

## 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, 1990, 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) The exemption provided under s. 551.22 (7), Stats., relating to the national market system of the national association of securities dealers, inc. is subject to the authority of the commissioner to terminate the exemption for the system or for a specific issue of securities or category of securities designated on the system. The commissioner may, by order, terminate an exemption upon a determination that the system's requirements for designation or maintenance set forth in securities act release No. 6810 (Dec. 18, 1988), 53 Federal Register 52550 (December 28, 1988), as amended in the form adopted April 28, 1990 by membership of the North American Securities Administrators Association, Inc. published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The issuance of any such order by the commissioner shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(b) The Chicago Board Options Exchange is designated as a national securities exchange qualifying for registration exemption status under s. 551.22 (7), Stats., subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), as contained in the Memorandum of Understanding

dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(4) (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.

(5) "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;

(b) Is offered or sold through a broker-dealer that is in compliance with s. 551.31 (1), Stats., or an institution described in s. 551.22 (3), Stats., or a state or any agency or political subdivision thereof, whether the person is acting for itself or for the account of a customer;

(c) Is not offered or sold to the general public by means of the publication or circulation of any advertising; and

(d) Is issued to finance liquid current assets (including inventories and receivables) or current operating expenses.

(6) A notice filed under s. 551.22 (10), Stats., shall consist of a complete description of the plan, including any advertising to be published, circulated or used. The exemption may be denied if the plan is unfair or inequitable to purchasers of securities thereunder. If the plan involves purchases of the employer's securities, a plan may be deemed unfair or inequitable unless:

(a) The formula price at which employees may purchase shares is calculated at least annually, and is not less than 85% of the fair market value

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of the stock at the beginning of the one-year purchase period or the end of the purchase period, whichever is lower, and shares purchased are fully paid for at the end of each period, stock certificates are issued and no fractional shares are issued;

(b) The issuer files an undertaking to deliver to all participating employees copies of the issuer's annual financial statements;

(c) A participating employee has the right to withdraw from the plan at any time without penalty;

(d) If there is no adequate public market for the issuer's shares as defined in s. SEC 3.02 (1) (b), the issuer offers to repurchase the shares at a price determined by the same formula pursuant to which the shares were purchased by the employee under the issuer's plan, upon the happening of either of the following events:

1. The employee ceases to be employed by the issuer (or a subsidiary), and a written request for repurchase is received by the issuer within 180 days after termination of employment; or

2. The employee experiences severe financial hardship due to illness or death in the immediate family, major uninsured casualty loss or other unforeseen events, and delivers to the issuer a written irrevocable election to have the issuer repurchase the shares, including a statement in reasonable detail as to the nature of the employee's financial hardship, and within 20 days the issuer's board of directors does not determine that no severe financial hardship exists.

(e) All funds contributed to the plan for the purchase of shares are protected from claims of creditors of the issuer;

(f) Any withholding from an employee's compensation is limited to not more than 10% of the compensation each pay period;

(g) All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of s. SEC 3.07; and

(h) If the securities to be purchased under the plan are not registered under the securities act of 1933, the issuer files a satisfactory opinion of counsel as to its exempt status under that act.

(7) Any security issued by a licensed broker-dealer to its officers, partners or employees is exempted under s. 551.22 (14), Stats., if:

(a) The issuer files with the commissioner prior to the offering a notice of the proposed issuance and such additional information as the commissioner requires, and the commissioner does not by order disallow the exemption within 10 days; or

(b) The security evidences a temporary subordinated borrowing by a broker-dealer that is a member of a national securities exchange, which is made in accordance with the rules of that exchange.

(8) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted under s. 551.22 (17), Stats.

(9) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted

under s. 551.22 (17), Stats., if it is a security which matures within 16 months of date of issue and the issuer has levied a direct annual irrepealable tax under Art. XI, s. 3, Wis. Const. or otherwise pledged levied taxes sufficient in amount to pay the interest on the securities as it falls due and also to pay and discharge the principal on the securities at maturity.

(10) (a) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted under s. 551.22 (17), Stats., if a notice of the proposed offering containing the information in par. (b) is filed with the commissioner prior to the offering and the commissioner does not by order deny the exemption within 10 days of the date the notice is filed.

(b) A notice filed under par. (a) shall include the following information:

1. The nature and cost of the project to be financed with the borrowed funds;
2. A statement of any other funds which may be needed to complete the project;
3. Reference to the statutory authority for issuance of the securities;
4. Whether the securities are general obligations of the issuer secured by a constitutionally mandated irrepealable tax levy;
5. Equalized value and, if available, assessed value relating to the property located in the geographical boundaries of the issuer for the preceding 5 years;
6. The issuer's debt limit and the aggregate amount of existing constitutional debt and unused borrowing margin;
7. The most recent U.S. census population and current estimated population within the geographic boundaries of the issuer;
8. The issuer's net tax rate for the last 5 years based upon equalized value and, if available, upon assessed value;
9. The dollar amount of tax levies of the issuer for the last 5 years;
10. A statement relating to any pending litigation which may have a material adverse financial impact upon the issuer or upon the securities;
11. The 5 largest employers in the relevant geographic area;
12. The 5 largest taxpayers in the issuer's geographic boundaries;
13. The executive officers of the issuer;
14. The issuer's financial statements for the preceding 3 years for which such statements are available. If the date of the financial statements for the issuer's most recent fiscal year is more than 180 days prior to the date of a filing for exemption under this subsection, the financial statements shall be updated by providing interim statements, that may be unaudited, to within 180 days of the date of filing;
15. The issuer's current general fund and debt service fund balances as at the end of the month preceding the filing of the notice; and

16. Whether the securities will be accompanied at delivery by an opinion of bond counsel to the effect that the securities are validly authorized and issued and are exempt from present federal income taxes.

(c) The requirements of par. (b) may be satisfied by an Official Statement or other disclosure document relating to the securities being offered containing at least the information required in par. (b).

(d) A notice filed under par. (a) shall be accompanied by:

1. A copy of any proposed resolution or resolutions of the governing body of the issuer relating to the authorization and issuance of the securities;

2. An opinion of bond counsel, or counsel to the issuer, to the effect that all appropriate steps to date necessary for the sale of the securities have been duly taken;

3. A proposed form of the securities;

4. A copy of the notice of sale, if applicable, relating to the securities or a reference to the same indicating where it may be located;

5. A consent to service of process and resolution relating to the same, certified by the secretary or clerk of the issuer;

6. A copy of the disclosure document for the offering to be provided to offerees containing the information required in par. (b);

7. A cross-reference sheet indicating where each information item listed in par. (b) can be found in the Official Statement or disclosure document for the offering;

8. The fee prescribed by s. SEC 7.01 (2); and

9. Such additional information as the commissioner may require.

**History:** Cr. Register, December 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; cr. (6), Register, October, 1974, No. 226, eff. 11-1-74; r. (1), renum. (6) to be (1) and am., renum. (2) to (5) to be (3) to (6), am. (3) and (4), r. and recr. (5), cr. (2) and (7), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), r. (3), renum. (4), (5) and (7) to be (3), (4) and (5), am. (3) (a), cr. (7) and (8), Register, September, 1978, No. 273, eff. 10-1-78; emerg. am. (1) (a) 2., eff. 10-1-78; am. (1) (a) 2., Register, January, 1979, No. 277, eff. 2-1-79; am. (7) (d) and (h), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a) 1. to 3., (3) (a), (4) (a) and (b), (5) (f), (6) (a) and (7) (a) and (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (a) 3. and (3) (a), cr. (7m), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (1) (c) and (d), (10), (11) and (12), eff. 5-1-82; cr. (1) (c) and (d), (9), (10) and (11), Register, September, 1982, No. 321, eff. 10-1-82; am. (7) (d), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a) 3., Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (a) 3., r. (10), renum. (11) to be (10), Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (1) (a), r. (7), eff. 1-1-86; r. (7), renum. (8) to (10) to be (7) to (9), Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a), Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (1) (c) 3., eff. 7-1-86; am. (1) (b), (c) 2. and 3., (3) (a) and (4) (b), r. (7m), Register, December, 1986, No. 372, eff. 1-1-87; emerg. am. (1) (c) 3., eff. 7-1-88; am. (1) (c) 3. and (9) (b) 14., Register, December, 1988, No. 396, eff. 1-1-89; renum. (3) to (9) to be (4) to (10), cr. (3), Register, December, 1990, No. 420, eff. 1-1-91; renum. (3) to be (3) (a), cr. (3) (b), Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 2.02 Exempt transactions.** (1), An "isolated nonissuer transaction" within the meaning of s. 551.23 (1), Stats., includes:

(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; but if the sale is effected through a broker-dealer, the transaction is deemed isolated only

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if it is one of not more than 3 such transactions effected by or through the broker-dealer in this state during the prior 12 months; and

(b) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers' transactions in accordance with section 4 (4) of the Securities Act of 1933 and rule 144 thereunder; or pursuant to any other transaction not effected through a broker-dealer and not involving a distribution if the sale, including any other sales by the person of securities of the same class during the prior 12 months, does not exceed 1% of the outstanding shares or units of that class.

(2) In any nonissuer transaction effected by or through a licensed broker-dealer under s. 551.23 (2), Stats., pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the purchaser a written acknowledgment that the purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. This exemption includes only transactions between a broker-dealer and a purchaser of a security.

(3) Any sale of an outstanding security is exempted under s. 551.23 (3), Stats., if:

(a) With respect to a security qualifying under s. 551.23 (3) (c), Stats., the issuer or a licensed broker-dealer files a notice of the proposed sale with the commissioner prior to the offering, including the latest prospectus filed under the securities act of 1933 describing the securities proposed to be sold, a copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect, and the information concerning the public market for the security specified in s. SEC 3.02 (1) (b). The exemption, unless denied or revoked by order of the commissioner within 10 days, is effective so long as the issuer is filing periodic information, documents and reports under section 15 (d) of the securities exchange act of 1934.

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

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

2. Being 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 of the following "qualified institutional buyer" entities, whether acting for its own account or the accounts of other qualified institutional buyers listed in sec. 230.144A under the securities act of 1933, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity:

1. Any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees.

2. Any employee benefit plan within the meaning of title I of the Employment Retirement Income Security Act of 1974.

3. Any business development company as defined in section 202 (1) (22) of the investment advisers act of 1940 or in section 2 (a) (48) of the investment company act of 1940.

4. Any organization described in section 501 (c) (3) of the internal revenue code, or any corporation (other than a bank as defined in section 3 (a) (2) of the securities act of 1933 or a savings and loan association or other institution referenced in section 3 (a) (5) (A) of the securities act of 1933 or a foreign bank or savings and loan association or equivalent institution).

5. Any partnership or Massachusetts or similar business trust.

(e) Any entity, all of the equity owners of which are persons designated in s. 551.23 (8), Stats., or rules thereunder, acting for its own account or the accounts solely of other persons designated in s. 551.23 (8), Stats., or rules thereunder.

(f) 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 relative 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 or agent 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 pursuant to a registration statement under the securities act of 1933 or exempted by regulations A or B there-

under, unless permitted by order of the commissioner in compliance with such conditions as the commissioner may prescribe.

(6) "Class vote" within the meaning of s. 551.23 (13), Stats., includes any vote pursuant to the articles of incorporation or the applicable corporation statute, of the stockholders of a corporation voting as one class, and any vote of stockholders of any class taken in accordance with the provisions of s. 180.1004, Stats., or comparable provisions of the articles of incorporation or of an applicable corporation statute of another state.

(7) (a) "Stock split" within the meaning of s. 551.23 (14), Stats., does not include any action by the corporation which has or may have the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class;

(b) "Stock dividend" within the meaning of s. 551.23 (14), Stats., includes the issuance of shares under a dividend reinvestment plan in which the election by a shareholder to participate in the plan is voluntary and such election may be rescinded at any time upon notice to the issuer.

(8) Notice of an offer of an evidence of debt of a non-profit corporation exempted under s. 551.23 (15), Stats., shall be filed with the commissioner prior to the offering, and shall include: 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, trust indenture and 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); such additional information as the commissioner may require; and

(a) With respect to an offer qualifying under s. 551.23 (15) (a), Stats., a signed or conformed opinion of counsel for the issuer or other evidence satisfactory to the commissioner with respect to the validity and rank of the lien of the mortgage or deed of trust and evidence satisfactory to the commissioner that the total amount of the securities proposed to be offered does not exceed 50% of the then fair market value of the land and buildings included in the mortgage or deed of trust, less the amount of any unpaid special assessment taxes; or

(b) With respect to an offer qualifying under s. 551.23 (15) (b), Stats., 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 an analysis of surplus of the issuer for each of its 3 immediately preceding fiscal years meeting the requirements of s. SEC 7.06.

(c) In addition, if the 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.

(9) The following transactions are exempted under s. 551.23 (18), Stats., without limiting the commissioner's authority thereunder:

(a) Any isolated issuer transaction relating to redeemable securities of an investment company registered under the investment company act of 1940, effected through a licensed broker-dealer pursuant to an unsolicited order or offer to purchase, provided that the broker-dealer obtains from the purchaser a written acknowledgment that the purchase was unsolicited or the confirmation delivered to the purchaser or a memoran-

dum delivered in connection therewith confirms that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. A transaction is presumed to be "isolated" if it is one of not more than 3 such transactions during the prior 12 months.

(b) Any issuance of securities by a corporation in a transaction meeting the requirements of section 368 (a) (1) (B) of the internal revenue code, if the issuer files with the commissioner prior to the offering the reorganization agreement and plan pursuant to which the securities are proposed to be issued and additional information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days from the date of filing.

(c) Any transaction pursuant to an offer to existing security holders of the issuer, and to not more than 10 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 months preceding the offer pursuant to s. 551.23 (10) or (11), Stats., if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state; and if the issuer files with the commissioner prior to the offering a notice specifying the terms of the offer, including any prospectus, circular or other material to be delivered to offerees in connection with the transaction and such other information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days.

(d) Any transaction incident to a vote of security holders of any issuer other than a corporation, pursuant to its organizational instrument or the applicable statute of any state, on a reorganization or a sale or transfer of assets in consideration of the issuance of securities of another person.

(e) Any offer or sale of securities pursuant to a transaction not involving a public offering under the securities act of 1933 which the commissioner by order exempts upon application filed by the issuer or seller, including such information as the commissioner may require, effected in compliance with such conditions as the commissioner may prescribe.

(f) Any offer or sale of securities to the employees or agents of the issuer or its subsidiaries pursuant to a stock option plan, provided there is filed with the commissioner a notice consisting of a complete description of the plan including any advertising to be published, circulated or used, and the commissioner by order exempts the plan. The commissioner may find the order inappropriate for the protection of investors unless:

1. The plan extends for no longer than 10 years;
2. The total amount of options and the exercise price meet the requirements of s. SEC 3.03 (4) and (5);
3. The issuer files an undertaking to deliver to all participating employees copies of the issuer's annual financial statements;
4. Any provision of the plan providing for installment payments for shares issued upon exercise is not permitted except as authorized by a majority of the disinterested independent outside directors of the issuer;
5. Certificates are issued upon exercise;
6. The plan meets the repurchase standards of s. SEC 2.01 (6) (d);

7. All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of s. SEC 3.07; and

8. If the shares to be issued under the plan are not registered under the securities act of 1933, the issuer files a satisfactory opinion of counsel as to its exempt status under that act.

(g) Any offer by a licensed broker-dealer pursuant to a preliminary prospectus, provided all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. 551.25 or 551.26, Stats., a filing under s. 551.235, Stats., or a notice filed under s. 551.22 (1) or (8) or 551.23 (12) or (15), Stats.;

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;

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.

(l) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the commissioner. In order to be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the commissioner either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 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; am. (4) (c) (intro.), 1. and 2. intro., (5) (c) and (d) 3., Register, December, 1989, No. 408, eff. 1-1-90; r. (6), renum. (4) (d), (7) to (10) to be (4) (e) and (6) to (9) and am. (9) (f) 6., cr. (4) (d), Register, December, 1991, No. 432, eff. 1-1-92; reprinted to correct error in (4) (d) 4., Register, February, 1992, No. 434; am. (4) (d) 4. and (6), renum. (4) (e) to be (4) (f), cr. (4) (e), Register, December, 1992, No. 444, eff. 1-1-93.

**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, 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.

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(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.

(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 \$200; 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; am. (5) (a) 4., Register, December, 1988, No. 396, eff. 1-1-89.

**SEC 2.027 Wisconsin issuer registration exemption by filing.** If all of 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 the securities 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 are sold to not more than 50 persons in this state, excluding:

(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 an 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, its officers, directors, general partners, controlling persons or affiliates, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. 551.23 (19) (c), Stats.

(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed \$500,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being

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integrated with the offering under Rule 502 (a) of Regulation D under the securities act of 1933.

(5) If any of the securities being offered and sold in reliance on the exemption in this section are shares of common stock, the offering price of the common stock may be not less than \$3 per share.

(6) The issuer reasonably believes that all sales made pursuant to this exemption are suitable for the purchaser and that the purchaser either alone or with the purchaser's representative has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment.

(7) An offering document is delivered to each purchaser prior to the sale of the securities that meets one of the following requirements:

(a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form; or

(b) For offerings by any type of issuer, an offering document that complies with the disclosure requirements of rule 502 (b) (2) of Regulation D under the securities act of 1933.

(8) 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 all 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 all material amendments to the offering document, not later than the date of first use of each material amendment in this state.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; r. and recr. Register, December, 1990, No. 420, eff. 1-1-91; am. (3) and (4), Register, December, 1991, No. 432, eff. 1-1-92.

**SEC 2.03 Exemption proceedings.** (1) If a notice is required to be filed in order to seek to claim registration exemption status pursuant to s. 551.22 or 551.23, Stats., the notice 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; am. (1), Register, December, 1991, No. 432, eff. 1-1-92.