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CHAPTER 551

WISCONSIN UNIFORM SECURITIES LAW

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SUBCHAPTER I

TITLE AND DEFINITIONS

551.01 Short title. This chapter shall be known and may be cited as the "Wisconsin Uniform Securities Law".

551.02 Definitions. In this chapter, unless the context otherwise requires:

(1) "Advertising" means any circular, prospectus, advertisement or other material or any communication by radio, television, pictures or similar means used in connection with a sale or purchase or an offer to sell or purchase any security.

(2) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect transactions in securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent if he or she is within this definition. "Agent" does not include an individual who represents an issuer in:

(a) Effecting transactions in a security exempted by s. 551.22;

(b) Effecting transactions exempted by s. 551.23, other than transactions exempted under s. 551.23 (10) or (19) in which the individual receives a commission or other remuneration directly or indirectly for soliciting or selling to any person in this state; or

(c) Effecting other transactions if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(a) An agent;

(b) An issuer;

(c) A bank, savings institution or trust company, when effecting transactions for its own account or as agent under s. 551.31 (5);

(d) An executor, administrator, guardian, conservator or pledgee;

(e) A person whose dealings in securities are limited to transactions exempt by s. 551.23 (5);

(f) A person licensed as a real estate broker under ch. 452 and whose transactions in securities are isolated transactions incidental to that business; or

(g) The investment board; or

(h) Other persons not within the intent of this subsection whom the commissioner by rule or order designates.

(4) "Commissioner" means the commissioner of securities.

(5) "Fraud", "deceit" and "defraud" are not limited to common law deceit.

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(6) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(7) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) A bank, savings institution or trust company;

(b) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his or her profession;

(c) A broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(d) A publisher of any bona fide newspaper, news magazine or business or financial publication with a regular and paid circulation or a publisher of any securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situation;

(e) The investment board; or

(f) Other persons not within the intent of this subsection whom the commissioner by rule or order designates.

(8) "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

(a) With respect to certificates of deposit or trust certificates, "issuer" means the person performing the acts and assuming the duties of depositor, manager or trustee pursuant to the provisions of the trust or other instrument under which the security is issued; and

(b) With respect to certificates of interest or participation in oil, gas or mining titles or leases, "issuer" means the owner of any such title or lease who creates fractional interests therein for purposes of sale.

(9) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(10) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government or any other entity.

(11) (a) "Sale" or "sell" includes every sale, disposition or exchange, and every contract of sale of, or contract to sell, a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to sell or dispose of, or solicitation of an offer to purchase, a security or interest in a security for value, but does not include solicitation by a licensed broker-dealer of tentative reservations of securities which shall not be binding upon the purchaser until ratified by the purchaser after the securities may legally be sold.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(d) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(e) The terms defined in this subsection do not include any bona fide pledge or loan of a security.

(f) A securities broker-dealer or agent who effects a brokered securities transaction is considered to have effected a sale or purchase of a security.

(12) "Securities act of 1933", "securities exchange act of 1934", "investment company act of 1940", "investment advisers act of 1940" and "internal revenue code" mean the federal statutes of those names as amended on January 1, 1970, including such later amendments as the commissioner determines are not inconsistent with the purpose of this chapter.

(13) (a) "Security" means any stock; treasury stock; note; bond; debenture; evidence of indebtedness; share of beneficial interest in a business trust; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization subscription; transferable share; investment contract; commodity futures contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as or having the incidents of a security or offered in the manner in which securities are offered; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or option, warrant or right to subscribe to or purchase or sell, any of the foregoing.

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(b) "Security" does not include any fixed or variable insurance or endowment policy or annuity contract under which an insurer promises to pay money either in a lump sum or periodically for life or some other specified period; any beneficial interest in any voluntary inter vivos trust not created for the purpose of carrying on any business or solely for the purpose of voting; or any beneficial interest in any testamentary trust.

(14) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

History: 1971 c. 84; 1977 c. 144; 1979 c. 102 s. 236 (3); 1981 c. 53 ss. 1 to 4, 43; 1983 a. 87, 216.

Where certificate of stock was mailed to plaintiff in Wisconsin, and extensive solicitation was conducted by defendants in Wisconsin, it qualified as an "offer" within (11) (b). Since securities were neither registered in Wisconsin nor exempt from registration, plaintiff was entitled to rescind transaction and recover purchase price of securities plus costs. Hardtke v. Love Tree Corp. 386 F Supp. 1085.

"Offer to sell" under (11) (b) occurred when defendant gave unexecuted partnership agreement to plaintiff, thus implicitly inviting plaintiff to return it completed as to form and amount. Feitler v. Midas Associates, 418 F Supp. 735.

State and federal regulation of condominiums. Minahan, 58 MLR 55.

SUBCHAPTER II

REGISTRATION OF SECURITIES

551.21 Registration requirement. (1) It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the security or transaction is exempted under s. 551.22 or 551.23.

(2) It is unlawful for any issuer or registrant of any securities registered under this chapter, or any person in control of or controlled by or under common control with the issuer or registrant, to offer or sell any of the registered securities in this state if the issuer or registrant is in violation of this chapter, or any rule under this chapter, or any order under this chapter of which he or she has notice, or if the registration statement relating to the securities, as of the date of such offer or sale, is incomplete in any material respect or contains any statement which is false or misleading with respect to any material fact.

History: 1971 c. 84; 1981 c. 53 s. 43.

See note to 551.02, citing Hardtke v. Love Tree Corp. 386 F Supp. 1085.

Registration and reporting requirements for exempt transactions discussed. Feitler v. Midas Associates, 418 F Supp. 735.

The financing of corporate expansion through industrial revenue bonds. Mulcahy, Guszkowski, 57 MLR 201.

551.22 Exempt securities. The following securities are exempt from registration under s. 551.21 (1):

(1) (a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but 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 only as provided under par. (b). A security, other than a revenue obligation or security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempt under this subsection only if the issuer's financial statements are prepared according to generally accepted accounting principles or guidelines which the commissioner designates by rule.

(b) Unless subject to a letter of credit of a bank or a savings and loan association as provided in this paragraph, a revenue obligation of an issuer specified under par. (a) that is 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 subject to rules adopted by the commissioner. A revenue obligation is exempt from any filing under the rules of the commissioner if it is the subject of an irrevocable letter of credit from a bank or a savings and loan association in favor of holders of the revenue obligations providing for payment of all principal and interest on the revenue obligations, and the letter of credit is accompanied by an opinion of counsel stating:

1. a. That payment of debt service will not constitute a preference under federal bankruptcy law if a petition in bankruptcy with respect to the enterprise is filed; or

b. That the letter of credit will provide for reimbursement to holders of the revenue obligations if they are required by order of a federal bankruptcy court to disgorge as a preference any payment of a debt service; and

2. That the enforceability of the letter of credit would not be materially affected by the filing of a petition under federal bankruptcy law with respect to the enterprise or any person obligated to reimburse the bank or a savings and loan association for payments made under the letter of credit.

(2) Any security, excluding a revenue obligation, issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is

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recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized under the laws of any state and licensed to do business in this state, but not including the capital stock of a state-chartered capital stock savings and loan association.

(5) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public service corporation, public utility or public utility holding company, which is subject to regulation in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province.

(7) Any security listed, or approved for listing upon notice of issuance, on the New York stock exchange, the American stock exchange, or a national securities exchange registered under the securities exchange act of 1934 and designated by rule of the commissioner; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(8) Any security issued to its members by a domestic corporation organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes; and any evidences of debt issued by any such corporation to nonmembers in compliance with rules adopted by the commissioner.

(9) Any commercial paper meeting the requirements established by rule of the commissioner and which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any investment contract or other security issued in connection with an employe's stock purchase, savings, pension, profit sharing or similar benefit plan if, in the case of plans which are not qualified under section 401 of the internal revenue code and which provide for contribution by employes, there is filed with the commissioner prior to any offer or sale a notice specifying the terms of the plan and the commissioner does not by order disallow the exemption within 10 days.

(11) Any shares of common stock issued by a service corporation organized under s. 180.99.

(12) Any securities of a cooperative corporation organized under ch. 185.

(13) Any option to put or call any outstanding security transactions in which are exempted under s. 551.23 (3).

(14) Any security issued by a licensed broker-dealer to its officers, partners or employes, subject to rules adopted by the commissioner.

(15) Any contract for the sale or purchase of a commodity for future delivery, if it is traded or executed on a contract market designated under 7 USC 7.

(16) Contribution notes issued under s. 611.33 (2) (b), 613.33 (2) or 614.33, and any debt securities approved by the commissioner of insurance and issued under s. 611.75 (2) in connection with the conversion of a stock insurance corporation to a mutual, or under s. 613.75 or 614.76 in connection with the conversion of a service insurance corporation or fraternal to a mutual.

(17) Any security as to which the commissioner by rule or order finds that registration is not necessary or appropriate for the protection of investors.

History: 1971 c. 84, 260; 1973 c. 265; 1975 c. 359; 1977 c. 144; 1979 c. 102; 1981 c. 53; 1983 a. 216.

551.23 Exempt transactions. The following transactions are exempt from registration under s. 551.21 (1):

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

(2) Any nonissuer transaction effected by or through a licensed broker-dealer pursuant to an unsolicited order or offer to purchase; but the commissioner may by rule require that the records of the broker-dealer confirm that the order or offer to purchase was unsolicited.

(3) Any sale of any outstanding security by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer at a price reasonably related to the current market price if:

(a) The issuer has any securities registered under s. 12 of the securities exchange act of 1934 or exempted from registration by s. 12 (g) (2)

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(G) of that act, or is an investment company registered under the investment company act of 1940; or

(b) Securities of the same class have been registered under this chapter under a registration statement becoming effective within 2 years preceding the sale and the registration has not been revoked or suspended; or

(c) Securities of the same class have been registered under the securities act of 1933 and there is filed with the commissioner prior to any offer or sale a notice of the proposed sale and other information as the commissioner by rule requires and the commissioner does not by order disallow the exemption within 10 days; or

(d) The issuer or applicant files with the commissioner such information, and an undertaking to file such reports, as the commissioner by rule requires and the commissioner does not by order disallow the exemption within 10 days.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) Any judicial sale or any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale of a security to any of the following:

(a) The issuer of the security.

(b) A bank, savings institution, credit union, trust company, insurer, broker-dealer, investment adviser or savings and loan association, if the purchaser or prospective purchaser is acting for itself or as trustee with investment control.

(c) An investment company as defined under 15 USC 80a-3 or a pension or profit-sharing trust.

(d) This state or any of its agencies or political subdivisions.

(e) The federal government or any of its agencies or instrumentalities.

(f) Any financial institution or institutional investor designated by rule or order of the commissioner.

(9) Any offer or sale of a preorganization subscription, if no commission or other remuneration is paid or given directly or indirectly for soliciting any subscriber in this state and no advertising is published or circulated unless it has been permitted by the commissioner, and if the subscription is not binding and no payment is made by any subscriber until the securities subscribed for may legally be sold.

(10) Any offer or sale of its securities by an issuer having its principal office in this state, if the aggregate number of persons holding directly or indirectly all of the issuer's securities, after the securities to be issued are sold, does not exceed 15, exclusive of persons under sub. (8), if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, except to broker-dealers and agents licensed in this state, and if no advertising is published unless it has been permitted by the commissioner.

(11) (a) Any transaction pursuant to an offer directed by the offeror to not more than 10 persons in this state, excluding persons exempt under sub. (8) but including persons exempt under sub. (10), during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if the offeror reasonably believes that all the persons in this state are purchasing for investment, and no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state other than those exempt by sub. (8).

(b) The commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in par. (a), and may require reports of sales under this exemption.

(12) Any transaction pursuant to an offer to existing security holders of the issuer, other than an entity designated in s. 551.52 (1) (b), or of a corporation which, prior to the offer, owned substantially all of the voting stock of the issuer or whose controlling persons organized the issuer for the purpose of the offer, 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, prior to any offer or sale, the issuer files a notice specifying the terms of the offer and all other information which the commissioner by rule requires and the commissioner does not by order disallow the exemption within 10 days. "Security holders" include persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercis-

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able within not more than 90 days of their issuance.

(13) Any transaction incident to a class vote by stockholders, pursuant to the articles of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(14) Any stock split and any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock.

(15) Any offer or sale of an evidence of debt issued by a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purposes if the security qualifies under this exemption, and if there has been filed with the commissioner prior to any offer or sale a notice identifying the security and the basis of its qualification under this exemption together with any further information as the commissioner by rule or order requires, and if the commissioner does not by order disallow the exemption within 10 days or such shorter period as the commissioner permits. The security qualifies under this exemption if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation; and the issuer complies with rules of the commissioner with respect to trust indentures and the use of a prospectus; and the security qualifies under either of the following:

(a) The issuer and its predecessors have not been in existence for 3 years, and the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings which is or will become a first lien at or prior to the issuance of such evidences of debt or provision satisfactory to the commissioner is made for impounding the proceeds from their sale until such first lien is established, and the total amount of such securities does not exceed 50% of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes; or

(b) The issuer or its predecessors have had an excess of revenues over expenses, excluding interest expense, provision for depreciation and extraordinary items, for each of the 2 fiscal years next preceding such offer or sale, or average net revenues for the last 3 fiscal years next preceding such offer or sale, of not less than 1 1/2 times the aggregate annual interest requirements on the issue of securities to be sold under this subsection and all securities of equal or prior rank to be outstanding immediately after such sale.

(16) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the securities act of 1933 if no stop order or denial order is in effect and no proceeding is pending under either law.

(17) Any offer or sale of warrants for or rights to subscribe to any security, provided the sale of the security deliverable on exercise of the warrant or right is in compliance with this chapter.

(18) Any other transaction as to which the commissioner by rule or order finds that registration is not necessary or appropriate for the protection of investors.

(19) (a) Any offer or sale of securities made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D under the securities act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder, if the offer or sale also satisfies the additional conditions and limitations in pars. (b) to (f).

(b) No commission or other remuneration may be paid or given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under par. (a), except to broker-dealers and agents licensed in this state.

(c) 1. Unless the cause for disqualification is waived under subd. 2, no exemption under par. (a) is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following apply to any of the persons described in Rule 252 (c) to (f) of Regulation A under the securities act of 1933:

a. The person has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to any state's law within 5 years before the filing of a notice required under par. (d) denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

b. The person has been convicted of any felony or misdemeanor in connection with the offer, sale or purchase of any security or

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franchise, or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. The person is subject to an effective administrative order or judgment entered by a state securities administrator within 5 years before the filing of a notice required under par. (d), which prohibits, denies or revokes the use of any exemption from securities registration, which prohibits the transaction of business by the person as a broker-dealer or agent, or which is based on fraud, deceit, an untrue statement of a material fact or an omission to state a material fact.

d. The person is subject to any order, judgment or decree of any court entered within 5 years before the filing of a notice required under par. (d), temporarily, preliminarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

2. a. Any disqualification under this paragraph involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

b. The commissioner may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(d) Not later than the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under par. (a), there is filed with the commissioner a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the securities act of 1933, a completed Form D as prescribed by Rule 503 of Regulation D under the securities act of 1933, and a fee of $200. Material amendments to the offering document shall be filed with the commissioner not later than the date of their first use in this state.

(e) 1. As to all sales in this state, the issuer shall reasonably believe immediately before making any sale that:

a. The investment is suitable for the purchaser; and

b. 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 prospective investment.

2. The failure to satisfy the conditions of subd. 1 as to a purchaser shall not affect the availability of the exemption under par. (a) as to other purchasers.

(f) The commissioner may, by order, increase the number of purchasers or waive any other conditions of the exemption under par. (a) for a particular offering. The commissioner shall not require the filing of advertising used in connection with offers or sales in reliance on the exemption. The exemption may be revoked by order of the commissioner, but only if the offering constitutes or would constitute a violation of s. 551.31 and notice thereof has been received by the issuer, or constitutes or would constitute a violation of s. 551.41.

History: 1971 c. 84; 1977 c. 144; 1979 c. 102 s. 236 (3); 1981 c. 53 ss. 6, 7, 43; 1981 c. 314; 1983 a. 27, 87, 216.

See note to 551.02, citing Hardtke v. Love Tree Corp. 386 F Supp. 1085.

Registration and reporting requirements for exempt transactions discussed. Feitler v. Midas Associates, 418 F Supp. 735.

Has securities law regulation in the private capital markets become a deterrent to capital growth: a critical review. Coles, 58 MLR 395.

551.24 Exemption proceedings. (1) The commissioner may by order deny or revoke any exemption under s. 551.22 or 551.23 with respect to a specified security or transaction.

(2) If the public interest and the protection of investors so require, the commissioner may by order summarily deny or revoke any exemption under s. 551.22 or 551.23 with respect to a specified security or transaction. Upon entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing.

(3) No order under this section may operate retroactively.

(4) A person who offers or sells a security pursuant to an exemption under s. 551.22 or 551.23 after the exemption is denied or revoked by an order of the commissioner does not violate s. 551.21 (1) if:

(a) The person was not given notice of the order; and

(b) The person sustains the burden of proof to establish that he or she was not given notice and did not know and, in the exercise of reasonable care, could not have known of the order.

(5) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: 1971 c. 84; 1975 c. 57, 199; 1981 c. 53.

551.25 Registration by coordination. (1) Registration by coordination may be used for any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering and has not become effective.

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(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in s. 551.27 (2) and the consent to service of process required by s. 551.65 (1):

(a) Three copies of the latest form of prospectus filed under the securities act of 1933;

(b) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(c) If the commissioner requires, any other information, or copies of any documents, filed under the securities act of 1933; and

(d) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after they are forwarded to or filed with the securities and exchange commission, or such longer period as the commissioner permits.

(3) (a) Unless waived in writing by the applicant before federal effectiveness, a registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all of the following conditions are met:

1. No stop order is in effect and no proceeding is pending under s. 551.28.

2. The registration statement has been on file with the commissioner for at least 10 days.

3. A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the commissioner permits, and the offering is made within these limitations.

(b) The registrant shall promptly notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection is effected, if the commissioner promptly notifies the registrant by telephone or telegram of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order shall be vacated. The commissioner may by rule or otherwise waive any of the conditions specified in par. (a). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under s. 551.28; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: 1981 c. 53 s. 43; 1983 a. 216.

551.26 Registration by qualification. (1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the information specified in s. 551.27 (2), shall be accompanied by the consent to service of process required by s. 551.65 (1), and shall contain such further information and be accompanied by such further documents as the commissioner by rule or otherwise requires. For this purpose the commissioner may classify issuers and types of securities.

(3) Registration under this section becomes effective when the commissioner so orders. If a registration statement has been on file for at least 30 days and all information required by the commissioner has been furnished, the person filing the statement may at any time file a written request that the commissioner take action within 10 days following the filing of such request. If a request is filed, and the commissioner takes no action within the period, the registration becomes effective at the end of the 10-day period.

(4) The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information contained in the registration statement or filed with it be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to the person, otherwise than by

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means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution; or the confirmation of any sale made by or for the account of any person; or the payment pursuant to any sale; or the delivery of the security pursuant to any sale; whichever first occurs.

History: 1981 c. 53.

551.27 General registration provisions. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made or a licensed broker-dealer, but the commissioner may in specific cases require that it be executed by the issuer.

(2) Every registration statement shall specify:

(a) The amount of securities to be offered in this state, if the issuer is not subject to s. 551.52 (1) (b);

(b) The states in which a registration statement or application in connection with the offering has been or is to be filed; and

(c) Any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or the securities and exchange commission, or any withdrawal of a registration statement or application relating to the offering.

(3) Any document filed under this chapter or a predecessor law within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(4) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(5) The commissioner may by rule or order require as a condition of registration, and at the expense of the applicant or registrant, that a report by an accountant, engineer, appraiser or other professional person be filed. The commissioner may also designate one of the commissioner's employes to make an examination of the business and records of an issuer of securities for which a registration statement has been filed by qualification or coordination, at the expense of the applicant or registrant.

(6) In the case of a nonissuer distribution, information may not be required under s. 551.26 (2) or 551.27 (12) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(7) The commissioner may by rule or order require as a condition of registration that any security issued within the past 3 years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; or that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere; or the commissioner may impose both such requirements. The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but the commissioner may not reject a depository solely because of location in another state.

(8) The commissioner may by rule require that securities of designated classes shall be issued under a trust indenture containing such provisions as the commissioner determines.

(9) The commissioner may by rule or order require as a condition of registration that any security registered be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to 3 years.

(10) The commissioner may by rule or order impose other conditions under which a security registered by qualification or coordination may be sold, if these conditions are reasonable and in the public interest.

(11) A registration statement is effective for one year from its effective date unless extended by rule or order of the commissioner. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any transaction by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer, so long as the registration statement is effective, unless otherwise prescribed by order. A registration statement may not be withdrawn after its effective date if any of the securities registered have been sold in this state, unless permitted by rule or order of the commissioner. No registration statement is effective during the time a stop order is in effect under s. 551.28.

(12) During the effective period of a registration statement, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering. If any of the securities registered have been sold in the state, the commissioner may by rule

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or order extend the period for filing the reports for an additional period not exceeding 2 years from the date the registration became effective or the date of its last amendment or extension.

(13) (a) Securities issued or guaranteed by an insurer authorized by the commissioner of insurance, or by a person whose business consists principally of owning or controlling the securities of any such insurer, may not be registered without the prior approval of the commissioner of insurance. Issuance of an organization permit under s. 611.13, 613.13 or 614.13 constitutes such approval for the securities described in the permit, and also precludes application of s. 551.28 (1) (d) and (i).

(b) No issuer which is being organized in this state or elsewhere solely or partly for the purpose of organizing a corporation under ch. 611, 613 or 614 may register or sell its securities in this state unless it obtains an organization permit under s. 611.13, 613.13 or 614.13. No security may be registered or sold in this state if there is any representation that an insurer will be organized or purchased in this state with the proceeds of the sale, unless the issuer obtains an organization permit under s. 611.13, 613.13 or 614.13.

(14) A registration statement relating to redeemable securities issued by an open-end management company or unit investment trust as defined in the investment company act of 1940, or to securities issued by any class of financial institutions which the commissioner by rule determines, may be amended after its effective date so as to increase the specified amount of securities proposed to be offered. The amendment becomes effective when the commissioner so orders.

(15) No warrant or right to purchase or subscribe to another security and no security convertible into another security shall be registered unless it appears to the commissioner that both the warrant or right or convertible security and the securities deliverable on the exercise of the warrant or right or conversion privilege comply with this chapter.

History: 1971 c. 84, 260; 1979 c. 102; 1981 c. 53 ss. 10, 43; 1983 a. 27, 216.

Blue sky law: Is there merit in the merit requirements? Goodkind, 1976 WLR 79.

551.28 Denial, suspension and revocation of registrations. (1) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the commissioner finds that the order is in the public interest and that:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment filed under s. 551.27 (14) as of its effective date, or any report under s. 551.27 (12) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Any provision of this chapter or any rule, order or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering, by the person filing the registration statement; the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by the issuer; or any broker-dealer or other person involved directly or indirectly in the offering;

(c) The securities are the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering, but the commissioner may not institute a proceeding against an effective registration statement under this paragraph more than one year from the date of the order or injunction relied on, and the commissioner may not enter an order under this paragraph on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) Subject to sub. (7), the issuance or sale of the securities is or would be unfair or inequitable to purchasers or has worked or tended to work a fraud upon purchasers or would so operate;

(f) Subject to sub. (7), the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;

(g) The applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this paragraph and the commissioner shall vacate any such order when the deficiency has been corrected;

(h) Advertising prohibited by s. 551.53 has been used in connection with the sale or offering of the securities; or

(i) The financial condition of the issuer affects or would affect the soundness of the securities.

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(2) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of a fact or transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within 180 days after the effective date.

(3) In a proceeding for registration by qualification, the applicant or registrant has the burden of satisfying the requirements of sub. (1). In a proceeding for registration by coordination, the commissioner has the burden of establishing the existence of one of the causes enumerated in sub. (1).

(4) If the public interest and the protection of investors so require, the commissioner may, by order, summarily deny, postpone, suspend or revoke the effectiveness of the registration statement. Upon the entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing.

(5) No stop order may be entered under this section, except under sub. (4), unless s. 551.61 (1) is complied with and appropriate prior notice is given to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered.

(6) The commissioner may vacate or modify a stop order if the commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

(7) Subsection (1) (e) and (f) does not apply to the issuance or sale of securities to any of the following if all material information in connection with the issuance or sale is disclosed to all purchasers:

(a) A person having an annual gross income of at least $30,000 and a net worth of at least $30,000, exclusive of the person's principal residence and its furnishings and personal use automobiles.

(b) A person having a net worth of at least $75,000, exclusive of the person's principal residence and its furnishings and personal use automobiles.

(c) A retirement trust or plan of a person under par. (a) or (b).

History: 1971 c. 84; 1977 c. 144; 1981 c. 53 ss. 11, 43; 1983 a. 27.

Adverse consequences of blue sky regulation of public offering expenses. Mofsky, 1972 WLR 1010.

SUBCHAPTER III

LICENSING OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS

551.31 Licensing requirement. (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless so licensed under this chapter, except that a person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in s. 551.23 (8) is not required to be so licensed.

(2) It is unlawful for any broker-dealer or issuer to employ an agent to represent it in this state unless the agent is licensed for that broker-dealer or issuer or the agent is excluded from the licensing requirement under sub. (1). No agent may at any time represent more than one broker-dealer or issuer, except an agent may represent licensed broker-dealers or issuers of securities registered under this chapter, or both, who are affiliated by direct or indirect common control. When an agent terminates employment with a broker-dealer or issuer, or terminates those activities which make that individual an agent, or transfers employment between licensed broker-dealers, the agent, the broker-dealer or the issuer shall promptly file a notice in accordance with rules adopted by the commissioner.

(3) It is unlawful for any person to transact business in this state as an investment adviser unless so licensed or licensed as a broker-dealer under this chapter, except that a person whose only clients in this state are persons specified in s. 551.23 (8) may transact business without a license.

(4) Every license expires one year from its effective date unless renewed, or unless the license is limited or extended for not more than 6 months by rule or order for the purpose of administering the licensing statutes in this chapter. The commissioner by rule or order may prepare an initial schedule for license renewals so that subsequent renewals of licenses effective January 1, 1970, may be staggered by calendar months. For this purpose the commissioner may adjust the license fee proportionately. No license is effective after its expiration, and expiration of a license for which a renewal application has not been filed is deemed an application for withdrawal under s. 551.34 (6).

(5) A bank, savings institution or trust company not licensed as a broker-dealer may execute orders for the purchase or sale of securities as agent for the purchaser or seller thereof in accordance with rules adopted by the commissioner.

(6) It is unlawful for any licensed broker-dealer, agent or investment adviser, or any person directly or indirectly controlling a licensed broker-dealer or investment adviser, to transact business in this state if the licensee is in violation of this chapter, or any rule under this chapter, or any order under this chapter of

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which the licensee or person has notice, or if the information contained in the licensee's or person's application for license, as of the date of such transactions, is incomplete in any material respect or is false or misleading with respect to any material fact.

History: 1971 c. 84; 1977 c. 144; 1981 c. 53; 1983 a. 216.

551.32 Licensing procedure. (1) (a) A broker-dealer, agent or investment adviser may obtain an initial or renewal license by filing with the commissioner, or an organization which the commissioner by rule designates, an application together with a consent to service of process under s. 551.65 (1).

(b) An application under par. (a) shall contain whatever information the commissioner by rule requires concerning the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony, and any other matters which the commissioner determines are relevant to the application. The commissioner may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(c) Licensing under this subchapter is effective 30 days after an application is filed, other than for an application for license as an agent for an issuer of securities exempted under s. 551.23 (10) or (19) in which case licensing is effective 10 business days after the application is filed or such earlier time as the commissioner permits, except:

1. Licensing is not effective if an order is in effect, or a proceeding is pending, under s. 551.34;

2. If the commissioner makes a written request for additional information relevant to the application within 30 days after the application is filed, the licensing is effective 30 days after the information is filed;

3. If an amendment to a pending application is filed, licensing is effective 30 days after the amendment is filed; and

4. The commissioner may by rule or order specify an earlier effective date.

(d) The commissioner shall cooperate with other securities administrators and regulatory authorities to simplify and coordinate license application and renewal procedures.

(2) Before action on an application the commissioner may designate an employe to make an examination of the books, records and affairs of the applicant at the applicant's expense.

(3) A licensed broker-dealer or investment adviser may file an application for licensing of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(4) The commissioner may by rule prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser, and the commissioner may by order require an examination of a licensed broker-dealer, agent or investment adviser for due cause.

(5) The commissioner may by rule require a minimum capital for broker-dealers and investment advisers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital.

(6) The commissioner may by rule require the furnishing of surety bonds by broker-dealers and investment advisers and all bonds so required shall provide for suit thereon by injured customers or clients, but no bond may be required of any licensee whose net capital exceeds the amount prescribed by rule for this purpose.

(7) The commissioner may by rule or order impose other conditions or limitations in connection with the issuance of licenses under this chapter as the commissioner deems appropriate in the public interest or for the protection of investors.

History: 1981 c. 53; 1983 a. 87.

551.33 Post-licensing provisions. (1) Every licensed broker-dealer, agent and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commissioner by rule prescribes. All records required shall be preserved for 3 years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the commissioner, be made available at any time for examination by the commissioner either in the principal office of the licensee or by production of exact copies thereof in this state.

(2) Every licensed broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes.

(3) If the information contained in any application for license or other document filed with

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the commissioner or an organization designated under s. 551.32 (1) (a) is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment.

(4) The commissioner shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as the commissioner determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the commissioner by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as it is practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the securities exchange act of 1934. The commissioner shall not make public the information obtained in the course of examinations, except when the commissioner's duty under this chapter requires the commissioner to take action regarding any broker-dealer or investment adviser or to make the information available to one of the organizations specified in this subsection, or except when called as a witness in any criminal or civil proceeding.

(5) The commissioner may by rule prohibit unreasonable charges, profits, commissions or other compensation of broker-dealers and investment advisers.

(6) The commissioner may by rule establish standards for the conduct of business by broker-dealers, agents, investment advisers and clearing corporations as defined in s. 408.102 (1) (b).

(7) No licensed broker-dealer shall be subject to s. 138.05 (1) (a) with respect to any debit balance in a customer account if the debit balance is payable on demand and the only collateral for the balance is securities.

History: 1971 c. 84; 1975 c. 107, 199; 1977 c. 144; 1981 c. 53; 1983 a. 189 s. 329 (24).

551.34 Denial, suspension and revocation of licenses. (1) The commissioner may by order deny an application for, or postpone the effective date of, a license or suspend or revoke any license or may censure the licensee, if the commissioner finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has wilfully violated or wilfully failed to comply with any provision of this chapter or a predecessor law or the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or any rule under any of such statutes or any order thereunder of which he or she has notice;

(c) Subject to ss. 111.321, 111.322 and 111.335, has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) Is the subject of an order of the commissioner denying an application or suspending or revoking a license as a broker-dealer, agent or investment adviser;

(f) Is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking the person's registration or license as a broker-dealer, agent or investment adviser, or is the subject of an order of the securities and exchange commission or of a securities exchange or association registered under the securities exchange act of 1934 suspending or expelling such person from a securities exchange or association or forbidding the association or affiliation of the person with a broker-dealer or investment adviser, or is the subject of a U.S. postal service fraud order. The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and the commissioner may not enter an order under this paragraph on the basis of an order under another state law or federal law unless the order was based on facts which would currently constitute a ground for an order under this section;

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(g) Has engaged in dishonest or unethical practices in the securities or investment advisory business or has taken unfair advantage of a customer;

(h) Is insolvent, in the sense that liabilities exceed assets or that the person cannot meet obligations as they mature, or is in such financial condition that the person cannot continue in business with safety to customers, or the person does not have sufficient financial responsibility to carry out the obligations incident to the person's operations;

(i) Is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

(j) Has failed reasonably to supervise agents or, in the case of an investment adviser, employes, to assure their compliance with this chapter, but no person may be deemed to have failed in such supervision if there have been established written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violations of statutes, rules or orders and if the person has reasonably discharged the duties incumbent upon the person by reason of such procedures and system;

(k) Has failed to pay the proper filing fee, but the commissioner shall vacate any such order when the deficiency has been corrected;

(l) Is selling or has sold, or is offering or has offered for sale, in this state securities through any unlicensed agent or for any dealer or issuer with knowledge that the dealer or issuer has not complied with this chapter;

(m) Has made any material misrepresentation to or withheld or concealed any material fact from the commissioner or any of his or her representatives, or has refused to furnish information reasonably requested by the commissioner; or

(n) Has not complied with the conditions or limitations of a license issued under this chapter.

(2) The enumeration of the causes stated in sub. (1) shall not be exclusive and the commissioner may deny an application or suspend or revoke any license or censure any licensee for any cause whether similar to or different from these causes when necessary or appropriate in the public interest or for the protection of investors.

(3) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when the license was issued unless the proceeding is instituted within 180 days following issuance of the license.

(4) If the public interest or the protection of investors so requires, the commissioner may by order summarily deny or suspend a license or postpone the effective date of a license. Upon the entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing.

(5) If the commissioner finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may on order issued summarily revoke the license or deny the application.

(6) Withdrawal from the status of a licensed broker-dealer, agent or investment adviser becomes effective 30 days after receipt by the commissioner or by an organization designated by rule of the commissioner under s. 551.32 (1) (a) of an application to withdraw or within such shorter period as the commissioner determines, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding for the grounds specified under sub. (1) (b), (g), (m) or (n) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

(7) No order may be entered under this section except under sub. (4) without appropriate prior notice to the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent. In cases of denial orders written findings of fact and conclusions of law are required only if requested by the applicant.

History: 1971 c. 84; 1977 c. 125, 144; 1981 c. 53 ss. 19 to 21, 43; 1981 c. 334 s. 25 (1); 1983 a. 216 ss. 11, 18.

SUBCHAPTER IV

FRAUDULENT PRACTICES

551.41 Sales and purchases. It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly:

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(1) To employ any device, scheme or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Intent to defraud is not necessary element under (2) State v. Temby, 108 W (2d) 521, 322 NW (2d) 522 (Ct. App. 1982).

Section 551.41 does not create private right of action 551.59 (1) contains civil remedy for violation of 551.41 (2), and limitation period in 551.59 (5) applies. Colonial Bank & Trust Co. v. American Bankshares, 478 F Supp. 1186 (1979).

See note to 895.01, citing Continental Assur. v. American Bankshares Corp. 483 F Supp. 175 (1980).

State was not required to prove that defendant entered into investment contracts with purpose or intent of defrauding investors. Van Duyse v. Israel, 486 F Supp. 1382 (1980).

551.42 Market manipulation. It is unlawful for any person, directly or indirectly, in this state:

(1) To effect any transaction in a security which involves no change in the beneficial ownership thereof, or to enter any order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale or purchase of the security, have been or will be entered by or for the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(2) To effect, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others; or

(3) To induce the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security, if he or she is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from any such person.

History: 1981 c. 53 s. 43.

551.43 Broker-dealer activities. It is unlawful for a broker-dealer to effect in this state any transaction in, or to induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including any fictitious quotation. The commissioner may by rule define the terms "manipulative, deceptive or other fraudulent device or contrivance".

551.44 Advisory activities. It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to employ any device, scheme or artifice to defraud the other person; or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person; or take or have custody of any securities or funds of any client unless the adviser is licensed as a broker-dealer under this chapter. The commissioner may adopt rules defining the terms used in this section.

History: 1981 c. 53.

SUBCHAPTER V

GENERAL PROVISIONS

551.51 Administration. (1) This chapter shall be administered by the commissioner of securities. The commissioner shall appoint a deputy commissioner, subject to s. 15.04 (2) and (3). The commissioner may designate the deputy commissioner or any employe to perform any duty or exercise any power or function assigned to the commissioner when he or she is absent from the office.

(2) It is unlawful for the commissioner or any officers or employes of the office of the commissioner to use for personal benefit any information which is filed with or obtained by the commissioner or an organization designated under s. 551.32 (1) (a) and which is not generally available to the public. Nothing in this chapter authorizes the commissioner or any officers or employes of the office of the commissioner to disclose any confidential information except among themselves or to other securities administrators or regulatory authorities or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any officers or employes of the office of the commissioner.

History: 1971 c. 84; 1977 c. 418; 1981 c. 53.

551.52 Fees and expenses. (1) (a) There shall be a filing fee of $750 for every registration statement filed under s. 551.25 or 551.26. When

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a registration statement is denied or withdrawn before the effective date or a pre-effective stop order is entered under s. 551.28, the filing fee shall be retained.

(b) An indefinite amount of securities shall be registered under a registration statement relating to redeemable securities issued by an open-end management company or a face amount certificate company, as defined in the investment company act of 1940, and the applicant shall pay the fee under par. (a). The registrant also shall, within 60 days after the end of each fiscal year during which its registration statement is effective and within 60 days after the registration is terminated, pay a fee of $1,500 or file a report on a form prescribed by rule of the commissioner specifying its sales of securities to persons in this state during the fiscal year and pay a fee of 0.05% of the securities sold to persons in this state, but not less than $150 nor more than $1,500.

NOTE: Par. (b) is shown as affected by 1983 Wis. Act 27, ss. 1731t and 2204 (48), eff. 7-1-85. Prior to that date, par. (b) states:

"(b) If the registration statement relates to redeemable securities issued by an open-end management company, unit investment trust or a face amount certificate company, as defined in the investment company act of 1940, the additional fee shall be one-twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and there shall be no maximum filing fee. The commissioner may by rule permit the registration of an indefinite amount of such securities and prescribe a method for payment of the filing fee."

(2) Every applicant for an initial or renewal license under s. 551.32 shall pay a filing fee of $200 in the case of a broker-dealer, $30 in the case of an agent representing a broker-dealer or issuer or a person representing an investment adviser, and $200 in the case of an investment adviser. A broker-dealer or investment adviser maintaining a branch office within this state shall pay an additional filing fee of $30 for each branch office. When an application is denied or withdrawn, the filing fee shall be retained.

(3) The expenses reasonably attributable to the examination of any matter arising under this chapter shall be charged to the applicant, registrant or licensee involved, but the expenses so charged shall not exceed such maximum amounts as the commissioner by rule prescribes.

(4) The commissioner may by rule require the payment of prescribed fees for delinquent or materially deficient filings of information or documents required under this chapter to be filed with the commissioner or an organization designated under s. 551.32 (1) (a).

(5) All fees and expenses collected under this section shall be paid into the state treasury.

History: 1973 c. 333; 1977 c. 418; 1981 c. 53; 1983 a. 27.

551.53 Advertising. (1) It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, to publish, circulate or use any advertising:

(a) That contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(b) That has not been filed with the commissioner not later than the date of publication or circulation, except as the commissioner may otherwise provide by rule or order.

(2) The commissioner may by rule or order prohibit the publication, circulation or use of any advertising deemed false or misleading.

History: 1971 c. 84; 1975 c. 57; 1981 c. 53; 1983 a. 216.

551.54 Misleading filings. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or filed under s. 551.32 (1) (a) with an organization designated by the commissioner or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

History: 1981 c. 53.

551.55 Unlawful representations. Neither the fact that a registration statement or an application for a license has been filed nor the fact that a security is effectively registered or a person is licensed constitutes a finding by the commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with the foregoing.

551.56 Investigations and subpoenas. (1) The commissioner may:

(a) Make such public or private investigations within or without this state as are necessary to determine whether any person has violated or is about to violate this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter;

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(b) Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(c) Publish information concerning any violation of this chapter or any rule or order under this chapter or concerning securities, or practices in the sale of securities, which appear or tend to be unfair, inequitable or fraudulent; and

(d) Hold hearings, upon reasonable notice, and issue orders on the basis thereof, in respect of any matter arising out of the administration of this chapter.

(2) For the purpose of any investigation, hearing or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry. Failure to obey a subpoena or give evidence may be dealt with in accordance with s. 885.12.

(3) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject the person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the individual is compelled, after claiming his or her privilege against self-incrimination, to testify or produce evidence, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

History: 1975 c. 57; 1981 c. 53 ss. 27, 43.

551.57 Injunctions. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, the commissioner may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder, or the commissioner may refer the matter to the attorney general or the district attorney of the appropriate county. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, or may appoint a receiver for the defendant or the defendant's assets, or may order rescission of any sales or purchases of securities determined to be unlawful under this chapter or any rule or order hereunder. The court may not require the commissioner to post a bond.

History: 1971 c. 84; 1981 c. 53 s. 43.

551.58 Criminal penalties. (1) Any person who wilfully violates any provision of this chapter except s. 551.54, or any rule under this chapter, or any order of which the person has notice, or who violates s. 551.54 knowing or having reasonable cause to believe that the statement made was false or misleading in any material respect, may be fined not more than $5,000 or imprisoned not more than 5 years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

NOTE: Sub. (1) was amended by chapter 53, laws of 1981, to delete the time limitation on prosecution. Section 44 of chapter 53 gives the applicability date of violations under this section and of the successor s. 939.74.

(2) The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the district attorney of the appropriate county, who may, with or without any reference, institute the appropriate criminal proceedings under this chapter. If referred to a district attorney, the district attorney shall, within 90 days, file with the commissioner a statement concerning any action taken or, if no action has been taken, the reasons therefor.

(3) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

History: 1981 c. 53.

551.59 Civil liabilities. (1) (a) Any person who offers or sells a security in violation of s. 551.21, 551.31, 551.41 or 551.55 or any rule relating thereto, or any condition imposed under s. 551.26 or 551.27 or any order under this chapter of which the person has notice is liable to the person purchasing the security from him or her. The person purchasing the security may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate under s. 138.04 from the date of payment, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the person no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it

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and interest at the legal rate under s. 138.04 from the date of disposition. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last-known address of the person liable.

(b) A person who offers or sells a security in violation of s. 551.41 (2) is not liable under par. (a) if the purchaser knew of the untrue statement of a material fact or omission of a statement of a material fact or the person sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known of the untrue statement or omission.

(2) (a) Any person who purchases a security in violation of s. 551.41 (2) is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security and reasonable attorney fees, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages and reasonable attorney fees if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate under s. 138.04 from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last-known address of the person liable.

(b) A person who purchases a security in violation of s. 551.41 (2) is not liable under par. (a) if the seller knew of the untrue statement of a material fact or omission of a statement of a material fact or the person sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known of the untrue statement or omission.

(3) Any person who wilfully participates in any act or transaction in violation of s. 551.42 shall be liable to any other person who purchases or sells any security at a price which was affected by the act or transaction for the damages sustained as a result of such act or transaction. Damages shall be the difference between the price at which the other person purchased or sold securities and the market value which the securities would have had at the time of his or her purchase or sale in the absence of the act or transaction, plus interest at the legal rate under s. 138.04 and reasonable attorney fees.

(4) Every person who directly or indirectly controls a person liable under sub. (1), (2) or (3), every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employe of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person, unless the person liable hereunder proves that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(5) No action shall be maintained under this section unless commenced before the expiration of 3 years after the act or transaction constituting the violation, but the time specified for commencing such action shall be extended by reason of any fact and for the time specified in ss. 893.13 and 893.16 to 893.23.

(6) (a) No purchaser may commence an action under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the purchaser of his or her rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate under s. 138.04 from the date of payment, less the amount of any income received thereon or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with sub. (1); and stating that the offer may be accepted by the purchaser at any time within a specified period of not less than 30 days after the date of receipt thereof or such shorter period as the commissioner may by rule prescribe; and the purchaser has failed to accept such offer in writing within the specified period.

(b) No seller may commence an action under this section if, before suit is commenced, the seller has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the seller of his or her rights; offering to return the security plus the amount of any income received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with sub. (2); and providing that the offer may be accepted by the seller at any time within a specified period of not less than 30 days after the date of receipt

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thereof; and the seller has failed to accept the offer in writing within the specified period.

(c) Offers shall be in the form and contain the information the commissioner by rule prescribes. Every offer under this subsection shall be delivered to the offeree or sent by certified mail addressed to the offeree at the offeree's last-known address. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection.

(7) No person who has made or engaged in the performance of any contract in violation of this chapter or any rule or order hereunder, or who has acquired any purported right under any contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(8) Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(9) The rights and remedies under this chapter are in addition to any other rights or remedies that may exist at law or in equity.

History: 1979 c. 323 s. 33; 1981 c. 53 ss. 29 to 33, 43; 1983 a. 216.

Civil action brought in Wisconsin under federal law is subject to limitation under (5). Cahill v. Ernst & Ernst, 625 F. (2d) 151 (1980).

Arbitration clause in securities brokerage contract was enforceable under federal arbitration act; sub. (8) was in "actual conflict" with act and was, therefore, preempted. Kroog v. Mait, 712 F. (2d) 1148 (1983).

Section 551.59 (5) applies to actions arising out of sales of securities under SEC rules, rather than 893.19 (7) [now 893.93 (1) (b)]. Kramer v. Loewi & Co., Inc. 357 F. Supp. 83.

Interpretation of phrase, "discovery of the facts constituting the fraud", in (5). Cahill v. Ernst & Ernst, 448 F. Supp. 84 (1978).

See note to 551.41, citing Colonial Bank & Trust Co. v. American Bankshares, 478 F. Supp. 1186 (1979).

See note to 895.01, citing Continental Assur. v. American Bankshares Corp. 483 F. Supp. 175 (1980).

Limitation period under (5) begins to run when defrauded party is in possession of such essential facts as will, if diligently investigated, disclose the fraud. Gieringer v. Silverman, 539 F. Supp. 498 (1982).

551.60 Miscellaneous powers of commissioner. (1) The commissioner may by rule or order require any issuer of securities registered or exempted by order of the commissioner under this chapter or predecessor laws to file with the commissioner and distribute to its security holders in this state at least annually specified financial or other information concerning the issuer.

(2) (a) If the commissioner has reason to believe that any offer or sale of an unregistered security is, has been or would be unfair, inequitable or fraudulent to offerees or purchasers, the commissioner may by order summarily prohibit further offers or sales of such security in this state until it is registered under this chapter.

(b) If the commissioner has reason to believe that any security is being or has been offered or sold in this state by any unlicensed person in violation of this chapter or any rule or order hereunder, the commissioner may by order summarily prohibit such person from further offers or sales of securities in this state until licensed under this chapter.

(c) If the commissioner has reason to believe that any unlicensed person is transacting or has transacted business in this state as an investment adviser in violation of this chapter or any rule or order promulgated under this chapter, the commissioner may by order summarily prohibit such person from further engaging in such activity in this state until licensed under this chapter.

(3) If the public interest and the protection of investors so require, the commissioner may by order summarily suspend all trading in this state by broker-dealers and agents in any security for any period specified. No broker-dealer or agent may effect any transaction in, or induce or attempt to induce the purchase or sale of, any security in this state in which trading is so suspended, except in performance of a contract previously entered into. At any time after the issuance of an order under this subsection, any interested person may in writing request that the suspension of trading be vacated. Upon the receipt of a written request, the matter shall be noticed for hearing and a hearing shall be held in the manner provided in s. 551.61 (2). After the hearing, the commissioner may order the suspension to be continued until modified or vacated by further order upon a finding that trading in the security will be unfair or inequitable or will tend to work a fraud upon the purchasers or sellers of the security. Otherwise, the commissioner shall vacate the suspension of trading and no further order may be entered under this subsection with respect to the same security in the absence of changed circumstances justifying an order.

(4) Every corporation, partnership or association having its principal office in this state or whose securities have been registered under this chapter or predecessor laws shall, within 20 days after receipt of written request from the commissioner made in connection with any investigation under s. 551.56 (1), furnish the commissioner with a list of all or part of its security holders as the commissioner requests, showing the amount of securities held by each security holder and the date of issuance of such securities and information reasonably related thereto, signed by the president, secretary or partner of the issuer or a person occupying a similar status or performing similar functions.

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(5) The commissioner may take such action as is authorized under 7 USC 13a-2, as amended.

History: 1971 c. 84; 1975 c. 57, 199; 1977 c. 144; 1981 c. 53 ss. 34, 35, 43; 1983 a. 216.

551.61 Hearings and judicial review. (1) No order, other than an order issued summarily subject to sub. (2), may be entered by the commissioner under s. 551.24, 551.28, 551.34 or 551.53 (2) without appropriate prior notice to all interested parties, opportunity for a hearing and, except as provided by s. 551.34 (7), written findings of fact and conclusions of law.

(2) Within 30 days after the commissioner has issued an order summarily, an interested party may file a written request with the commissioner for a hearing in respect to any matters determined by the order, except a party may file a request for a hearing regarding an order issued under s. 551.60 (3) at any time. Within 10 days after an interested person files a written request with the commissioner for a hearing, the matter shall be noticed for hearing, and a hearing shall be held within 60 days after notice, unless extended by the commissioner for good cause. During the pendency of any hearing requested under this subsection, the order issued summarily shall remain in effect unless vacated or modified by the commissioner.

(3) After a hearing, the commissioner may issue a final order as appropriate. The final order may affirm, vacate or modify an order issued summarily in effect during the pendency of the hearing as appropriate, or may include such other sanctions as are provided for under s. 551.24, 551.28 or 551.34. An order issued summarily against a party becomes a final order if the party fails to request a hearing under sub. (2) or if the party defaults after requesting a hearing.

(4) Hearings and rehearings shall be public.

(5) Orders of the commissioner are subject to judicial review under ch. 227 but orders originally entered without a hearing may be reviewed only if the party seeking review has requested a hearing within the time provided by sub. (2).

History: 1971 c. 84; 1975 c. 57, 199, 414; 1981 c. 53.

551.62 Stay of proceedings. (1) No permanent or temporary injunction, stay, restraining order or other order shall issue in any proceeding under s. 551.56 or 551.61 suspending or staying any order of the commissioner, except upon application to the circuit court of the appropriate county, notice of which shall be given to the commissioner and other parties to the proceeding, and except after opportunity for hearing thereon. No permanent or temporary injunction, stay, restraining order or other order shall issue in any other proceeding or action, in any court, which shall have the effect of delaying or preventing any such order from becoming effective, unless the parties to the proceeding before the commissioner are also parties to the court proceeding or action, and except after notice and opportunity for hearing thereon.

(2) No permanent or temporary injunction, stay, restraining order or other order shall issue in any proceeding under s. 551.56 or 551.61 or in any other proceeding or action, in any court, suspending or staying any order of the commissioner or having the effect of delaying or preventing any such order from becoming effective, unless an undertaking is entered into on the part of the petitioner or plaintiff, with a surety and in the sum the court or the presiding judge thereof directs or approves to the effect that the petitioner or plaintiff will pay all damages which any party sustains by the suspension or stay of the order or the delay or prevention of the order from becoming effective, and to such other effect as the court or judge directs, and no order or judgment in any proceeding or action shall be stayed on appeal therefrom unless a like undertaking is entered into by the petitioner or plaintiff in addition to the undertaking under s. 808.07.

History: 1971 c. 84; Sup. Ct. Order, 67 W (2d) 776; 1977 c. 187 s. 135; 1983 a. 216.

551.63 Rules, forms and orders. (1) The commissioner may make, amend and rescind any rules, forms and orders that are necessary to carry out this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. For the purpose of rules and forms, the commissioner may classify securities, persons and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes. Rules shall be made and published in accordance with ch. 227.

(2) No rule, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest and for the protection of investors. In prescribing rules and forms the commissioner may cooperate with the securities administrators of other states and the securities and exchange commission with a view to achieving maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

(3) The commissioner may by rule or order prescribe the form and content of financial

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statements required under this chapter, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices unless otherwise permitted by rule or order.

(4) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the commissioner, notwithstanding that the rule, form or order may later be amended or rescinded or be determined to be invalid for any reason.

History: 1981 c. 53 s. 43.

551.64 Administrative files and opinions. (1) A document is filed when it is received by the commissioner or, if authorized under s. 551.32 (1) (a), an organization designated by the commissioner.

(2) The commissioner shall keep a register of all licenses and registration statements which are or have ever been effective under this chapter and predecessor laws and all denial, suspension or revocation orders which have been entered under this chapter and predecessor laws. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, application or report shall be made available to the public in accordance with rules adopted by the commissioner.

(4) The commissioner upon request shall furnish to any person at a reasonable charge photostatic or other copies, certified under the commissioner's seal of office, if certification is requested, of any entry in the register or any order or other document on file in the commissioner's office. Any copy so certified is admissible in evidence under s. 889.18.

(5) The commissioner may honor requests from interested persons for interpretative opinions.

History: 1981 c. 53 ss. 40, 43.

551.65 Service of process. (1) Every applicant for license or registration under this chapter and every issuer which proposes to offer a security in this state through any person acting as agent shall file with the commissioner or, if applying for a license, with the organization designated by the commissioner under s. 551.32 (1) (a), an irrevocable consent appointing the commissioner or the commissioner's successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or a successor, executor or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent shall be in the form the commissioner by rule prescribes. The consent need not be filed by a person who has filed a consent in connection with a previous registration or license which is then in effect. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by the commissioner, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the person's last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, or within such time as the court allows.

(2) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and the person has not filed a consent to service of process under sub. (1) and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against the person or the person's successor, executor or administrator which arises out of that conduct and which is brought under this chapter or any rule or order under this chapter, with the same validity as if served on him or her personally. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by the commissioner, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the person's last-known address or takes other steps which are reasonably calculated to give actual notice; and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process or within such time as the court allows.

(3) When process is served under this section the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as is necessary to afford the defendant or respondent reasonable opportunity to defend.

History: 1981 c. 53 ss. 41, 43.

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551.66 Scope of chapter. (1) The provisions of this chapter concerning sales and offers to sell apply when a sale or offer to sell is made in this state or when an offer to purchase is made and accepted in this state. The provisions concerning purchases and offers to purchase apply when a purchase or offer to purchase is made in this state or an offer to sell is made and accepted in this state.

(2) For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state, but for the purpose of s. 551.21, an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

(3) For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

(4) An offer to sell or to purchase is not made in this state when the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

History: 1971 c. 84; 1981 c. 53.

This section focuses on locus of certain actions, regardless of either party's presence. Feitler v. Midas Associates, 418 F Supp. 735.

551.67 Statutory policy. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact the "Uniform Securities Act" and to coordinate the interpretation and administration of this chapter with related federal regulation.