

Chapter SEC 23

REGISTRATION OF TAKE-OVER OFFERS

SEC 23.01 Filing of registration statement

History: Emergency rules covering general subject matter were adopted effective July 1, 1972.

SEC 23.01 Filing of registration statement. (1) Any person who proposes to make a take-over offer involving a target company in this state or to acquire any equity securities of a target company pursuant to the offer, shall file with the commissioner a registration statement on form TO-1 and, not later than the date of filing, send a copy of such registration statement by certified mail to the target company at its principal office and, on the date of filing, publicly disclose in the manner specified in s. SEC 21.01 (4) [(6)] Wis. Adm. Code the material terms of the proposed offer.

(2) If any material change occurs in the facts set forth in the registration statement required by sub. (1), the offeror who filed such statement shall promptly notify the commissioner and the target company of such change by telephone or telegraph confirmed by letter, and shall amend the registration statement to reflect such change within 10 days of the change.

(3) The proposed take-over offer filed with the commissioner as part of the registration statement pursuant to s. 552.05 (2) (b), Stats., shall include, but shall not be limited to, the following information:

(a) The name of the offeror making the take-over offer;

(b) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to s. 552.11 (2), Stats., or otherwise;

(c) If the take-over offer is for fewer than all of the outstanding equity securities of the class and the offeror is not obligated to acquire all of the securities tendered, the date of expiration of the period during which the securities will be taken up pro rata pursuant to s. 552.11 (3), Stats., or otherwise; and

(d) The information required by Items B (1), (3), and (5), C, D, E, and F of form TO-1, or a fair and adequate summary thereof.

(4) All materials filed with the commissioner pursuant to s. 552.05, Stats., shall be confidential and shall not be subject to public disclosure until such time and only to the extent that the commissioner determines the public disclosure is necessary and appropriate to satisfy the purposes of this chapter and will not cause the person filing such material to violate either Regulation 14D under the securities exchange act of 1934 or this chapter.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; emerg. cr. (4), eff. 2-15-80; cr. (4), Register, June, 1980, No. 294, eff. 7-1-80.

requires that the licensor aid or assist the distributor or licensee in training, obtaining locations or facilities for operation of the franchisee's business or in marketing the franchisor's product or service.

(7) "Published in this state" within the meaning of s. 553.59 (4), Stats., may be determined by the commissioner to include, but not be limited to, advertising circulated for particular regional use within this state by residents of this state although printed outside of this state and mailed to residents of this state located at a Wisconsin address.

(8) The commissioner shall, in any determination he shall make as to whether a marketing plan or system of a franchisee is "substantially associated with the franchisor's business and trademark, service mark, trade name, logotype, advertising or other commercial symbol" within the meaning of s. 553.03 (4) (a) 2., Stats., include, but not be limited to, consideration of the following factors:

(a) Whether the identification of the licensor's business or utilization of his trademark, service mark, trade name, logotype, advertising or other commercial symbol is utilized either by the licensor or the licensee to enhance the chances of licensee's success in respect to licensee's transactions with persons dealing in or purchasing licensor's product or service.

(b) Whether the agreement provides for the distributor or licensee to contribute a portion of his operating revenue to the licensor for advertising expense or representations made by the licensor or his agents or employees suggest payment by the licensee for advertising conducted, managed or prescribed by the licensor.

(9) The commissioner shall, in any determination he shall make as to whether a marketing plan or system of a manufacturer, licensor or a franchisor is a "bona fide wholesale transaction" or a series thereof within the meaning of s. 553.03 (7) (a), Stats., include, but not be limited to, consideration of the following factors:

(a) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, consideration in purchase transactions thereunder is solely for the payment of goods, services, equipment, inventory or real estate and such consideration does not reflect, in part or in whole, payment for the right to continue such purchase transactions or business whether on the same or different terms than those stated in the subject agreement.

(b) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, a purchase of goods, services, equipment, inventory or real estate is required in connection with the subject agreement.

(c) Whether, in connection with an agreement to process, resell or otherwise distribute a manufacturer's or licensor's product or service, the cost of goods, services, equipment, inventory or real estate thereunder to the seller thereof is reasonably related to the price of the same to the distributor or licensee, taking into account the respective circumstances in the market of both the seller and buyer thereof.

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(10) "Timely" within the meaning of s. 553.41 (4), Stats., shall mean at least 48 hours prior to the execution of an agreement or the taking of consideration constituting the sale of a franchise.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72.