

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: **06/22/2001**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Assembly Republican Caucus**

By/Representing: **Hartsough**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - securities**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

ARC:.....Hartsough - AM48,

Topic:

Securities registration exemptions

Instructions:

See attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 06/23/2001	csicilia 06/24/2001		_____			
/1	rmarchan 06/27/2001	csicilia 06/27/2001	pgreensl 06/24/2001	_____	lrb_docadmin 06/24/2001		
/2			jfrantze 06/27/2001	_____	lrb_docadmin 06/27/2001		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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/?	rmarchan 06/23/2001	csicilia 06/24/2001					
/1		12 cjs 6/26 01	pgreensl 06/24/2001		lrb_docadmin 06/24/2001		

FE Sent For:

06/27 Sell
6/27
<END>

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1?	rmarchan	11 jrs 6/24/01	6/25/01	6/25/01	6/25/01		

FE Sent For:

<END>

a) Securities Statutory Modifications (at the request of Representative Vrakas)

RJM

Section 551.23(10) in its present form provides an exemption from securities registration for any offer or sale of securities by an issuer with its principal place of business in Wisconsin if the total number of security holders after the transaction does not exceed 15, exclusive of persons listed under 551.23(8). The registration exemption is available on a self-executing basis, and although there are no specific disclosure requirements, anti-fraud provisions are applicable. The current exemption level of 15 permitted security holders has been unchanged for over 30 years, and an increase to 25 security holders will facilitate the ability of small businesses using the exemption to raise needed equity or debt capital.

The registration exemption is available for any transaction pursuant to an offer made to not more than 10 persons in Wisconsin (other than persons listed in 551.23(8)) during a twelve-month period. The registration exemption in its current form is based on a Uniform Securities Act of 1956 provision that has been in effect in Wisconsin since January 1, 1970, and in similar fashion to the above referenced proposed change to 551.23(10), the increase in the number of permitted offerees will facilitate the ability of small businesses using the exemption to raise needed equity or debt capital.

Under current law, a person acting as a securities agent representing an issuer who receives compensation for such activities is required to be licensed unless the person qualifies for an exemption from licensure. This provision would include Wisconsin with several neighboring states that do not require securities agent licensure for persons involved in offerings to so-called "accredited investors," whether utilizing the NASAA Model Accredited Investor Exemption or in other offering contexts.

Motion: 1) Under sec. 551.23(10), Wis. Stats., increase to 25 (from the current 15) the number of security holders permitted under the exemption. 2) Under sec. 551.23(11), Wis. Stats., increase to 25 (from the current 10) the number of offers permitted under the exemption. 3) Amend the current "individual accredited investor" exemption in s. 551.23(8)(g) in the following respects to make the Wisconsin exemption consistent with the federal definition of that term and with the definition in other states: (i) delete the term "individual" in line 1; (ii) delete the so-called "investment sophistication test" language from line 2 to the end of the paragraph; and (iii) add a cross-reference to the federal definition of "accredited investor" in Rule 501(a) under Regulation D of the Securities Act of 1933. 4) Add to the list of exemptions from the securities agent licensing requirement under s. 551.31(1), Wis. Stats., a new subdivision (d) using the following language "(d) The agent is acting exclusively as an agent representing an issuer of securities and makes offers and sales of the issuer's securities in transactions exempted by s. 551.23(8)(g) or rule DFI-Sec 2.02(9)(n) under s. 551.23(18)."

(No Fiscal Effect)

2001 BILL

stays
PWR
NOTE

AA-ASA1-SB55

At the locations indicated, amend the substitute amendment as follows:

1 AN ACT to renumber 551.02 (1); to amend 551.23 (8) (g), 551.23 (10) and 551.23
2 (11) (a); and to create 551.02 (1g) and 551.31 (1) (d) of the statutes; relating
3 to: exemptions from securities registration requirements and licensing
4 requirements for securities broker-dealers and securities agents.

Analysis by the Legislative Reference Bureau

Under current law, a person may not offer or sell any security in this state unless a registration statement relating to the security is filed with the division of securities in the department of financial institutions (division) or unless the security is exempt from state registration requirements under federal law. However, current law exempts certain types of securities and transactions from this registration requirement. For example, an offer or sale of a security currently is exempt from registration if the offer or sale is made to an individual who qualifies as an accredited investor under the rules of the division, as long as the issuer of the security reasonably believes that the accredited investor has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment. In addition, with certain exceptions, an offer or sale of a security by the issuer of that security is exempt from registration if the issuer has its principal office in this state and if, among other things, not more than 15 persons will hold all of the securities after the sale. Also, under current law, any transaction that is entered into pursuant to an offer made to not more than ten persons in this state during any period of 12 consecutive months is exempt from registration, if certain other requirements are satisfied.

BILL

This bill expands these exemptions from registration. Under this bill, an offer or sale of a security to an accredited investor is exempt from registration if the individual or person receiving the offer or making the purchase qualifies as an accredited investor under certain federal rules. These federal rules define "accredited investor" to include, among other things, certain financial entities, such as banking institutions, and individuals who have a net worth of greater than \$1,000,000 or who have had an income of greater than \$200,000 in the two most recent years. The bill also repeals the requirement that the issuer reasonably believe the accredited investor has a specified level of knowledge and experience in financial and business matters. In addition, under this bill, an offer or sale of a security by the issuer of that security generally is exempt from registration if the issuer has its principal office in this state and if, among other things, not more than 25 persons will hold all of the issuer's securities after the sale. Also, under this bill, any transaction that is entered into pursuant to an offer made to not more than 25 persons in this state during any period of 12 consecutive months generally is exempt from registration, if the other requirements under current law are satisfied.

Currently, in order to transact business as a securities broker-dealer or securities agent in this state, a person must obtain a license from the division, unless the person is exempt from the licensing requirement. Current law exempts persons who give certain group presentations relating to securities, persons who engage exclusively in transactions on account of or with certain financial and governmental entities, and certain persons who are exempt from state licensing requirements under federal law.

This bill creates an additional exemption from this licensing requirement. This bill exempts any securities agent who is acting exclusively on behalf of an issuer of securities (as opposed to acting on behalf of a securities broker-dealer) and who makes offers and sales of the issuer's securities in transactions that are exempt from registration under the rules of the division that specifically exempt transactions involving accredited investors or to persons who qualify as accredited investors under certain federal rules.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Item #. 1156, 6: after line

1 " **SECTION 1.** 551.02 (1) of the statutes is renumbered 551.02 (1r).

2 **SECTION 2.** 551.02 (1g) of the statutes is created to read:

3 551.02 (1g) "Accredited investor" has the meaning given in 17 CFR 230.501(a).

4 **SECTION 3.** 551.23 (8) (g) of the statutes is amended to read:

3608h

BILL

1 551.23 (8) (g) ~~An individual accredited investor, as defined by rule of the~~
2 ~~division, if the issuer reasonably believes immediately before the sale that the~~
3 ~~individual accredited investor, either alone or with the individual accredited~~
4 ~~investor's representative, has such knowledge and experience in financial and~~
5 ~~business matters as to be capable of evaluating the merits and risks of the~~
6 ~~prospective investment.~~

7 3608j SECTION 4. 551.23 (10) of the statutes is amended to read:

8 551.23 (10) Any offer or sale of its securities by an issuer having its principal
9 office in this state, if the aggregate number of persons holding directly or indirectly
10 all of the issuer's securities, after the securities to be issued are sold, does not exceed
11 ~~15~~ 25, exclusive of persons under sub. (8), if no commission or other remuneration
12 is paid or given directly or indirectly for soliciting any person in this state, except to
13 broker-dealers and agents licensed in this state, and if no advertising is published
14 unless it has been permitted by the division.

15 3608k SECTION 5. 551.23 (11) (a) of the statutes is amended to read:

16 551.23 (11) (a) Any transaction pursuant to an offer directed by the offeror to
17 not more than ~~10~~ 25 persons in this state, excluding persons exempt under sub. (8)
18 but including persons exempt under sub. (10), during any period of 12 consecutive
19 months, whether or not the offeror or any of the offerees is then present in this state,
20 if the offeror reasonably believes that all the persons in this state are purchasing for
21 investment, and no commission or other remuneration is paid or given directly or
22 indirectly for soliciting any person in this state other than those exempt by sub. (8).

23 3608n SECTION 6. 551.31 (1) (d) of the statutes is created to read:

24 551.31 (1) (d) An agent who is acting exclusively as an agent representing an
25 issuer of securities and who makes offers and sales of the issuer's securities in

BILL

1 transactions that are exempt under s. 551.23 (8) (g) or under a rule of the division
2 promulgated under s. 551.23 (18) that specifically exempts transactions involving
3 accredited investors.)

4 (END)

NOTE

¶ The instructions directed me to cross-reference in s. 551.31(1)(d), stats., administrative rule DFI - securities 2.02(9)(n). That rule does not exist. At this point, DFI has only published notice that the rule is forthcoming. This draft, instead, refers specifically to the subject matter of the proposed rule. Even if the proposed rule did exist, this method of drafting would be preferable because it avoids the necessity of ~~amending~~ ^{of amending} the statutes if, in the future, the location of the proposed rule in the administrative code is changed.

(RJM)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1570/1dn
RJM:cjs:pg

June 24, 2001

The instructions directed me to cross-reference in s. 551.31 (1) (d), stats., administrative rule DFI-securities 2.02 (9) (n). That rule does not exist. At this point, DFI has only published notice that the rule is forthcoming. This draft, instead, refers specifically to the subject matter of the proposed rule. Even if the proposed rule did exist, this method of drafting would be preferable because it avoids the necessity of amending the statutes if, in the future, the location of the proposed rule in the administrative code is changed.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

Marchant, Robert

From: Pirlot, R.J.
Sent: Wednesday, June 27, 2001 8:52 AM
To: Marchant, Robert
Cc: Hartsough, Melanie; Pleva, Brian
Subject: FW: LRBb1570

Yes, please go ahead with Randy Schumann's suggested change.

R.J. Pirlot

Policy Director and Legal Counsel
Office of Assembly Speaker Scott R. Jensen

Direct: 608-261-9482
Fax: 608-266-5123

-----Original Message-----

From: **Marchant, Robert**
Sent: Wednesday, June 27, 2001 8:28 AM
To: Pirlot, R.J.
Cc: Hartsough, Melanie
Subject: LRBb1570

R.J.--

I spoke yesterday with Randy Schumann of the division of securities in DFI. He had received a copy of LRBb1570 (securities registration exemptions) to review. In response to my drafter's note, he suggested a change in order to narrow one of the proposed exemptions under the bill to be more in line with the intent of the caucus motion (in particular, by specifically referring in s. 551.31 (1) (d) to the North American Securities Administrators Association model exemption that DFI is in the process of promulgating as an administrative rule). This change appears to more closely reflect the intent of the motion. I have not received instructions to redraft the amendment, but if a redraft is desirable, it would be helpful to know soon.

Thanks.

Robert J. Marchant

Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us



Rmk

ARC:.....Hartsough – AM48, Securities registration exemptions

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS ASSEMBLY AMENDMENT

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1156, line 6: after that line insert:

3 **SECTION 3608d.** 551.02 (1) of the statutes is renumbered 551.02 (1r).

4 **SECTION 3608f.** 551.02 (1g) of the statutes is created to read:

5 551.02 (1g) “Accredited investor” has the meaning given in 17 CFR 230.501(a).

6 **SECTION 3608h.** 551.23 (8) (g) of the statutes is amended to read:

7 551.23 (8) (g) ~~An individual accredited investor, as defined by rule of the~~

8 ~~division, if the issuer reasonably believes immediately before the sale that the~~

9 ~~individual accredited investor, either alone or with the individual accredited~~

10 ~~investor’s representative, has such knowledge and experience in financial and~~

1 ~~business matters as to be capable of evaluating the merits and risks of the~~
2 ~~prospective investment.~~

3 **SECTION 3608j.** 551.23 (10) of the statutes is amended to read:

4 551.23 (10) Any offer or sale of its securities by an issuer having its principal
5 office in this state, if the aggregate number of persons holding directly or indirectly
6 all of the issuer's securities, after the securities to be issued are sold, does not exceed
7 ~~15~~ 25, exclusive of persons under sub. (8), if no commission or other remuneration
8 is paid or given directly or indirectly for soliciting any person in this state, except to
9 broker-dealers and agents licensed in this state, and if no advertising is published
10 unless it has been permitted by the division.

11 **SECTION 3608L.** 551.23 (11) (a) of the statutes is amended to read:

12 551.23 (11) (a) Any transaction pursuant to an offer directed by the offeror to
13 not more than ~~10~~ 25 persons in this state, excluding persons exempt under sub. (8)
14 but including persons exempt under sub. (10), during any period of 12 consecutive
15 months, whether or not the offeror or any of the offerees is then present in this state,
16 if the offeror reasonably believes that all the persons in this state are purchasing for
17 investment, and no commission or other remuneration is paid or given directly or
18 indirectly for soliciting any person in this state other than those exempt by sub. (8).

19 **SECTION 3608n.** 551.31 (1) (d) of the statutes is created to read:

20 551.31 (1) (d) An agent who is acting exclusively as an agent representing an
21 issuer of securities and who makes offers and sales of the issuer's securities in
22 transactions that are exempt under s. 551.23 (8) (g) or under a rule of the division
23 promulgated under s. 551.23 (18) that specifically exempts transactions involving
24 accredited investors^s.

25

(END)

Issuer 2-24

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb1570/2ins
RJM:.....

INSERT 2-24

accredited investor

and that is based on a model *accredited investor* exemption adopted by the North American
Securities Administrators Association



ARC:.....Hartsough – AM48, Securities registration exemptions

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

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6 **SECTION 3608h.** 551.23 (8) (g) of the statutes is amended to read:

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8 ~~division, if the issuer reasonably believes immediately before the sale that the~~
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22 transactions that are exempt under s. 551.23 (8) (g) or under a rule of the division
23 promulgated under s. 551.23 (18) that specifically exempts transactions involving

1 accredited investors and that is based on a model accredited investor exemption
2 adopted by the North American Securities Administrators Association.”

3 (END)