

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 s. 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 s. 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 franchisees.** Franchisors whose franchisees are exempted under s. 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 franchisees 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, 1988, No. 396, eff. 1-1-89.

**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
- 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. The commissioner may, within 10 days after the filing date of the notice or other information, require that additional information reasonably related to the offering be filed. If the commissioner requires additional information, the date by which the commissioner may withdraw, deny or revoke the ex-

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emption is 10 days after the date of filing that information.

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 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; am. (1) (c) 5., Register, December, 1992, No. 444, eff. 1-1-93. Correction in (2) made under s. 13.93 (2m) (b) 5, Stats., Register, December, 1992, No. 444.

**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, 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, October 31, 1988 and April 25, 1993. 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; am. (2), Register, May, 1994, No. 461, eff. 6-1-94.

**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 registra-

tion 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 time during the effectiveness of a registration statement under s. 553.29, Stats. The commissioner may take, upon such filing, action appropriate in the public interest or for the protection of investors under s. 553.26 (20) or 553.28, Stats. The registration statement or registration renewal statement filed with the commissioner remains in effect while an application to amend such registration statement or registration renewal statement is being reviewed by the commissioner. If the commissioner does not require additional information under s. 553.26 (20), Stats., or if no stop order or other order under s. 553.28, Stats., is in effect, the amendment to the registration statement or registration renewal statement becomes effective 15 business days after receipt by the commissioner of the application to amend the registration statement or registration renewal statement or at an earlier time determined by the commissioner. In the case of an application for registration or a registration renewal statement, the effective date of the original application for registration or, as the case may be, registration renewal statement shall remain the date from which time is measured for purposes of renewal of registration statements under s. SEC 32.07, and the filing of periodic reports under s. SEC 32.08.

(3) In the absence of the filing of a registration renewal statement under s. 553.30, Stats., or of an application to amend a registration statement under s. 553.31, Stats., the commissioner may by order extend the offering period of a registration statement subject to conditions the commissioner prescribes for the protection of investors.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.08 and am. Register, December, 1980, No. 300, eff. 1-1-81; am. (1), Register, December, 1989, No. 408, eff. 1-1-90.

**SEC 32.08 Periodic reports for franchisors or franchise registrants.** (1) Each franchisor or registrant of franchises under s. 553.29 (2), Stats., shall file with the commissioner quarterly commencing 90 days after the effective date of its registration statement any reports required by order, on a form prescribed by the commissioner, specifying the number of franchises sold in the state pursuant to the registration statement, the selling prices of each of the franchises, and graphic representations of the exclusive areas, if any, sold to the franchisees.

(2) Each franchisor or registrant of franchises under s. 553.29 (2), Stats., shall file with the commissioner any additional reports of sales of franchises and financial statements required by order, and shall furnish the commissioner, pursuant to s. 553.31 (1), Stats., with written notice within 30 days after the happening of any material event or material change affecting the franchisor or the franchisees registered.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.09 and am., Register, December, 1980, No. 300, eff. 1-1-81.

**SEC 32.09 Registration proceedings.** If, in connection with the examination of any application for registration under s. 553.26, Stats., any information is reasonably required by the commissioner prior to the effective date of

an application for registration under s. 553.29 (1), Stats., and the request is communicated by the commissioner to the applicant or interested person in any form within the 15 business day period specified in s. 553.29 (1), Stats., which period shall commence on the day following receipt by the commissioner of the application for registration, the filing of an application for registration is made when the additional information so required is received by the commissioner.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.10 and am., Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December, 1987, No. 384, eff. 1-1-88.

**SEC 32.10 Underscoring changes.** If any registration renewal statement under s. 553.30, Stats., or any application for amendment to a registration statement under s. 553.31, Stats., alters the text of the prospectus or offering circular, or of any item, exhibit or other document previously filed as a part of the application for registration under s. 553.26, Stats., the changes in the text shall be indicated by means of underscoring or in some other appropriate manner.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.11 and am., Register, December, 1980, No. 300, eff. 1-1-81.

**SEC 32.11 Signing of applications.** An application for registration under s. 553.26, Stats., a registration renewal statement under s. 553.30, Stats., an application to amend a registration statement under s. 553.31, Stats., an application for an opinion confirming an exemption from registration under s. 553.22, Stats., a notice filing under s. SEC 32.05 (1) (c) or an application for an order of exemption under s. 553.25, Stats., shall be signed by an officer or general partner of the applicant, as the case may be, however, it may be signed by another person holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, shall include, as an additional exhibit, a copy of said power of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.12, Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December, 1981, No. 312, eff. 1-1-82; am. Register, December, 1985, No. 360, eff. 1-1-86.

**SEC 32.12 Escrow of franchise fees and other consideration.** (1) In a case where the applicant has failed, within the meaning of s. 553.27 (2), Stats., to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the commissioner may impose, as a condition to the registration of a franchise offering, an escrow of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

(2) When an escrow condition is imposed under sub. (1), 100% of franchise fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of the funds, be placed with the depository until the commissioner takes further action pursuant to sub. (1). All checks shall be made payable to the depository.

(3) When an escrow condition is imposed under sub. (1), the franchisor shall deliver to each franchisee or sub-

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franchisor, a purchase receipt, in a form approved by the commissioner. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor.

(4) Funds subject to an escrow condition imposed under sub. (1), shall be placed in a separate trust account with a national bank located in Wisconsin or a Wisconsin bank or trust company. A written consent of the depository to act in such capacity shall be filed with the commissioner.

(5) (a) The commissioner shall authorize the depository to release to the franchisor such amounts of the escrowed funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement or that for other reasons the escrow is no longer required for the protection of franchisees.

(b) An application to the commissioner for written authorization to release escrowed funds to the franchisor shall be verified and shall contain:

1. A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound or escrow condition;

2. A statement of the depository signed by an appropriate officer setting forth the aggregate amount of escrow funds placed with the depository;

3. The names of each franchisee (or subfranchisor) and the amount held in the escrow for the amount of each franchisee (or subfranchisor);

4. A showing that the franchisor, with respect to each franchise the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training or other items, as the case may be; and

5. Such other information as the commissioner may reasonably require.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.13 and am. (2), Register, December, 1980, No. 300, eff. 1-1-81; am. (5) (b), Register, December, 1987, No. 384, eff. 1-1-88

**SEC 32.13 Surety bond in lieu of escrow.** In lieu of the imposition of an escrow condition under s. 553.27 (2), Stats., and s. SEC 32.12, a franchisor may post a surety bond in such amount as shall be required by the commissioner. The bond shall be issued by a corporate surety authorized to transact business in the state of Wisconsin, conditioned upon the completion by the franchisor of its obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

**History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.14, Register, December, 1980, No. 300, eff. 1-1-81; am. Register, December, 1981, No. 312, eff. 1-1-82.