

(5) With respect to an offer or sale of a security exempted under s. 551.23 (10) or (11), 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 the securities, provided that any relative or spouse, or any relative of the 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 use of an exemption for the offer and sale of securities by such affiliated issuer or person shall not be denied on account of such affiliation provided the offer and sale are not part of a common business purpose or plan of offering, or if upon the filing of an application the commissioner so orders. A "common business purpose or plan of offering" is presumed where the offer or sale of securities is not separate and distinct from another offer and sale of securities with respect to (i) the application of proceeds, (ii) the physical proximity of real property or other assets, or (iii) the financial affairs of the business;

(c) A reasonable commission or fee may be paid to a broker-dealer or agent licensed in this state for services rendered in connection with a sale of securities effected under s. 551.23 (10) or (11), Stats.; a commission or fee will be presumed reasonable if it does not exceed the amount permitted under s. SEC 3.01 (1); and

(d) The exemption for any offer or sale under s. 551.23 (11), Stats., is withdrawn with respect to:

1. Except as provided in this subdivision, any offer or sale of interests in a limited partnership, irrespective of the kind of assets held or business engaged in by the partnership, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds \$100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the commissioner, including any prospectus, circular or other material to be delivered to offerees, and other information as the commissioner may require, and the commissioner does not by order withdraw, deny or revoke the exemption within 10 days. This subdivision is not applicable to any offer or sale made by a broker-dealer licensed in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control;

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 ch. 551, Stats., or any predecessor law and are held of record by more than 100 shareholders in this state, otherwise than in compliance with sub. (1) (b); and

3. Any offer or sale of securities pursuant to a registration statement under the securities act of 1933 or exempted by regulations A or B there-

under, unless permitted by order of the commissioner in compliance with such conditions as the commissioner may prescribe.

(6) "Class vote" within the meaning of s. 551.23 (13), 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 s. 180.1004, Stats., or comparable provisions of the articles of incorporation or of an applicable corporation statute of another state.

(7) (a) "Stock split" within the meaning of s. 551.23 (14), 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 s. 551.23 (14), 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.

(8) Notice of an offer of an evidence of debt of a non-profit corporation exempted under s. 551.23 (15), Stats., shall be filed with the commissioner prior to the offering, and shall include: a trust indenture meeting the requirements of s. 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 s. SEC 3.23 (1); such additional information as the commissioner may require; and

(a) With respect to an offer qualifying under s. 551.23 (15) (a), Stats., 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 the mortgage or deed of trust, less the amount of any unpaid special assessment taxes; or

(b) With respect to an offer qualifying under s. 551.23 (15) (b), Stats., 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 3 immediately preceding fiscal years meeting the requirements of s. SEC 7.06.

(c) In addition, if the non-profit corporation is or operates as a church, the offering shall meet the requirements of s. SEC 3.14, and if the domestic non-profit corporation is or operates as a health care facility, the offering shall meet the requirements of s. SEC 3.145.

(9) The following transactions are exempted under s. 551.23 (18), 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 the purchase was unsolicited or the confirmation delivered to the purchaser or a memoran-

dum delivered in connection therewith confirms that the 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 prior to the offering the reorganization agreement and plan pursuant to which the securities are proposed to be issued and additional information as the commissioner may require, and the commissioner does not by order disallow the exemption within 10 days from the date of filing.

(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 s. 551.23 (10) or (11), 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 prior to the offering 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.

(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 the 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 s. SEC 3.03 (4) and (5);
3. The issuer files an undertaking to deliver to all participating employes copies of the issuer's annual financial statements;
4. Any provision of the plan providing for installment payments for shares issued upon exercise is not permitted except as authorized by a majority of the disinterested independent outside directors of the issuer;
5. Certificates are issued upon exercise;
6. The plan meets the repurchase standards of s. SEC 2.01 (6) (d);

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7. All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of s. 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 all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. 551.25 or 551.26, Stats., a filing under s. 551.235, Stats., or a notice filed under s. 551.22 (1) or (8) or 551.23 (12) or (15), Stats.;

2. The 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; and

3. Before the securities referred to in subd. 1. may legally be sold, no customer funds are received and no customer signs any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

(h) Any transaction, in other than the initial public offering, involving any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States, or any agency or corporate instrumentality of the United States, where the government security is of investment quality rating as determined by the office of the commissioner of banking for the state of Wisconsin or by the comptroller of the currency by virtue of credit worthiness, or any transaction involving any government security dated prior to the effective date of this paragraph.

(i) Any offer or sale of debt securities by an issuer to its employees or agents, provided there is filed with the commissioner prior to any offer or sale a notice as provided in s. SEC 2.03 (1), and the commissioner by order exempts the offering. Without limiting the ability of the commissioner to refuse to issue an order on other grounds, the commissioner may find the issuance of an order inappropriate for the protection of investors unless:

1. The issuer's net earnings for its last fiscal year prior to the offering shall have been at least equal to the interest requirements on its debt securities for that year;

2. The debt securities being offered shall be of a fixed-term nature with maturities varying from not less than 90 days to not more than 2 years from the date of issue;

3. Any provision for renewal of the debt securities shall require that each holder receive 30 days prior written notice of the renewal accompanied by updated information described in subd. 5., that the renewal may not occur unless the holder signs at the time of the renewal a subscription agreement agreeing to the renewal, and that the term of the securities being renewed shall not extend beyond the expiration date of the Order of Exemption issued under this subdivision;

4. Each purchaser of debt securities shall be required to represent in a subscription agreement for purchase or renewal of the debt securities that the dollar amount of the purchase does not exceed 25% of his or her liquid net worth, excluding equity in his or her house or personal property;

5. An Information Summary containing at least the following information shall be provided by the issuer to each offeree at the time of the offering:

a. Disclosure of the specific purposes for use of the funds raised from the sale of the debt securities;

b. A statement that the decision of an offeree whether or not to purchase or to agree to any renewal will not have any effect upon that offeree's advancement opportunities, raises or other benefits, nor will impact on the offeree's continued employment or job duties;

c. A representation that the issuer is not contemplating, and is not the subject of, any proposed merger, sale of assets or control of the issuer, receivership or bankruptcy, that it does not have current financial obligations that it is unable to meet, and that it has not been refused credit by any lending institution for the purposes for which the proceeds from sale or renewal of the debt securities will be used; and

d. Financial statements for the issuer's 3 previous fiscal years, or the duration of the issuer's existence, whichever is less, that shall be either audited or, if unaudited, accompanied by the issuer's federal income tax return with supporting schedules for the corresponding years;

6. Offerees shall be provided with a 5-day period following their receipt of any offering materials, information or subscription agreement for purchase of the issuer's securities, before the subscription agreement can be returned to or accepted by the issuer; and

7. The issuer shall provide that upon the death or involuntary termination of employment of the holder, the debt securities will be redeemed by the issuer within 60 days of receipt by the issuer of a written request for repurchase from the holder or the holder's legal representative. The redemption price shall include principal plus accrued interest to the date of redemption.

(j) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. SEC 2.025 or 2.027.

(k) Offers or sales of a discretionary or managed trading account involving discretion or management provided by a broker-dealer licensed in this state or by an investment adviser licensed in this state.

(l) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the commissioner. In order to be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the commissioner either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application

required by the commissioner, the commissioner shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, but are not limited to, gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their business plans and products, or their financing or investment capital needs or proposals.

(m) 1. Any offer, sale or option to purchase equity securities issued by a new Wisconsin business corporation if that offer or sale is made by, or the option is offered by, the issuing corporation to its employees, officers or directors. In this subsection, "new Wisconsin business corporation" means a business incorporated under ch. 180, Stats., with its principal office in this state which, on the date of the offer, sale or issuance of the option, has been operating 5 years or less, has no more than 50 employees and has annual gross receipts of \$5,000,000 or less.

2. Prior to any offering made in this state under this paragraph, the corporation shall provide the commissioner with at least 20 days' advance written notice of the offering. The notice shall include a copy of a written disclosure document to be provided to each offeree setting forth, without limitation as to other types of information that can be provided, the amount of funds being raised in the offering; how the proceeds will be expended; basic information about the corporation's business activities and historical operations to date; the identity of its officers, directors and controlling persons; the current ownership levels of the corporation's securities, together with the price per share paid by persons for those shares; and financial statements for the corporation.

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. (1), eff. 11-4-75; cr. (1), 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; am. (6) (b) and (d) 1, Register, September, 1978, No. 273, eff. 10-1-78; am. (5) (c), (6) (b) and (11) (f) 6., Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (b), (2) and (3) (a) and (b), r. (4), renum. (5) to (11) to be (4) to (10), and am. (5) (a), (c), and (d) 1., (6), (9) and (10), Register, December, 1980, No. 300, eff. 1-1-81; cr. (9) (c) and am. (10) (d), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (10) (h), eff. 5-1-82; cr. (10) (h), Register, September, 1982, No. 321, eff. 10-1-82; am. (3) (a) and (5) (d) 1., cr. (10) (i), Register, December, 1982, No. 324, eff. 1-1-83; cr. (10) (j), Register, August, 1983, No. 332, eff. 9-1-83; am. (1) (a), (5) (d) 1. and (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; emerg. r. (10) (j), eff. 1-1-84; r. (10) (j), Register, May, 1984, No. 341, eff. 6-1-84; am. (10) (g), Register, December, 1984, No. 348, eff. 1-1-85; am. (3) (b) and (10) (f) 4., Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (10) (g) 1., eff. 1-1-86; cr. (10) (j), Register, March, 1986, No. 363, eff. 4-1-86; am. (10) (g) 1., Register, May, 1986, No. 365, eff. 6-1-86; am. (1) (a) and (9) (c), cr. (10) (k), Register, December, 1986, No. 372, eff. 1-1-87; am. (10) (j), Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. (4) (c), am. (10) (j), cr. (10) (l) and (m), Register, December, 1988, No. 396, eff. 1-1-89; am. (4) (c) (intro.), 1. and 2. intro., (5) (c) and (d) 3., Register, December, 1989, No. 408, eff. 1-1-90; r. (6), renum. (4) (d), (7) to (10) to be (4) (e) and (6) to (9) and am. (9) (f) 6., cr. (4) (d), Register, December, 1991, No. 432, eff. 1-1-92; reprinted to correct error in (4) (d) 4., Register, February, 1992, No. 434; am. (4) (d) 4. and (6), renum. (4) (e) to be (4) (f), cr. (4) (e), Register, December, 1992, No. 444, eff. 1-1-93.

SEC 2.025 Non-seasoned issuer registration exemption by filing. Except as provided in sub. (6) a transactional registration exemption is available under s. 551.23 (18), Stats., for any offer or sale of common stock that meets the conditions set forth in subs. (1) to (5) unless a condition or conditions is waived by the commissioner upon a showing of good cause.

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. 1-1-72; 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.

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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 and October 31, 1988. 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.

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 registration 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 state-
Register, December, 1992, No. 444