

COMMISSIONER OF SECURITIES

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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 section 551.22 (1), Wis. Stats., if:

1. The enterprise is a public utility described under section 551.22 (6), Wis. 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, and a notice of the proposed offering including the offering statement or prospectus is filed with the commissioner prior to the offering;

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 section 551.22 (7), Wis. Stats., and notice of the proposed offering including the offering statement or prospectus is filed with the commissioner prior to the offering; or

3. A notice of the proposed offering is filed with the commissioner, including a trust indenture meeting the requirements of Wis. Adm. Code section SEC 3.24, an official statement or a prospectus meeting the requirements of Wis. Adm. Code section SEC 3.23, and such 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 any security exempt under section 551.22 (1), Wis. Stats., is exempted from section 551.21, Wis. Stats.

(2) For purposes of sections 551.22 (3) and 551.22 (6), Wis. 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:

(a) The issuer's or guarantor's equity securities and debt securities with a maturity of one year or more; or

(b) The particular securities to be offered and sold.

(3) Any security listed, or approved for listing upon notice of issuance, on the New York Stock Exchange, Inc., or the American Stock Exchange, Inc., is exempted under section 551.22 (7), Wis. Stats.

(4) (a) Any evidence of debt issued by a domestic non-profit corporation to persons other than its members is exempted under section 551.22 (8), Wis. Stats., if the issuer or a licensed broker-dealer files a notice of the proposed issuance in the form prescribed by the commissioner, including: a trust indenture meeting the requirements of Wis.

Adm. Code section SEC 3.24 under which such evidence of debt is proposed to be issued; a prospectus describing the trust indenture; and such additional information as the commissioner may require; and the commissioner does not by order deny or revoke the exemption within 10 days.

(b) A person does not become a "member" for purposes of section 551.22(8), Wis. Stats., solely by reason of the purchase of the issuer's securities.

(5) "Commercial paper" exempted under section 551.22(9), Wis. 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 such paper which is likewise limited, or any guarantee of such paper or such renewal;

(b) Is offered or sold through a broker-dealer, or an institution described in section 551.22(3), Wis. Stats., or a state or any agency or political subdivision thereof, whether such 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) Any security issued by a licensed broker-dealer to its officers, partners or employes is exempted under section 551.22 (14), Wis. Stats., if:

(a) The issuer files with the commissioner a notice of the proposed issuance and such additional information as he may require, 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.

(7) A notice filed under section 551.22(10), Wis. 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 employes may purchase shares is calculated at least annually, and is not less than 85% of the fair market value of the stock at the beginning of the 1-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 employes copies of the issuer's annual financial statements;

(c) A participating employe 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 Wis. Adm. Code section 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 employe 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 employe 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 employe'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 such compensation each pay period;

(g) All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of Wis. Adm. Code section 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.

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.

SEC 2.02 Exempt transactions. (1). An "isolated nonissuer transaction" within the meaning of section 551.23 (1), Wis. 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 if all transactions in the security effected by or through the broker-dealer are isolated; a transaction is presumed to be "isolated" if it is one of not more than 3 such transactions 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 such 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 section 551.23 (2), Wis. Stats., pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the

purchaser a written acknowledgment that such purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that such 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 section 551.23 (3), Wis. Stats., if:

(a) With respect to a security qualifying under subsection (3) (c) thereof, the issuer or a licensed broker-dealer files a notice of the proposed sale in the form prescribed by the commissioner, including the latest prospectus filed under the securities act of 1933 describing the securities proposed to be sold, and the information concerning the public market for the security specified in Wis. Adm. Code section SEC 3.02(1) (b). Such 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 subsection (3) (d) thereof, the issuer or an applicant files a notice of the proposed sale, including: the prospectus used in the most recent offering of the securities proposed to be sold; any information specified in Wis. Adm. Code sections 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 Wis. Adm. Code section 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 Wis. Adm. Code section 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 purposes) 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. Such 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 bond or other evidence of indebtedness secured by a mortgage, deed of trust or agreement of sale, is not "offered and sold as a unit" within the meaning of section 551.23 (5), Wis. Stats., if it is part of an offering including other bonds or evidences of indebtedness secured by interests in real estate owned or developed by the same person or by persons affiliated by reason of direct or indirect control; or if it is offered or sold with any right of recourse or substitution against or any guaranty by the real estate developer or any person other than the debtor.

(5) A "financial institution or institutional investor" within the meaning of section 551.23 (8), Wis. 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) Any other corporation, partnership or association which has been in existence for 10 years or whose net assets exceed \$250,000, and whose principal purpose as stated in its articles, by-laws or other organizational instrument is investing in securities; and

(d) Any other person or entity whom the commissioner by order designates.

(6) With respect to an offer or sale of a security exempted under sections 551.23(10) or (11), Wis. 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 such securities, provided that any relative or spouse, or any relative of such 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 the commissioner may by order exempt the offer or sale of securities by any such affiliated issuer or person upon the filing of a notice of the proposed sale and such other information as the commissioner may require, if it is not part of a common business purpose or plan of offering;

(c) A reasonable commission or fee may be paid to a broker-dealer licensed in this state for services rendered in connection with a sale of securities effected under these sections; a commission or fee will be presumed reasonable if it does not exceed the amount permitted under Wis. Adm. Code section SEC 3.01(1); and

(d) The exemption for any offer or sale under section 551.23(11), Wis. Stats., is withdrawn with respect to:

1. Any offer or sale of a limited partnership interest, investment contract, or certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such title or lease, if the aggregate maximum value of all securities to be offered in this state by or on behalf of the issuer, together with the value of any securities issued in this state by or on behalf of the issuer during the prior 12 months, exceeds \$100,000, unless the issuer files a notice of such proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and such other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption within 10 days;

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 chapter 551, Wis. Stats., or any predecessor law and are held of record by more than 100 shareholders in this state, otherwise than in compliance with Wis. Adm. Code section SEC 2.02(1)(b); and

3. Any offer or sale of securities registered under the securities act of 1933 or exempted by regulations A or B thereunder, unless permitted by

order of the commissioner in compliance with such conditions as the commissioner may prescribe.

(7) Notice of an offer to existing security holders exempted under section 551.23 (12), Wis. Stats., shall be filed in the form prescribed by the commissioner, and shall include any prospectus, circular or other material to be delivered to offerees in connection with such transaction.

(8) "Class vote" within the meaning of section 551.23 (13), Wis. 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 section 180.52, Wis. Stats., or comparable provisions of the articles of incorporation or of an applicable corporation statute of another state.

(9) (a) "Stock split" within the meaning of section 551.23 (14), Wis. 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 section 551.23 (14), Wis. 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.

(10) Notice of an offer of an evidence of debt of a non-profit corporation exempted under section 551.23 (15), Wis. Stats., shall be filed in the form prescribed by the commissioner, and shall include: a trust indenture meeting the requirements of Wis. Adm. Code section 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 Wis. Adm. Code section SEC 3.23 (1); such additional information as the commissioner may require; and

(a) With respect to an offer qualifying under subsection (15) (a) thereof, 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 such mortgage or deed of trust, less the amount of any unpaid special assessment taxes; or

(b) With respect to an offer qualifying under subsection (15) (b) thereof, 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 three immediately preceding fiscal years meeting the requirements of Wis. Adm. Code section SEC 7.06.

(11) The following transactions are exempted under section 551.23 (18), Wis. 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 such purchase was unsolicited or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith confirms that such 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 the reorganization agreement and plan pursuant to which such securities are proposed to be issued and such additional information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days.

(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 section 551.23 (10) or (11), Wis. 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 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; if the issuer files with the commissioner a notice specifying the terms of the reorganization, sale or transfer of assets, including any proxy solicitation or other material to be delivered to security holders in connection with the transaction, and the commissioner does not by order disallow the exemption within 10 days.

(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 employes 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 such 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 Wis. Adm. Code sections 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. Installment payments for shares issued upon exercise are not permitted;

5. Certificates are issued upon exercise;

6. The plan meets the repurchase standards of Wis. Adm. Code section SEC 2.01 (7) (d);

7. All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of Wis. Adm. Code section 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 the securities are the subject of a registration statement filed under sections 551.25 or 551.26, Wis. Stats., or a notice filed under sections 551.22 (1) or (8) or 551.23 (12) or (15), Wis. Stats., and provided that such 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.

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.

SEC 2.03 Exemption proceedings. (1) A notice of exemption pursuant to sections 551.22 or 551.23, Wis. Stats., is not deemed filed until payment of the examination fee prescribed by Wis. Adm. Code section SEC 7.01 (1).

(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 sections 551.22 or 551.23, Wis. 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 sections 551.22 or 551.23, Wis. Stats., has the same effect as an order denying or revoking an exemption pursuant to section 551.24, Wis. 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.