

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 Examination expenses.** The following amounts are prescribed for examination of various matters arising under ch. 553, Wis. Stats., as authorized by section 553.72 (4), Wis. Stats., and are chargeable to the applicant, or registrant and are payable unless otherwise provided at the time the application or notice is filed:

- (1) Examination of registration matters:
  - (a) Application for opinion confirming exemption from registration under sections 553.22, 553.23, or 553.25, Wis. Stats., ----- \$50.
  - (b) Application for interpretative opinions under chapter 553, Wis. Stats., ----- \$20.
  - (c) Application for approval of written notice under section 553.51 (4), Wis. Stats., ----- \$20.
- (2) Examination of advertising:
  - (a) Advertising filed by a registrant pursuant to section 553.53, Wis. Stats., ----- \$5. per item but not exceeding an aggregate amount of \$150. per registrant in any one year
  - (b) Advertising filed by a person or applicant not a registrant pursuant to section 553.53, Wis. Stats., ----- \$10. per item but not exceeding an aggregate amount of \$150. per person or applicant in any one year

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

**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 section 553.53, Wis. 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 section 553.29 (3), Wis. Stats.
2. Advertising which does no more than state from whom advertising or, in the case of a franchisor registered under section 553.26, Wis. Stats., a prospectus, may be obtained, identify the franchise offered for sale and state the franchise fee, if any, for such franchise and the name of the franchise or selling entity, and

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3. 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 section 553.59, Wis. Stats., and required to be filed by virtue of sections 553.22 (4), or 553.26 and 553.53, Wis. 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, and shall not be used in this state until a copy thereof, marked with allowance for use, by the commissioner, has been received from the commissioner.

(c) The commissioner may, prior to use thereof in this state, request revision of advertising to reflect the requirements of sections 553.22 (3), 553.26, Wis. Stats., and the requirements of subsection (2) of this rule by written notification of his objection to use of such advertising filed pursuant to section 553.53, Wis. Stats., and not exempted from such filing by this rule.

(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 Wis. Adm. Code, sections SEC 34.02 (1) (d) or 35.05 or unless otherwise permitted by the commissioner, and then, only if a statement of the basis therefor as required by sections 553.22 (3) (m) or 553.26 (16), Wis. Stats., is disclosed therein.

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

(b) All advertising shall make reference to:

1. The name and address of the person using the advertisement or making the offer.

2. The commercial symbol of the franchisor.

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

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

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

**SEC 35.04 Administrative files.** The information contained in any investigation files of the commissioner shall be kept confidential, unless the disclosure of such information is deemed by the commissioner to be in the public interest.

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

**SEC 35.05 Financial statements.** (1) All financial statements required by chapter 553, Wis. 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:

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(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 section 553.26, Wis. Stats., audited and certified by an independent certified public accountant, provided that this requirement may be waived by the commissioner in particular cases for a 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 sections 553.22, 553.23 or 553.25, Wis. 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 subsection (1) of this rule, 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."

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

**SEC 35.06 Justification for definitional exceptions, exemptions from registration, and for the use of projections.** In connection with any matter relating to the claim of an exception from a definition contained in section 553.03, Wis. Stats., or in relation to the claim of an exemption from registration under sections 553.22, 553.23, or 553.25, Wis. Stats., or in connection with the use of projections under section 553.22 (3) (m) or section 553.26 (16), Wis. Stats., the commissioner may reasonably require such additional information from the applicant, claimant or interested person in order to enable him to determine the availability of such exception, exemption from registration, or basis for the use of projections and the availability such exception or exemption, or authority for the use of such projections shall not be confirmed by interpretative opinion under section 553.75 (5), Wis. Stats., until such information reasonably requested is received by the commissioner and a period of time, not to exceed a period of 15 days from the date of receipt of such material, shall have expired, unless a shorter period of time is permitted by the commissioner.

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