

Chapter SEC 32

EXEMPTION AND REGISTRATION OF FRANCHISES

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

SEC 32.01 Requirement for franchise exemption notice filings. A notice of exemption pursuant to a statute or rule under ch. 553, Stats., that does not specify the information to be provided, shall consist of the following:

- (1) The examination fee prescribed under SEC 35.01;
- (2) A statement by the franchisor or the franchisor's attorney on its behalf describing how the franchisor meets the conditions for use of the exemption; and
- (3) A copy of either an offering circular prepared in the form required by SEC 32.06 or a disclosure document prepared in the form required by 16 CFR Part 436, the federal trade commission's disclosure requirements and prohibitions concerning franchising and business opportunity ventures.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1980, No. 300, eff. 1-1-81; am. (3), Register, December, 1981, No. 312, eff. 1-1-82; r. and recr. Register, December, 1988, No. 396, eff. 1-1-89.

SEC 32.03 Material events or material changes affecting exempted franchisors and their franchises. Franchisors whose franchises are exempted under ss. 553.22 or 553.25, Stats., shall be required, as a condition of maintenance of the exemption, to notify the commissioner in writing within 30 days after the happening of any material event or material change within the meaning of s. SEC 31.01 (3), affecting the exempted franchises or the franchisor.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.04 and am., Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December,

SEC 32.05 Exemptions by the commissioner. (1) The following transactions shall be exempted from s. 553.21, Stats., pursuant to s. 553.25, Stats.:

(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchises where:

- 1. The franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature; or

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2. A franchisee or prospective franchisee of a governmental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired.

(b) Any offer to sell or sale of a franchise which includes payment by a person for the right to participate in a distribution or marketing plan where such payment, computed on an annual basis, does not exceed \$1,000 in excess of the bona fide wholesale price for such product or service in wholesale transactions.

(c) Any offer to sell, or sale, of a franchise if all of the following conditions are met:

1. There is filed on behalf of the franchisor an irrevocable guaranty of performance in the form required by the commissioner pursuant to which a corporation owning at least 80% of the franchisor absolutely and unconditionally guarantees the franchisor's performance of its obligations under the franchise agreements.

2. The corporation acting as guarantor in subd. 1. has a net worth on a consolidated basis according to its most recent audited financial statement of not less than \$5,000,000.

3. The franchisor either: a. has at least 25 franchisees conducting the business of the franchise at 25 locations in this state at all times during the 5-year period immediately preceding the offer or sale; or b. has conducted business which is the subject of the franchise continuously for not less than 5 years preceding the offer or sale.

4. The franchisor discloses in writing the information required under s. SEC 32.01 (3) to each prospective franchisee at least 10 business days prior to the execution by the prospective franchisee of any binding franchise or other agreement or at least 10 business days prior to the receipt of any consideration, whichever first occurs.

5. There is filed by or on behalf of the franchisor, at least 10 business days prior to the offer of a franchise in this state, a notice of the proposed offer or sale, including any prospectus, circular or other material to be delivered to prospective franchisees and other information the commissioner may require, together with a consent to service of process as specified in s. 553.27 (10), Stats., and the commissioner does not by order withdraw, deny or revoke the exemption within 10 business days.

6. The franchisor files annually with the commissioner within 120 days after the close of its fiscal year, a copy of its current offering circular prepared in the form required by s. SEC 32.06, or disclosure document prepared in the form required by 16 CFR Part 436, the federal trade commission's disclosure requirements and prohibitions concerning franchising and business opportunity ventures. The filing by the franchisor shall be signed by an officer or general partner of the franchisor in the manner prescribed by s. SEC 32.11, and shall be accompanied by a statement by the franchisor setting forth how the requirements for use of the exemption continue to be met.

(d) Any offer to sell or sale of a franchise to any of the following:

1. The franchisor of the franchise;

2. A bank, trust company, credit union or savings and loan association purchasing a franchise for its own account.

(e) The offer or sale to a franchisee or prospective franchisee where the franchisee or prospective franchisee is not domiciled in this state and where the franchise business will not be operated in this state, and provided that the offer, sale and purchase of the franchise is effected in compliance with any applicable franchise law of the state in which the franchise business will be operated or the franchisee is domiciled.

(f) The offer or sale to an existing franchisee of an additional franchise that is the same as a franchise that the franchisee is operating at the time of the offer or sale.

(g) The offer or sale of a franchise or interest in a franchise which also constitutes a security that is either registered or exempt from registration pursuant to ch. 551, Stats.

(h) Any modification or amendment of an existing franchise agreement if there is no interruption in the operation of the franchise business and there is no material change in the franchise relationship. For purposes of this paragraph, an interruption in the operation of the franchise business solely for the purpose of relocating that business shall not be considered a material change in the franchise relationship or an interruption in the operation of the franchise business.

(i) The offer and sale of a franchise by the franchisor during the pendency of an application to renew the franchisor's registration statement under s. 553.30, Stats., or an application to amend a registration statement pursuant to s. 553.31, Stats., if all of the following requirements are met:

1. The offer and sale is made by means of the prospectus contained in the effective registration statement.

2. The prospectus is supplemented by a supplemental disclosure document, filed with the commissioner at the time of the renewal or amendment application, disclosing all differences between the prospectus for the effective registration statement and the prospectus filed in connection with the renewal or amendment application.

3. The supplemental disclosure document is delivered to, and left with, the prospective franchisee.

(2) Unless otherwise specified, nothing in this rule shall prevent the commissioner from exercising his authority under s. 553.28 (1) (a), (b), (c), (e), (f) or (h), Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.06, Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (intro.), Register, December, 1981, No. 312, eff. 1-1-82; am. (1) (a) and (2), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (b), r. and recr. (1) (c), cr. (1) (d), Register, December, 1985, No. 360, eff. 1-1-86; am. (1) (b) and (c) 5, cr. (1) (e) to (i), Register, December, 1987, No. 384, eff. 1-1-88; cr. (1) (c) 6, Register, December, 1988, No. 396, eff. 1-1-89; am. (1) (intro.), Register, December, 1991, No. 432, eff. 1-1-92.

SEC 32.06 Form of application. (1) All applications for registration of an offer to sell or sale of a franchise, all registration renewal statements and all applications to amend the registration statement shall be filed upon the uniform franchise registration application adopted in September,

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1975 by the Midwest Securities Commissioners Association and adopted in April, 1980 by the North American Securities Administrators Association.

(2) In determining whether an applicant has complied with the requirements of the uniform franchise registration application, the commissioner shall follow the Guidelines for Preparation of the Uniform Franchise Offering Circular and Related Documents adopted in October, 1977 by the Midwest Securities Commissioners Association and in April, 1980 by the North American Securities Administrators Association, as amended November 20, 1986 and October 31, 1988. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$20. The Guidelines are published in the CCH NASAA Reports published by Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

(3) An applicant's offering circular shall disclose, and its franchise contract or agreement shall state, that ch. 135, Stats., the Wisconsin Fair Dealership Law, supersedes any provisions of the applicant's franchise contract or agreement inconsistent with that law.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81; cr. (3), Register, December, 1986, No. 372, eff. 1-1-87; am. (2), Register, December, 1987, No. 384, eff. 1-1-88; am. (2), Register, December, 1989, No. 408, eff. 1-1-90.

SEC 32.07 Renewal or amendment of registration statements. (1) A registration renewal statement under s. 553.30, Stats., shall be filed on a form prescribed by the commissioner not less than 15 business days prior to the end of one year from the effective date of the registration statement unless such period is waived by order of the commissioner, and shall be accompanied by the latest form of prospectus or offering circular, meeting the requirements of s. SEC 32.06, used in connection with the sale of the registered franchises together with a balance sheet of the franchisor as of a date within 120 days of the proposed renewal date and an income statement and analysis of surplus of the franchisor for its last fiscal year preceding the date of the balance sheet and for the period between the close of the franchisor's last fiscal year and the date of the balance sheet, all meeting the requirements of s. SEC 35.05. If no stop order or other order under s. 553.28, Stats., is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at an earlier time as the commissioner determines.

(2) An application to amend a registration statement under s. 553.31, Stats., shall be filed on a form prescribed by the commissioner at any

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