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Senate Bill 15

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1985 Wisconsin Act 38

AN ACT to amend 551.02 (2) (b), 551.21 (1), 551.23 (3) (a) and 551.24 (1), (2) and (4) (intro.); and to create 551.235 of the statutes, relating to exemptions from registration for offers and sales of securities by issuers and sales in the secondary market under certain conditions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 551.02 (2) (b) of the statutes is amended to read:

551.02 (2) (b) Effecting transactions exempted by s. 551.23 or 551.235, other than transactions exempted under s. 551.23 (10) or (19) in which the individual receives a commission or other remuneration directly or indirectly for soliciting or selling to any person in this state; or

SECTION 2. 551.21 (1) of the statutes is amended to read:

551.21 (1) It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the security or transaction is exempted under s. 551.22 or 551.23 or 551.235.

SECTION 3. 551.23 (3) (a) of the statutes is amended to read:

551.23 (3) (a) The issuer has any securities registered under s. 12 of the securities exchange act of 1934 or exempted from registration by s. 12 (g) (2) (G) of that act, has any securities exempted from registration by rule 12g3-2 (b) under the securities exchange act of 1934 and an exemption for the offer and sale of the securities has been obtained under s. 551.235, or is an

investment company registered under the investment company act of 1940; or

SECTION 4. 551.235 of the statutes is created to read:

551.235 Seasoned issuer exempt transactions. A registration exemption is available for any offer or sale of securities that meets all of the following conditions or that meets all of the following conditions other than any condition or conditions waived by the commissioner upon a showing of good cause:

(1) JURISDICTION. The issuer either is organized under the laws of the United States or a state or has appointed an agent in the United States for service of process and has set forth the name and address of that agent in its prospectus.

(2) STATUS OF SECURITIES UNDER SECURITIES EXCHANGE ACT OF 1934. A class of the issuer's securities is registered under section 12 of the securities exchange act of 1934, or in the case of a foreign private issuer, as defined in rule 3b-4 under that act, is exempt under section 12 (g) (3) of that act and rule 12g3-2 (b) under that act, and has been so registered or exempt for 36 calendar months immediately preceding the filing of the federal registration statement for the securities being offered.

(3) TIMELY FILING OF REPORTS UNDER SECURITIES EXCHANGE ACT OF 1934. The issuer has filed in a timely

manner all reports required to be filed under section 12 of the securities exchange act of 1934 during the 12 calendar months immediately preceding the filing of the federal registration statement for the securities being offered.

(4) GENERAL FINANCIAL CONDITION OF THE ISSUER.

(a) *Net worth.* The issuer has a tangible net worth of at least \$3,000,000.

(b) *Net income.* The issuer has consolidated after tax net income from operations, before allowance for extraordinary items, credits and the cumulative effect of accounting changes, of at least \$400,000 per fiscal year for 2 of its last 3 fiscal years.

(c) *Material defaults.* During its last fiscal year, neither the issuer nor any significant subsidiary has defaulted in the payment of any of the following:

1. Principal, interest or sinking fund instalments on indebtedness for borrowed money, if the indebtedness exceeds 5% of the issuer's total assets together with the total assets of all consolidated subsidiaries of the issuer.

2. Dividend payments on preferred stock, unless the arrearage is cured within 90 days.

(5) SPECIFIC CONDITIONS FOR THE OFFERING. (a) *Federal registration statement.* A registration statement for the securities has been filed under the securities act of 1933 and has been declared effective by the U.S. securities and exchange commission.

(b) *Underwriting.* 1. The offering will be made pursuant to a firm commitment underwriting.

2. At least one of the underwriters participating in the offering, and each broker-dealer who will offer the securities in this state, are members of, or are subject to the rules of fair practice of, a national association of securities dealers with respect to the offering, and none of the managing underwriters is affiliated with the issuer, or the sponsor or controlling person of the issuer, by means of direct or indirect common control.

(c) *Equity or convertible to equity offering.* If the offering is common stock or securities convertible or exercisable into common stock by any means, the following additional conditions are met:

1. The issuer has a minimum of 2 independent outside directors.

2. a. On any date within 180 days before the registration statement for the securities being offered is filed under the securities act of 1933, the issued and outstanding equity securities of the issuer are owned beneficially or of record by at least 500 persons and at least 400,000 shares are publicly held, exclusive of those held by officers, directors, underwriters or persons owning of record or beneficially 5% or more of the issuer's outstanding equity securities.

b. The issued and outstanding equity securities of the issuer have at least 4 market makers for each of the 5 business days preceding the date of filing of the registration statement under the securities act of 1933 for the securities being offered, unless the securities are

listed on a national or regional stock exchange registered under the securities exchange act of 1934.

3. a. Unless otherwise approved by holders of two-thirds of all outstanding common stock, exclusive of those shares held by officers and directors of the issuer, the securities that will be offered have voting rights at least equal to the lowest voting class of securities of the issuer's outstanding and publicly held classes of common stock with respect to the number of votes per share and the right to vote on the same general corporate decisions.

b. The securities that will be offered will have a public offering price of at least \$5 per share.

(d) *Debt or preferred stock offering.* If the offering is debt securities or preferred stock, whether or not convertible, the issuer has net income equal to at least 125% of its combined annual interest and dividend expense, when calculated as follows:

1. Net income is calculated as consolidated net income for the last fiscal year, before deduction for income taxes, depreciation and extraordinary items and may take into account the intended use of the proceeds of the securities being offered.

2. Combined annual interest and dividend expense is calculated for the 365 days following the date the registration statement for the securities being offered is filed under the securities act of 1933, and the rate for floating rate dividends is determined as of the date that registration statement is filed.

(6) FILING. (a) *Filing requirements.* The issuer or applicant files all of the following with the commissioner:

1. A copy of the registration statement filed with the U.S. securities and exchange commission for the securities for which this exemption is sought.

2. A notarized original consent to service of process signed by a person authorized by the issuer.

3. A copy of the most recent annual report of the issuer.

4. A fee of \$500.

5. An undertaking, signed by a person authorized by the issuer or applicant, to file promptly with the commissioner all pre-effective amendments to the federal registration statement for the securities, 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) are 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.

SECTION 5. 551.24 (1), (2) and (4) (intro.) of the statutes are amended to read:

551.24 (1) The commissioner may by order deny or revoke any exemption under s. 551.22 ~~or~~, 551.23 or

551.235 with respect to a specified security or transaction.

(2) If the public interest and the protection of investors so require, the commissioner may by order summarily deny or revoke any exemption under s. 551.22 ~~or~~ 551.23 or 551.235 with respect to a specified security or transaction. Upon entry of the order, the commissioner shall serve upon all named parties a copy of the order and notify the parties of their right to request a hearing.

(4) (intro.) A person who offers or sells a security pursuant to an exemption under s. 551.22 ~~or~~ 551.23 or 551.235 after the exemption is denied or revoked by an order of the commissioner does not violate s. 551.21 (1) if:

SECTION 6. **Effective date.** This act takes effect on January 1, 1986.
