

Chapter SEC 35

GENERAL PROVISIONS

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

SEC 35.01 Fees. The following fees, prescribed for examination of various matters arising under ch. 553, Stats., are chargeable to the applicant or registrant and are payable, unless otherwise provided by the commissioner, at the time the application or notice is filed:

(1) (a) Application for order of exemption under s. 553.25, Stats. \$200.00

(b) Notice filing for purposes of claiming registration exemption status under ch. 553, Stats., or rules thereunder \$200.00

(c) Application for opinion confirming a registration exemption or an exclusion from a definition \$500.00

(d) Application for issuance of an interpretive opinion under ch. 553, Stats. \$500.00

(e) Application for approval of a written notice under s. 553.51 (4), Stats. \$200.00

(f) Application for renewal of a registration statement under s. 553.30, Stats. \$200.00

(g) Application for amendment of a registration statement under s. 553.31, Stats. \$200.00

(h) Annual filing required to be made by a franchisor to maintain franchise registration exemption status under s. 553.22 (5), Stats., or s. SEC 32.05 (1) (c) 6 \$200.00

(2) Advertising filed under s. 553.53, Stats. \$10.00 per item.

(3) Issuance of a certificate under s. 553.75 (4), Stats., relating to the existence or non-existence of documents or entries on file or contained in the records of the commissioner's office \$50.00 plus \$1 per page for copies included with the certificate.

(4) Photocopying fee \$25 per page for the first 10 pages and \$.10 per page for any additional pages.

(5) Delinquent or materially deficient filings:

(a) Delinquent filing of annual materials prescribed under s. 553.22 (5), Stats., or s. SEC 32.05 (1) (c) 6 relating to franchise registration exemption \$100.

(b) The commissioner may by order require the payment of a fee of not more than \$200 for delinquent or materially deficient filings of information or documents required to be filed in connection with the examination of any matter under ch. SEC 32 or 33.

(6) Per copy cost of Guidelines for Preparation of the Uniform Franchise Offering Circular and Related Documents \$20.00

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (a) and (b), (2) (a), cr. (1) (d) and (e), Register, December, 1980, No. 300, eff. 1-1-81; cr. (3) and (4), Register, December, 1982, No. 324, eff. 1-1-83; renum. (1) (b) to (e) to be (1) (c) to (f), cr. (1) (b) and (g), Register, December, 1984, No. 348, eff. 1-1-85; am. (1) (a) and (c), Register, December, 1985, No. 360, eff. 1-1-86; am. (2) (a) and (b), Register, December, 1986, No. 372, eff. 1-1-87; r. and recr. (1) to (3), Register, December, 1988, No. 396, eff. 1-1-89; cr. (5), Register, December, 1989, No. 408, eff. 1-1-90; reprinted to correct error in (4), Register, December, 1990, No. 420; cr. (1) (h) and (6), r. and recr. (3), Register, December, 1991, No. 432, eff. 1-1-92.

SEC 35.02 Advertising. (1) **FILING.** (a) The following advertising used in connection with the offer to sell, sale or purchase of any franchise in this state is exempted from filing under s. 553.53, Stats.:

1. A prospectus used by a person other than the applicant in connection with the offer or sale of a franchise for which an order of registration has been issued under s. 553.29 (3), Stats.;

2. Advertising which does no more than state from whom advertising or, in the case of a franchisor registered under s. 553.26, Stats., a prospectus may be obtained, identify the franchise offered for sale and state the franchise fee, if any, for the franchise and the name of the franchise or selling entity; and

3. Advertising published, distributed or used relating to a franchise exempted under ss. 553.22, 553.23, 553.25, Stats., or s. SEC 32.05.

4. Any other advertising which the commissioner may specify by order.

(b) All advertising required to be filed by a registrant or by any franchisor, person or applicant doing business within the state of Wisconsin subject to the scope of the chapter within the meaning of s. 553.59, Stats., and required to be filed by virtue of ss. 553.22 (4) or 553.26 and 553.53, Stats., shall be filed with the commissioner in duplicate not less than 5 days prior to the date of use thereof or such shorter period as the commissioner may permit.

(c) The commissioner may, prior to use in this state of advertising filed pursuant to s. 553.53, Stats., request revision of the advertising to reflect the requirements of ss. 553.22 (3) and 553.26, Stats., and the requirements of sub. (2).

(2) **STANDARDS FOR ADVERTISING.** (a) No advertising shall make reference to:

1. The purchase or sale of a franchise as a safe investment, as free from loss or default, or as an assurance of earnings or profits;

2. Projections of operations or of income from the operation of any franchise unless based on past certified and audited financial statements except during the time preceding the first yearly report of operations of the franchisor as authorized under s. SEC 35.05, or unless otherwise permitted by the commissioner, and then, only if a statement of the basis for the projections as required by s. 553.26 (16), Stats., is disclosed;

3. Any opinion of counsel without stating the name and address of such counsel.

(b) All advertising shall make reference to the name and address of the person using the advertisement or making the offer.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. (1) (a) 2., Register, December, 1980, No. 300, eff. 1-1-81; am. (2) (b), Register, December, 1981, No. 312, eff. 1-1-82; renum. (1) (a) 3. to be 4. and cr. (1) (a) 3., Register, December, 1984, No. 348, eff. 1-1-85; am (1) (b), Register, December, 1985, No. 360, eff. 1-1-86; am. (1) (b) and (c), Register, December, 1987, No. 384, eff. 1-1-88; am. (2) (a) 2., Register, December, 1991, No. 432, eff. 1-1-92.

SEC 35.03 Injunctions. In any injunctive proceeding under s. 553.54, Stats., the commissioner may petition the court to order rescission of any sale or purchase of franchises determined to be in violation of ch. 553, Stats.

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

SEC 35.04 Files and records. (1) Except as otherwise provided by law or as specified in sub. (2), any record or document in the commissioner's possession or control of which the commissioner is the legal custodian, may be inspected or copied by any person during regular business hours.

(2) The following records may be excluded from disclosure under this section if the commissioner finds the public interest in nondisclosure outweighs the benefits of open access:

(a) Personnel files of office employees, former employees and job applicants;

(b) Communications with legal counsel;

(c) Records obtained under a pledge or reasonable expectation of confidentiality;

(d) Memoranda and work papers of employees, the commissioner or the deputy commissioner prepared with the reasonable expectation of confidentiality;

(e) A record that is part of a current investigation that may result in administrative, legal or criminal action or which relates to any such pending action.

(f) A record whose disclosure would unduly damage a person's reputation so as to outweigh the public interest in disclosure.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. and recr. Register, December, 1988, No. 396, eff. 1-1-89.

SEC 35.05 Financial statements. (1) Except as permitted in sub. (4), all financial statements required by ch. 553, Stats., or rules adopted thereunder or utilized in connection with the offer to sell, sale or purchase of a franchise within this state shall be:

(a) Prepared in accordance with generally accepted accounting principles applied on a consistent basis; and

(b) 1. In the case of financial statements of franchisors, the franchises of which are required to be registered under s. 553.26, Stats., audited and certified by an independent certified public accountant, provided that this requirement may be waived by the commissioner in particular cases for good cause shown and does not apply to interim financial statements unless otherwise required by the commissioner in particular cases; or

2. In the case of financial statements of franchisors exempt from registration under ss. 553.22, 553.23 or 553.25, Stats., certified and audited by an independent certified public accountant unless such requirement be waived by the commissioner as not in the public interest or for the protection of investors.

(2) All unaudited financial statements when utilized, either when referred to orally or presented in writing, pursuant to sub. (1), shall be accompanied by an oral statement at the same time or disclosure, immediately adjacent to the use of such statements if in written form, of the following:

“THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT. INVESTORS IN OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED

PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED HIS OPINION WITH REGARD TO THEIR CONTENTS OR FORM."

(3) In addition to supplying a prospective franchisee with a copy of its franchise offering prospectus, a franchisor may open for inspection the books and records of any of its company-owned or operated units that are offered for sale by the franchisor and that the prospective franchisee has expressed an interest in purchasing.

(4) If audited financial statements have not been prepared by an applicant for registration under s. 553.26, Stats., that is in the promotional or developmental stage, the applicant may submit in lieu of audited financial statements an audited balance sheet dated within 90 days of the date of the registration application, together with unaudited income statements for each of the 3 fiscal years, if any, preceding the date of the balance sheet. In this subsection, an applicant in the promotional or developmental stage means an applicant that has no significant record of operations or earnings prior to the date of filing the registration application.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; cr. (3), Register, December, 1986, No. 372, eff. 1-1-87; am. (1) (intro.) and cr. (4), Register, December, 1987, No. 384, eff. 1-1-88; correction in (2) made under s. 13.93 (2m) (b) 4, Stats., Register, January, 1989, No. 397.