) (b) and (c) 5., cr. (1) (e) to (i), Register, December, 1987, No. 384, eff. 1-1-88; cr. (1) (c) 6., Register, December, 1988, No. 396, eff. 1-1-89; am. (1) (intro.), Register, December, 1991, No. 432, eff. 1-1-92; am. (1) (c) 5., Register, December, 1992, No. 444, eff. 1-1-93. Correction in (2) made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1992, No. 444; r. (1) (c), (i), (2), renum. (1) (d) to (h) to be (1) (c) to (g), Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 32.06 Form of registration by notification.

A notification to register a franchise shall be filed using the cover page of the 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association, together with a disclosure document prepared in conformance with those Disclosure Guidelines, and containing the information and accompanied by the fee required in s. 553.26 (1), Stats.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; cr. (3), Register, December, 1986, No. 372, eff. 1-1-87; am. (2), Register, December, 1987, No. 384, eff. 1-1-88; am. (2), Register, December, 1989, No. 408, eff. 1-1-90; am. (2), Register, May, 1994, No. 461, eff. 6-1-94; renum. (1) to be DFI-Sec 32.06 and am., r. (2), (3), Register, December, 1996, No. 492, eff. 1-1-97; CR 08-077: am. Register December 2008 No. 636, eff. 1-1-09.

DFI-Sec 32.07 Amendment to registration statement. (1)

An application to amend the registration statement shall be filed using the Uniform Franchise Application Form (Form A) of the 2008 Franchise Registration and Disclosure Guidelines adopted on June 6, 2008 by the North American Securities Administrators Association, and containing the information required in s. 553.31 (1), Stats. The application shall be accompanied by a copy of the amended disclosure document prepared in conformance with those Disclosure Guidelines, together with the \$200 filing fee prescribed in s. DFI-Sec 35.01.

(2) The amendment is effective upon receipt by the division of the materials and fee required under sub. (1).

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from DFI-Sec 32.08 and am. Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1989, No. 408, eff. 1-1-90; r. and recr. Register, December, 1996, No. 492, eff. 1-1-97; CR 08-077: am. Register December 2008 No. 636, eff. 1-1-09; CR 10-062: am (1) Register September 2010 No. 657, eff. 10-1-10.

DFI-Sec 32.08 Escrow of franchise fees and other consideration. (1)

When an escrow is imposed pursuant to s. 553.27 (2), Stats., 100% of franchise fees and all other funds paid by the franchisee or subfranchisor for any purpose shall within 48 hours of the receipt of the funds, be placed with the escrow agent selected under sub. (2). All checks shall be made payable to the escrow agent.

(2) Funds subject to an escrow imposed pursuant to s. 553.27 (2), Stats., shall be placed in a separate trust account with a national bank located in Wisconsin, a Wisconsin bank or trust

company, or any federally insured bank satisfactory to the division. A written consent of the escrow agent to act in such capacity shall be filed with the division.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from DFI-Sec 32.13 and am. (2), Register, December, 1980, No. 300, eff. 1-1-81; am. (5) (b), Register, December, 1987, No. 384, eff. 1-1-88; r. (1), (3), (5), renum. from SEC 32.12 (2) and (4) and am., Register, December, 1996, No. 492, eff. 1-1-97.

DFI-Sec 32.09 Surety bond in lieu of escrow. In lieu of the imposition of an escrow condition under s. 553.27 (2), Stats., and s. DFI-Sec 32.08, a franchisor may post a surety bond

in an amount as shall be required by the division. The bond shall be issued by a corporate surety authorized to transact business in the state of Wisconsin, conditioned upon the completion by the franchisor of its obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from DFI-Sec 32.14, Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December, 1981, No. 312, eff. 1-1-82; renum. from SEC 32.13 and am., Register, December, 1996, No. 492, eff. 1-1-97.