

COMMISSIONER OF SECURITIES

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(b) With respect to a security qualifying under s. 551.23 (3) (d), Stats., the issuer or an applicant files with the commissioner prior to the offering a notice of the proposed sale, including: the prospectus used in the most recent offering of the securities proposed to be sold; a copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect; any information specified in ss. SEC 3.22 and 3.23, and not contained in the filed prospectus; the trust indenture, if any, under which the securities proposed to be sold are issued; the information concerning the public market for the security specified in s. SEC 3.02 (1) (b); a balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing and statements of income and changes in financial position and analysis of surplus for such fiscal year meeting the requirements of s. SEC 7.06; an undertaking to file with the commissioner within 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purpose) after the end of each fiscal year of the issuer comparable financial statements of the issuer for each such fiscal year; and an undertaking to furnish the commissioner with a written report within 30 days after the happening of any material event affecting the issuer or the securities proposed to be sold. The exemption, unless disallowed by order of the commissioner within 10 days, is effective so long as the information required to be furnished is kept current.

(4) A "financial institution or institutional investor" within the meaning of s. 551.23 (8), Stats., includes:

(a) An endowment or trust fund of a charitable organization specified in section 170 (b) (1) (A) of the Internal Revenue Code;

(b) An issuer which has any class of securities registered under section 12 of the Securities Exchange Act of 1934, and any wholly owned subsidiary thereof;

(c) Is a venture capital company as a result of meeting any of the following requirements:

1. Operates a small business investment company licensed under the small business investment act of 1958, as amended 15 USC sec. 631.

2. Is a corporation, partnership or association that has been in existence for 5 years or whose net assets exceed \$250,000 and either:

a. Whose principal purpose as stated in its articles, by-laws or other organizational instruments is investing in securities; or

b. Whose primary business is investing in developmental stage companies or eligible small business companies as defined in the regulations of the small business administration at 13 CFR 108.2.

(d) Any other person or entity whom the commissioner by order designates.

(5) With respect to an offer or sale of a security exempted under s. 551.23 (10) or (11), Stats.:

(a) Offerees or persons holding directly or indirectly all the issuer's securities include all joint or common owners and all beneficial owners of its securities, and all beneficial owners of any corporation, partnership, association or trust holding any of the issuer's securities and organized in connection with the offer or sale of the securities, provided that any rela-

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tive or spouse, or any relative of the spouse, having the same home as the offeree or person, shall not be deemed a separate offeree or person;

(b) Issuers affiliated by reason of direct or indirect control or persons affiliated by reason of direct or indirect control of any issuer are deemed to be a single issuer or person; but use of an exemption for the offer and sale of securities by such affiliated issuer or person shall not be denied on account of such affiliation provided the offer and sale are not part of a common business purpose or plan of offering, or if upon the filing of an application the commissioner so orders. A "common business purpose or plan of offering" is presumed where the offer or sale of securities is not separate and distinct from another offer and sale of securities with respect to (i) the application of proceeds, (ii) the physical proximity of real property or other assets, or (iii) the financial affairs of the business;

(c) A reasonable commission or fee may be paid to a broker-dealer licensed in this state for services rendered in connection with a sale of securities effected under s. 551.23 (10) or (11), Stats.; a commission or fee will be presumed reasonable if it does not exceed the amount permitted under s. SEC 3.01 (1); and

(d) The exemption for any offer or sale under s. 551.23 (11), Stats., is withdrawn with respect to:

1. Except as provided in this subdivision, any offer or sale of interests in a limited partnership, irrespective of the kind of assets held or business engaged in by the partnership, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds \$100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption within 10 days. This subdivision is not applicable to any offer or sale made by a broker-dealer licensed in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control;

2. Any offer or sale of equity securities by or on behalf of any person directly or indirectly controlling an issuer whose equity securities were registered under ch. 551, Stats., or any predecessor law and are held of record by more than 100 shareholders in this state, otherwise than in compliance with sub. (1) (b); and

3. Any offer or sale of securities registered under the securities act of 1933 or exempted by regulations A or B thereunder, unless permitted by order of the commissioner in compliance with such conditions as the commissioner may prescribe.

(6) Notice of an offer to existing security holders exempted under s. 551.23 (12), Stats., shall be filed with the commissioner prior to the offering, and shall include any prospectus, circular or other material to be delivered to offerees in connection with such transaction.

days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application required by the commissioner, the commissioner shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, but are not limited to, gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their business plans and products, or their financing or investment capital needs or proposals.

(m) 1. Any offer, sale or option to purchase equity securities issued by a new Wisconsin business corporation if that offer or sale is made by, or the option is offered by, the issuing corporation to its employees, officers or directors. In this subsection, "new Wisconsin business corporation" means a business incorporated under ch. 180, Stats., with its principal office in this state which, on the date of the offer, sale or issuance of the option, has been operating 5 years or less, has no more than 50 employees and has annual gross receipts of \$5,000,000 or less.

2. Prior to any offering made in this state under this paragraph, the corporation shall provide the commissioner with at least 20 days' advance written notice of the offering. The notice shall include a copy of a written disclosure document to be provided to each offeree setting forth, without limitation as to other types of information that can be provided, the amount of funds being raised in the offering; how the proceeds will be expended; basic information about the corporation's business activities and historical operations to date; the identity of its officers, directors and controlling persons; the current ownership levels of the corporation's securities, together with the price per share paid by persons for those shares; and financial statements for the corporation.

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; am. (10) (j), Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. (4) (c), am. (10) (j), cr. (10) (l) and (m), Register, December, 1988, No. 396, eff. 1-1-89.

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,

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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 subsds. 1 to 5 upon the filing with the commissioner of a certification that the conditions in subsds. 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.