

Chapter SEC 2

REGISTRATION EXEMPTIONS

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SEC 2.01 Exempt securities. (1) (a) 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 under s. 551.22 (1), Stats., if:

1. The enterprise is a public utility described under s. 551.22 (6), Stats., having securities registered under section 12 of the securities exchange act of 1934, or is a wholly-owned subsidiary of one or more of such utilities.

2. Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale or loan arrangement, are exempt under s. 551.22 (7), Stats., or meet the conditions of s. 551.235 (1) to (4) and (5) (c) 1.2. and 3a., Stats.; or

3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for the enterprise meeting the requirements of s. SEC 3.22 (1) (p) and subject to the standards in s. SEC 3.06 (2), and additional information as the commissioner may require, and the commissioner does not by order deny the exemption within 20 days of the date the notice is filed.

(b) Any guarantee of, or any put option or similar agreement to purchase from a holder of, any security exempt under s. 551.22(1), Stats., is exempted from s. 551.21, Stats.

(c) For purposes of the registration exemption provision of s. 551.22 (1), Stats., requiring the financial statements of certain issuers to be prepared according to generally accepted accounting principles or guidelines which the commissioner of securities designates by rule, a security is exempted from registration thereunder if:

1. The issuer's annual financial statements for fiscal years commencing on or after January 1, 1982, are prepared according to generally accepted accounting principles as established by the National Council on Governmental Accounting, Statement 1, "Governmental Accounting and Financial Report Principles" (March 1979) or other rule-making body designated under rule 203 of The Professional Ethics Code of the American Institute of Certified Public Accountants; or

2. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1990, are prepared according to generally accepted accounting principles as provided in subd. 1., but where the auditor's opinion is qualified with respect to the fixed asset account group; or

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3. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1987, are prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency.

(d) Determination of accounting principles or guidelines. Whether financial statements meet the requirements of par. (c), shall be conclusively determined by the last available auditor's opinion relating to the issuer's financial statements for a fiscal year ending not more than 21 months prior to the offering. The auditor's opinion may be conclusively relied upon by third parties for purposes of such determination. The opinion shall meet the requirements of rule 2.02 of regulation S-X of the U.S. securities and exchange commission in 17 CFR H210.2-02 and provide that:

1. With respect to par. (c) 1, the financial statements are prepared in accordance with generally accepted accounting principles, or equivalent language;

2. With respect to par. (c) 2, the financial statements are prepared in accordance with generally accepted accounting principles, but qualified with respect to the fixed asset account group, or equivalent language;

3. With respect to par. (c)3, the financial statements are prepared on the basis of accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency, or equivalent language.

(2) For purposes of s. 551.22 (3), Stats., an issuer or a guarantor is "subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority" if that governmental authority has authority to regulate the issuer's or guarantor's business and the terms of the particular securities to be offered and sold.

(3) (a) Any evidence of debt issued by a domestic non-profit corporation to persons other than its members is exempted under s. 551.22 (8), Stats., if the issuer or a licensed broker-dealer files a notice of the proposed issuance with the commissioner prior to the offering, including: a trust indenture meeting the requirements of s. SEC 3.24, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. SEC 3.23 (1); and such additional information as the commissioner may require; and the commissioner does not by order deny or revoke the exemption within 10 days. In addition, if the domestic non-profit corporation is or operates as a church, the offering shall meet the requirements of s. SEC 3.14, and if the domestic non-profit corporation is or operates as a health care facility, the offering shall meet the requirements of s. SEC 3.145.

(b) A person does not become a "member" for purposes of s. 551.22 (8), Stats., solely by reason of the purchase of the issuer's securities.

(4) "Commercial paper" exempted under s. 551.22(9), Stats., means any note, draft or bill of exchange, which:

(a) Evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, any renewal of the paper which is likewise limited, or any guarantee of the paper or the renewal;

2. The preliminary prospectus has been filed with the U.S. securities and exchange commission or the commissioner for a period of 10 days, and the commissioner does not by order deny the exemption; and

3. Before the securities referred to in subd. 1. may legally be sold, no customer funds are received and no customer signs any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

(h) Any transaction, in other than the initial public offering, involving any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States, or any agency or corporate instrumentality of the United States, where the government security is of investment quality rating as determined by the office of the commissioner of banking for the state of Wisconsin or by the comptroller of the currency by virtue of credit worthiness, or any transaction involving any government security dated prior to the effective date of this paragraph.

(i) Any offer or sale of debt securities by an issuer to its employees or agents, provided there is filed with the commissioner prior to any offer or sale a notice as provided in s. SEC 2.03 (1), and the commissioner by order exempts the offering. Without limiting the ability of the commissioner to refuse to issue an order on other grounds, the commissioner may find the issuance of an order inappropriate for the protection of investors unless:

1. The issuer's net earnings for its last fiscal year prior to the offering shall have been at least equal to the interest requirements on its debt securities for that year;

2. The debt securities being offered shall be of a fixed-term nature with maturities varying from not less than 90 days to not more than 2 years from the date of issue;

3. Any provision for renewal of the debt securities shall require that each holder receive 30 days prior written notice of the renewal accompanied by updated information described in subd. 5., that the renewal may not occur unless the holder signs at the time of the renewal a subscription agreement agreeing to the renewal, and that the term of the securities being renewed shall not extend beyond the expiration date of the Order of Exemption issued under this subdivision;

4. Each purchaser of debt securities shall be required to represent in a subscription agreement for purchase or renewal of the debt securities that the dollar amount of the purchase does not exceed 25% of his or her liquid net worth, excluding equity in his or her house or personal property;

5. An Information Summary containing at least the following information shall be provided by the issuer to each offeree at the time of the offering:

a. Disclosure of the specific purposes for use of the funds raised from the sale of the debt securities;

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b. A statement that the decision of an offeree whether or not to purchase or to agree to any renewal will not have any effect upon that offeree's advancement opportunities, raises or other benefits, nor will impact on the offeree's continued employment or job duties;

c. A representation that the issuer is not contemplating, and is not the subject of, any proposed merger, sale of assets or control of the issuer, receivership or bankruptcy, that it does not have current financial obligations that it is unable to meet, and that it has not been refused credit by any lending institution for the purposes for which the proceeds from sale or renewal of the debt securities will be used; and

d. Financial statements for the issuer's 3 previous fiscal years, or the duration of the issuer's existence, whichever is less, that shall be either audited or, if unaudited, accompanied by the issuer's federal income tax return with supporting schedules for the corresponding years;

6. Offerees shall be provided with a 5-day period following their receipt of any offering materials, information or subscription agreement for purchase of the issuer's securities, before the subscription agreement can be returned to or accepted by the issuer; and

7. The issuer shall provide that upon the death or involuntary termination of employment of the holder, the debt securities will be redeemed by the issuer within 60 days of receipt by the issuer of a written request for repurchase from the holder or the holder's legal representative. The redemption price shall include principal plus accrued interest to the date of redemption.

(j) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. SEC 2.025 or 2.027.

(k) Offers or sales of a discretionary or managed trading account involving discretion or management provided by a broker-dealer licensed in this state or by an investment adviser licensed in this state.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; emerg. cr. (11), eff. 11-4-75; cr (11), Register, February, 1976, No. 242, eff. 3-1-76. Am. (1)(a), (3)(a), and (b), (5) and (6), renum. (9)(10) and (11) to be (10), (11) and (9), am. (9)(10) (intro.) and (11)(a) and (e), r. and recr. (10)(b), cr. (11) (f) and (g), Register, December, 1977, No. 264, eff. 1-1-78; am. (6)(b) and (d) 1, Register, September, 1978, No. 273, eff. 10-1-78; am. (5) (c), (6) (b) and (11) (f) 6., Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (b), (2) and (3) (a) and (b), r. (4), renum. (5) to (11) to be (4) to (10), and am. (5) (a), (c), and (d) 1., (6), (9) and (10), Register, December, 1980, No. 300, eff. 1-1-81; cr. (9) (c) and am. (10) (d), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (10) (h), eff. 5-1-82; cr. (10) (h), Register, September, 1982, No. 321, eff. 10-1-82; am. (3) (a) and (5) (d) 1., cr. (10) (i), Register, December, 1982, No. 324, eff. 1-1-83; cr. (10) (j), Register, August, 1983, No. 332, eff. 9-1-83; am. (1)(a), (5)(d)1. and (10)(b), Register, December, 1983, No. 336, eff. 1-1-84; emerg. r. (10) (j), eff. 1-1-84; r. (10) (j), Register, May, 1984, No. 341, eff. 6-1-84; am. (10) (g), Register, December, 1984, No. 348, eff. 1-1-85; am. (3) (b) and (10) (f) 4., Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (10) (g) 1., eff. 1-1-86; cr. (10) (j), Register, March, 1986, No. 363, eff. 4-1-86; am. (10) (g) 1., Register, May, 1986, No. 365, eff. 6-1-86; am. (1) (a) and (9) (c), cr. (10) (k), Register, December, 1986, No. 372, eff. 1-1-87.

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

(1) **FEDERAL REGISTRATION STATEMENT.** A registration statement for the securities shall have been filed under the securities act of 1933 and, Register, December, 1986, No. 372

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prior to any sale in this state, the registration statement shall have been declared effective by the U.S. securities and exchange commission.

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

(a) 1. The underwriter shall be a member in good standing of the National Association of Securities Dealers, Inc., and shall have been during the 5-year period preceding the offering.

2. The underwriter shall have been engaged as a managing or co-managing underwriter in not less than 5 firmly underwritten public offerings pursuant to effective registration statements under the securities act of 1933 during the 5-year period preceding the offering.

3. The underwriter shall have had positive net income after taxes according to its financial statements in at least 3 fiscal years during the 5-fiscal-year period preceding the offering.

4. A majority of the principal officers of the underwriter shall have been engaged in the securities business for the 5-year period preceding the offering; and

5. The underwriter shall be licensed as a broker-dealer in Wisconsin.

6. An underwriter shall be presumed qualified under subds. 1 to 5 upon the filing with the commissioner of a certification that the conditions in subds. 1 to 5 are satisfied. The certification shall be in letter form signed by an officer, partner or principal of the underwriter, or by counsel for the underwriter, and shall be filed with the commissioner at least 10 days prior to the proposed effective date of the registration statement filed with the U.S. securities and exchange commission.

(b) For an underwriter not qualified under par. (a), the underwriter may be designated a qualified managing underwriter for the offering by letter issued by the commissioner prior to any offer or sale of the securities in this state. The designation shall require an application by letter filed with the commissioner at least 10 days prior to the proposed effective date of the registration statement filed with the U.S. securities and exchange commission. In making the designation, the commissioner shall consider, without limitation, and the applicant's letter shall address, the following factors:

1. The number of underwriters involved in the offering;
2. The size and experience of the underwriter's staff;
3. The net capital of the underwriter;
4. The independence of the underwriter from the issuer;
5. The past operating history of the underwriter; and
6. The total size of the offering.

(3) **SPECIFIC REQUIREMENTS FOR THE OFFERING.** (a) The common stock being offered shall have a public offering price of at least \$5.00 per share.

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(b) The aggregate amount of the offering shall be \$1 million or more.

(c) Neither the issuer, any qualified managing underwriter, nor any officer, director, controlling person or affiliate of the foregoing, is subject to disqualification under s. 551.23 (19) (c), Stats.

(d) For an offering that is the initial public offering by an issuer under the securities act of 1933, the registration statement filed under sub. (1) receives full review by the U.S. securities and exchange commission.

(4) **FAIRNESS TO INVESTOR STANDARDS.** (a) *Promoters equity investment.* If the offering is by a corporation in the promotional or developmental stage, the existing capital of the corporation shall be at least 10% of the aggregate offering price of the securities to be sold in the offering. As used in this subdivision, a "promotional or developmental stage" corporation means a corporation that has had no positive earnings from operations for any fiscal year during the 3 fiscal years immediately preceding the filing of the federal registration statement in sub. (1) or the shorter period of its existence. As used in this subdivision, "Existing capital" means the total of all amounts contributed to the corporation in cash and the reasonable value of all tangible assets contributed to the corporation as determined by independent appraisal, and as adjusted by the corporation's retained earnings.

(b) *Promotional stock.* The total amount of promotional stock held of record or beneficially by all promoters of the corporation shall not exceed 40% of the amount of the corporation's common stock to be outstanding upon completion of the offering. As used in this paragraph, "promotional stock" means all stock issued during the 3 years preceding the filing of the federal registration statement in sub. (1), other than those shares for which the promoters paid an amount per share equal to the public offering price in cash or the reasonable value of tangible assets contributed to the corporation as determined by independent appraisal. As used in this paragraph, "promoter" means any officer or director of the corporation or any person owning of record or beneficially 5% or more of the outstanding voting securities of the issuer, or affiliates of any of the foregoing.

(c) *Options and warrants.* The corporation shall represent in writing to the commissioner that during the 12 month period following the offering, options and warrants to purchase the common stock of the issuer held by its officers and directors will not exceed 10% of the outstanding common stock of the corporation. The exercise price of any options and warrants to purchase common stock of the corporation shall be at not less than 85% of the fair market value of the common stock on the date of grant.

(5) **FILING REQUIREMENTS.** (a) *Materials to be filed.* The issuer or applicant shall file with the commissioner:

1. A copy of the registration statement filed with the U.S. securities and exchange commission for the securities being offered;

2. A notarized original consent to service of process signed by a person authorized by the issuer;

3. A written statement specifying how the requirements for use of the exemption in this section are met;

4. A fee of \$500; and

5. An undertaking signed by a person authorized by the issuer or applicant to file promptly all pre-effective amendments to the registration statement, to notify promptly the commissioner by telephone or wire of the date and time when the federal registration statement becomes effective, and to file promptly with the commissioner 2 copies of the final prospectus.

(b) *Time for filing.* The documents and fee prescribed in par. (a) shall be filed with the commissioner not later than the earlier of the date of the first use of the preliminary or final offering document in this state or the first sale in this state.

(6) **NONAVAILABILITY FOR CERTAIN ISSUERS OF SECURITIES.** The registration exemption under this section is not available for offers or sales of common stock by the following issuers of securities:

(a) A corporation that has had a class of its securities registered under section 12 of the securities exchange act of 1934 for each of its 5 fiscal years immediately preceding the filing of the federal registration statement in sub. (1).

(b) An open-end or closed-end management company, or a face amount certificate company as defined in the investment company act of 1940.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SEC 2.027 Wisconsin issuer registration exemption by filing. If all the following conditions are met other than any condition or conditions waived by the commissioner upon a showing of good cause, a transactional registration exemption is available under s. 551.23 (18), Stats., for any offer or sale of common stock of an issuer having, both before and upon completion of the offering, its principal office and a majority of its full-time employees located in this state:

(1) The securities sold in this state in the offering are purchased by not more than 50 persons described in s. 551.28 (7), Stats. The following are excluded in counting the 50 persons:

(a) Persons described in s. 551.23 (8), Stats.;

(b) Accredited investors as defined in rule 501(a) of Regulation D under the securities act of 1933; and

(c) Members of the immediate family of any executive officer or director of the issuer who have the same permanent residence as the officer or director.

(2) No commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state in reliance on the exemption in this section, except to broker-dealers and agents licensed in this state.

(3) Neither the issuer nor any broker-dealer offering or selling the securities is or would be disqualified under s. 551.23 (19) (c), Stats.

(4) The securities being offered have an offering price of not less than \$5 per share.

(5) An offering document meeting the disclosure requirements of rule 502 (b) (2) of Regulation D under the securities act of 1933 is delivered to each purchaser or prospective purchaser prior to the sale of the securities.

(6) The offering document provides that at least 80% of the net proceeds from the offering shall be used in connection with the operations of the issuer in this state.

(7) The issuer or applicant files with the commissioner:

(a) The offering document to be used in connection with the offer and sale of the securities not later than the date of the first use of the document in this state, together with a fee of \$200; and

(b) A copy of any advertising, other than the offering document, to be used in connection with the offer and sale of the securities not later than the date of its first use in this state, and a copy of any material amendment to the offering document, not later than the date of first use of the material amendment in this state.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86.

SEC 2.03 Exemption proceedings. (1) A notice of exemption pursuant to s. 551.22 or 551.23, Stats., shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. SEC 7.01 (2), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the commissioner prior to the effective date of an exemption, in connection with the examination of any notice filed pursuant to s. 551.22 or 551.23, Stats., the notice is not deemed filed until the information so required is filed with the commissioner.

(3) An order of the commissioner disallowing an exemption with respect to a specified security or transaction pursuant to s. 551.22 or 551.23 Stats., has the same effect as an order denying or revoking an exemption pursuant to s. 551.24, Stats.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; am. (1), Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. (1), Register, December, 1981, No. 312, eff. 1-1-82; am. (1), Register, December, 1982, No. 324, eff. 1-1-83.