

CR 83-79

CERTIFICATE

STATE OF WISCONSIN)
OFFICE OF THE)
COMMISSIONER OF SECURITIES)

ss

*Received 8-2-83
1:30 pm*

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard R. Malmgren, Commissioner of the State of Wisconsin Office of the Commissioner of Securities and custodian of the official records of said agency do hereby certify that the annexed rules relating to the operation of ch. 551., Stats., the Wisconsin Uniform Securities Law, with respect to adopting a uniform limited offering exemption from securities registration and prescribing a fee, were duly approved and adopted by this agency on July 29, 1983.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the city of Madison, this 29th day of July, 1983.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities
State of Wisconsin

9-1-83

ORDER OF
THE OFFICE OF THE
COMMISSIONER OF SECURITIES
STATE OF WISCONSIN
ADOPTING AND AMENDING RULES

To create SEC 2.02(10)(j), SEC 2.025 and SEC 7.01(2)(g) relating to the Rules of the Commissioner of Securities with respect to adopting a uniform limited offering exemption from securities registration and prescribing a fee.

Pursuant to authority vested in the Office of the Commissioner of Securities by ss. 551.23(18), 551.52(3) and 551.63(1), Stats., the Wisconsin Commissioner of Securities adopts rules interpreting ss. 551.23(18) and 551.52(3), Stats., as follows:

SECTION 1. SEC 2.02(10) (j) is created to read:

SEC 2.02(10) (j) Any offer or sale of securities under s. SEC 2.025.

SECTION 2. SEC 2.025 is created to read:

SEC 2.025 UNIFORM LIMITED OFFERING EXEMPTION. (1) Except as provided under sub. (6), any offer or sale of securities made in compliance with the requirements of regulation D under the securities act of 1933, and Rules 230.501-230.503, 230.505 and 230.506 thereunder [17 CFR 230.501-503, 230.505 and 230.506] as set forth in the U.S. securities and exchange commission release No. 33-6389, is exempted if the offer or sale also satisfies the additional conditions and limitations in this section.

(2) No commission or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state or in connection with sales in this state of securities in reliance on the exemption under this section, except to a broker-dealer licensed in this state or to an issuer representative meeting the conditions in sub. (7) of this section.

(3) (a) Unless the cause for disqualification is waived under par. (b), no exemption under this section shall be available for the securities of any issuer if any of the following subds. apply to any of the persons or parties described in pars. (c) through (f) of rule 230.252 of regulation A under the securities act of 1933 [17 CFR 230.252]:

1. The person or party has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to any state's law within five years prior to the filing of a notice required under sub. (4) denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

2. The person or party has been convicted of any felony or misdemeanor in connection with the offer, sale or purchase of any security or franchise, or any felony involving

fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

3. The person or party, other than a broker-dealer licensed in this state, is subject to any state's administrative order or judgment entered by that state's securities administrator within five years prior to the filing of a notice required under sub. (4), or the person or party, including a broker-dealer licensed in this state, has been subject to any state's administrative order or judgment based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact, and the order or judgment was entered by that state's securities administrator within five years prior to the filing of a notice required under sub. (4);

4. The person or party is subject to any state's administrative order or judgment entered by that state's securities administrator within five years prior to the filing of a notice required under sub. (4) which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, sale or purchase of securities; or

5. The person or party is subject to any order, judgment or decree of any court temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court entered within five years prior to the filing of a notice required under sub. (4) permanently restraining or enjoining the person or party from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

(b) 1. Any disqualification under this subsection involving a broker-dealer is waived in the event the broker-dealer is licensed as a broker-dealer in this state subsequent to the act or event causing disqualification; and

2. The commissioner may waive any disqualification under this subsection upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(4) The issuer shall file with the commissioner a notice comprised of the information and documents listed in pars. (a) through (e) of this subsection not later than the date the first offer in reliance on the exemption under this section is made in this state:

(a) An offering document providing full disclosure of all material facts relating to the issuer and to the offering, including its terms and conditions;

(b) An undertaking to file with the commissioner a copy of any material amendment to the offering within 10 days from the date of the amendment;

(c) A completed Form D as prescribed under the securities act of 1933 in 17 CFR 239.500 that is manually signed by a person duly authorized by the issuer;

(d) A consent to service of process manually signed by a person duly authorized by the issuer; and

(e) The fee prescribed by s. SEC 7.01(2).

(5) In all sales in this state to accredited and non-accredited investors, as both terms are defined in regulation D under the securities act of 1933, the issuer, any person acting on its behalf, and any broker-dealer involved in the offer or sale of the securities, shall make inquiry sufficient to have reasonable grounds to believe, and shall believe, that both of the following conditions are satisfied:

(a) The investment is suitable for the purchaser upon the basis of facts, if any, disclosed by the purchaser regarding the purchaser's other securities holdings and current financial condition and objectives. For the limited purpose of this condition, a rebuttable presumption is created that the investment is suitable if it does not exceed 20% of the purchaser's net worth, excluding principal residence, household furnishings and personal automobiles;

(b) The purchaser either alone or with the purchaser's representative has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment. For purposes of this subparagraph, the offeree representative shall not be directly or indirectly affiliated with the issuer and shall not receive a fee or compensation from the issuer or any broker-dealer involved in the offer or sale of the securities.

(6) The registration exemption under this section is not available for offers or sales of securities described in pars. (a) or (b) of this subsection unless the offers and sales are made by a broker-dealer licensed in this state;

(a) Any investment contract or limited partnership interest engaged in acquiring or developing an oil, gas or mining title or lease; or

(b) Any 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.

(7) A person may act as an issuer representative to offer or sell the securities of an issuer engaged or to be engaged in the acquisition or development of real estate located in this state if conditions (a) to (c) of this subsection are complied with:

(a) The person is licensed by meeting the filing, qualification and licensing provisions applicable to an agent for an issuer under ss. 551.31-551.33, Stats., and is subject to the provisions of s. 551.34, Stats. and to the filing of an application for withdrawal under s. SEC 4.08(2) when the offering is terminated or the issuer representative terminates employment;

(b) An application for license is filed by the issuer with the commissioner for each issuer representative not later than 10 business days prior to the filing of a notice required under sub. (4) of this section, and licensing is effective 10 business days after filing, or such earlier time as the commissioner may permit, unless the application is denied or postponed under s. 551.34, Stats.; and

(c) Every applicant for an issuer representative license shall pay the agent filing fee specified in s. 551.52(2), Stats.

(8) The commissioner may, by order increase the number of purchasers or waive any other conditions of the exemption under this section for a particular offering.

SECTION 3. SEC 7.01(2)(g) is created to read:

SEC 7.01(2)(g) Notice filed under s. SEC 2.025. \$200.

* * * *

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in sec. 227.026(1), (Intro.), Stats.

DATED at Madison, Wisconsin, this 29th day of July, 1983.

(SEAL)

Richard R. Malmgren
RICHARD R. MALMGREN
Commissioner of Securities

Report Prepared by the
Office of the Commissioner of Securities
Relating to Amendments to the
Rules of the Commissioner of Securities

(a) Findings of Fact

(1) The administrative rule promulgation procedure is being implemented in this matter for the purpose of adopting the Uniform Limited Offering Exemption ("ULOE") that was approved by the North American Securities Administrators Association, Inc. ("NASAA") in 1982.

(2) A Notice of Hearing to consider the promulgation of the rules that are the subject of this Order was issued by the Commissioner on April 15, 1983 and was published in the April 30, 1983 Wisconsin Administrative Register, designating the public hearing to be held in Room 318 Southwest of the State Capitol on the 22nd day of June, 1983, commencing at 10:00 a.m.

(3) A summary of the Notice of Hearing and the complete text of the proposed rules with Explanatory Notes was contained in the April, 1983 monthly Wisconsin Securities Bulletin distributed to the general public, securities licensees and registrants, securities law practitioners, securities trade associations and securities regulatory bodies.

(4) A summary of the Notice of Hearing was published in the May 11, 1983 edition (Number 686) of the Blue Sky Law Reporter, published by Commerce Clearing House, and was published in the May 27, 1983 edition of the Securities Regulation & Law Report, published by the Bureau of National Affairs, Inc.

(5) The required filing of the proposed rule amendments was made with the Rules Clearinghouse of the Wisconsin Legislative Council on May 5, 1983, and those proposed rule amendments were designated in the Rules Clearinghouse Report as Clearinghouse Rule 83-79. The Rules Clearinghouse Report contained comments on the proposed rules that related solely to their "Form, Style and Placement in Administrative Code" and "Clarity, Grammar, Punctuation and Plainness." All of the suggestions by the Rules Clearinghouse in its Report were implemented as particularized in sub. (e) of this Report.

(6) The public hearing relating to the rules that are the subject of this Order was held as scheduled on June 22, 1983 at the prescribed hearing room, 318 Southwest Capitol, with the Wisconsin Commissioner of Securities presiding as the hearing officer.

(7) During the comment period, 10 letters were received setting forth specific comments on the proposed revisions, and at the public hearing, testimony was presented by 13 persons (other than agency staff) who set forth additional comments.

(8) Certain of the comments made in the letters submitted and in the hearing testimony resulted in changes and modifications to the Proposed Rules as identified in sub. (c) of this Report.

(9) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to exercise his rule-making authority under ss. 551.23(18), 551.52(3) and 551.63(1), Stats., to adopt the rules as attached to carry out the purposes of the Wisconsin Uniform Securities Law.

* * * * *

(b) Statement Explaining Need For Rules

The administrative rule promulgation procedure is being implemented in this matter for the purpose of adopting the Uniform Limited Offering Exemption ("ULOE") that was approved by the North American Securities Administrators Association, Inc. ("NASAA") in 1982. The adopted rule/ULOE sets forth requirements that, if met by an issuer of securities, would allow the issuer to offer and sell its securities on a non-public-offering basis to persons in Wisconsin without registration of the offering under the Wisconsin Uniform Securities Law. The rule is being adopted under the statutory authority granted the Wisconsin Commissioner of Securities in sec. 551.23(18) of the Wisconsin Uniform Securities Law to exempt from registration any securities transaction where the Commissioner by rule or order finds registration is not necessary or appropriate for the protection of investors.

The ULOE is being adopted by Wisconsin consistent with the statutory directive in sec. 551.63(2), Wis. Stats., which provides that in prescribing rules, the Commissioner may cooperate with the securities administrators of other states and the U.S. Securities and Exchange Commission ("SEC") in order to achieve maximum uniformity in securities regulation. In that regard, the foundation of the ULOE is Regulation D, adopted in 1982 by the SEC and the text of the ULOE specifically incorporates by reference certain rules adopted by the SEC under the federal Securities Act of 1933 that establish the requirements of Regulation D. Twenty-five states to date have adopted registration exemptions in statute or rule form utilizing Regulation D and/or the ULOE.

The federal Regulation D is a series of six rules, designated Rules 501-506, that establishes three exemptions from the registration requirements of the Securities Act of 1933. The SEC in Release No. 33-6389 describing Regulation D, stated that its purposes included simplifying existing rules and regulations and achieving uniformity between state and federal securities registration exemptions in order to facilitate capital formation consistent with the protection of investors. Rules 501-503 set forth definitions, terms and conditions that apply generally throughout the regulation. The registration exemptions of Regulation D are contained in Rules 504-506. The SEC stated that Rule 504 was not intended to be part of the ULOE, but rather was a federal registration exemption for offerings to be regulated by state "blue sky" requirements. Rules 505 and 506, together with applicable definitions, terms and conditions in Rules 501-503, were stated by the SEC as intended to be uniform federal-state exemptions. The registration exemption created federally under Rule 505 establishes an offering limit of \$5 million in a 12-month period, prohibits use of any general solicitation

or general advertising, and permits sales to 35 persons that are not "accredited investors" (as defined in Rule 501 with reference to certain income and net worth suitability requirements), as well as to an unlimited number of accredited investors. The federal registration exemption under Rule 506 differs from Rule 505 primarily in that there is no dollar limit on the amount of the offering and requires the issuer of the securities to make a subjective determination that each purchaser meets certain sophistication standards.

The basic ULOE as proposed for adoption in Wisconsin includes the exemptions under both federal Rules 505 and 506 and would thus permit sales of securities in a non-public offering to be made to up to thirty-five non-accredited purchasers, with an unlimited number of sales permitted to be made to "accredited investors" up to a total maximum of \$5,000,000 of sales in offerings made pursuant to Rule 505, and with no dollar amount maximum for offerings made pursuant to Rule 506. The exemption as proposed for adoption by Wisconsin contains the following provisions taken from the basic text of the ULOE and its footnoted items: (a) no sales commissions or other remuneration can be paid for making solicitations or sales in Wisconsin except to a broker-dealer licensed in Wisconsin or to a person licensed as an issuer sales representative under the 10-day notice licensing procedure in sub. (7) of the exemption; (b) accredited as well as non-accredited investors must meet a dual test of investor sophistication and maximum allowed percentage of net worth invested; and (c) persons who are the subject of enumerated state enforcement actions or specified court proceedings are prohibited from using the ULOE (the language of the so-called "bad boy" disqualification-from-use provision in sub. (3) of the rule contains substantial modifications from the NASAA draft language). The filing requirement for use of the ULOE which necessitates specified information and materials being filed with the Commissioner of Securities differs from the ULOE in that the filing must be not later than the date the first offer in reliance on the exemption is made in Wisconsin. Consequently, offers and sales in Wisconsin in reliance on use of the exemption can commence on the date the notice is filed with the Commissioner. The other significant differences in the proposed Wisconsin rule from the ULOE model would: (1) preclude use of the exemption for offerings involving oil and gas well drilling operations or mining operations unless the offering in Wisconsin is made through a broker-dealer licensed in Wisconsin; and (2) require a copy of a full disclosure offering document to be included as part of the information and materials filed to claim the exemption.

* * * *

(c) Explanation of Modifications Made as a Result of Public Comment Letters Received and Public Hearing Testimony

- As a result of comments made in the Rules Clearinghouse Report discussed in detail in paragraph (e) of this Report, the structure and format of the rule was revised as a new section SEC 2.025.
- As a result of comment letters received and hearing testimony presented, the scope of the exemption was expanded to include offerings made under Rule 506 of Regulation D by adding in SEC 2.025(1) of the Rule, a cross-reference to that federal rule and its Code of Federal Regulations citation.
- As a result of comment letters received and hearing testimony presented, subd. (3)(a)4. of the "bad boy" disqualification provision was amended to include an identical 5-year time limitation as is present in subdivisions (a)1., (a)3. and (a)5. of the disqualification provisions.
- As a result of comment letters received and hearing testimony presented, the disqualification waiver provision of SEC 2.025(3)(b) was divided into two subdivisions, sub. 1. of which is new and provides for an automatic waiver of any disqualification involving a broker-dealer in the event the broker-dealer becomes licensed in Wisconsin subsequent to the act or event causing the disqualification.
- As a result of comment letters received and hearing testimony presented, the notice filing provision in SEC 2.025(4) was changed to a "contemporaneous with first offer in Wisconsin" filing requirement that would allow offers and sales under the exemption to commence in Wisconsin concurrently with the date the notice and offering materials are filed with the Commissioner.
- As a result of comment letters received and hearing testimony presented, the listing of information and materials required to be included in a notice filed under SEC 2.025(4) was amended to delete the need to file a cover letter and to add par. (b), a requirement that an undertaking be submitted to file with the Commissioner copies of all material amendments made to the offering within 10 days from the date of the amendment.

- As a result of comment letters received and hearing testimony presented, the limitation on use of the exemption by issuers engaged in acquiring or developing an oil, gas or mining title or lease was amended to allow use of the exemption for such offerings if they are made through a securities broker-dealer licensed in Wisconsin.

- As a result of comment letters received and hearing testimony presented, sub. (2) of the rule was amended to permit sales commissions to be paid to persons licensed as an issuer sales representative under a 10-day notice licensing procedure set forth in new sub. (7) of the exemption.

- As a result of comment letters received and hearing testimony presented, a new provision in sub. (8) was created to give the Commissioner the authority by rule or order to increase the number of purchasers or waive any other conditions under the exemption.

* * * * *

(d) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities
Richard R. Malmgren as Hearing Officer

- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to summarize the position of the staff regarding the form and content of the proposed rule and staff recommendations for modifications from the comment draft form of the rule.
- Jack Bloomfield, President of Wisconsin Association of Securities Dealers, Inc., 770 North Jefferson Street, Milwaukee, Wisconsin, 53702.
- Conrad G. Goodkind, Attorney at Law, Quarles & Brady, 780 North Water Street, Milwaukee, Wisconsin, 53202.
- Thomas A. Wessels, Resident Vice President and Office Manager, Milwaukee office of Merrill, Lynch, Pierce, Fenner & Smith, One Plaza East, 330 East Kilbourne Street, Milwaukee, Wisconsin, 53202.
- John Secord, Branch Manager, Madison office of The Milwaukee Company, One South Pinckney Street, Madison, Wisconsin, 53703.
- Robert Schowalter, Managing Partner, Automotive Engine Associates, 301 South Blount Street, Madison, Wisconsin, 53703.
- Michael E. Mullett, Vice President of Investment Division, Munz Corporation, 340 West Washington Avenue, Madison, Wisconsin, 53703.
- John C. Kasdorf, President, Kaztex Financial, Inc., 6101 Milwaukee Avenue, Wauwatosa, Wisconsin, 53213.
- Matthew G. Hayden, President, Wisconsin Realtors Association, 3009 Irvington Way, Madison, Wisconsin, 53713.
- Paul E. Magnuson, representing Real Estate Securities & Syndication Institute, Wisconsin Chapter, 4801 Hayes Road, Madison, Wisconsin, 53704.

- William A. Spring, representing Security Spring & Boe Financial Corp., 16655 Bluemound Road, Brookfield, Wisconsin, 53005.
- Joseph P. Hildebrandt, Attorney at Law, Foley & Lardner, One South Pinckney Street, Madison, Wisconsin, 53703.
- Robert F. Henkle, Jr., Attorney at Law, Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., 111 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.
- Kirk Dunlap, representing Reid Investments, Milwaukee, Wisconsin.
- Comment letters received:

letter dated June 14, 1983, received June 15, 1983 from Jack Bloomfield, President, on behalf of the Wisconsin Association of Securities Dealers, Inc., 770 North Jefferson Street, Milwaukee, Wisconsin, 53702.

letter dated June 17, 1983, received June 22, 1983 from John M. Young, State Representative, Room 304 West State Capitol, Madison, Wisconsin, 53707.

letter dated June 20, 1983, received June 20, 1983 from John C. Schober, State Representative, Room 335D North Capitol, Madison, Wisconsin, 53707.

letter dated June 21, 1983, received June 21, 1983 from State Senator Susan S. Engeleiter, Room 409 South State Capitol, Madison, Wisconsin, 53707.

Memorandum dated June 21, 1983 from Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities on behalf of the staff of the Office of the Commissioner of Securities, 111 West Wilson Street, Madison, Wisconsin, 53703.

letter dated June 22, 1983, received at public hearing June 22, 1983 from Michael E. Mullee, on behalf of The Munz Corporation, 340 West Washington Avenue, Madison, Wisconsin, 53703.

letter dated June 21, 1983, received at public hearing June 22, 1983 from John C. Kasdorf, on behalf of Kaztex Financial, Inc., 6101 Milwaukee Avenue, Wauwatosa, Wisconsin, 53213.

letter dated June 22, 1983, received at public hearing on June 22, 1983 from Paul E. Magnuson, on behalf of the Real Estate Securities & Syndication Institute, Wisconsin Chapter, 4801 Hayes Road, Madison, Wisconsin, 53704.

letter dated June 22, 1983, received at public hearing June 22, 1983 from Joseph P. Hildebrandt, under letterhead of Foley & Lardner, One South Pinckney Street, Madison, Wisconsin, 53703.

letter dated June 21, 1983, received at public hearing June 22, 1983 from Robert F. Henkle, Jr., on behalf of Reinhart, Boerner, Van Deuren, Norris & Rieselbach, S.C., 111 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202.

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(e) Response to Legislative Council/Rules Clearinghouse Report Recommendations

(1) Acceptance of recommendations in whole:

Under 1. Statutory Authority

-- No comments were made by the Rules Clearinghouse.

Under 2. Form, Style and Placement in Administrative Code

-- Consistent with the Rules Clearinghouse comment in para. a., SECTION 1 of the rule was redrafted as an entirely separate section, SEC 2.02(5) LIMITED OFFERING EXEMPTION, with a cross-reference to that new section in s. SEC 2.02(10)(j). The remainder of the rule was restructured as per the Rules Clearinghouse format and language.

-- Consistent with the Rules Clearinghouse comment in para. b., the language "this section" was substituted for "this rule" in line 3 of sec. 2.02(10)(j)2. of the public comment draft. Also, in the fourth and fifth lines "subparagraphs" was changed to "subds." and "paragraphs" was changed to "pars.," and "(c) through (f)" was changed to "(c) to (f)," and a Code of Federal Regulations citation was added. In subd. 2.c of the public comment draft, the language "this state" was substituted for "Wisconsin" in lines 2 and 6, and in the last line, the language "the exemption under this section" was substituted for "this exemption." In subd. 2f, in line 2, the language "under this subsection" was substituted for "caused by subparagraphs a., c., d. or e." as required in a different section of the Rules Clearinghouse report.

-- Consistent with the Rules Clearinghouse comment in para. c., revisions were made in proposed SEC 2.02(10)(j)3, 4 and 5 of the public comment draft in the following respects: the language "this state" was substituted for "Wisconsin" in the "intro.;" in subd. 3.e, the language "under this section" was substituted for "this exemption"; in subd. 4 (intro.) and 4a, commas were substituted for the parentheses; in subd. 5, (intro.), the

language "the registration exemption under this section" was substituted for "this registration exemption."

- Consistent with the Rules Clearinghouse comment in para. d., the language "Wis. Adm. Code." was deleted in SEC 7.01(2)(g) of the public comment draft.
- Consistent with the Rules Clearinghouse comment in para. e., the phrase "Wis. Stats." in the Effective Date section of the public comment draft was changed to "Stats."

Under 3. Review of Rules for Conflict With or Duplication of Existing Rules

- No comments were made by the Rules Clearinghouse.

Under 4. Adequacy of References to Related Statutes, Rules and Forms

- No comments were made by the Rules Clearinghouse.

Under 5. Clarity, Grammar, Punctuation and Plainness

- Consistent with the Rules Clearinghouse comment in para. a., the following revisions to the language in the public comment draft were made: the capitalization was removed from the words "release" and "commissioner" in SEC 2.02(10)(j)(intro.) and (2); in the seventh line, the language "if" was substituted for the language "provided that," and the word "satisfies" was substituted for the language "shall satisfy"; in line 8, the word "additional" was substituted for the word "further"; in para. (j)2, the capitalization of the word "Commissioner" was removed.
 - Consistent with the Rules Clearinghouse comment in para. b., a comma was inserted after the word "offering" in SEC 2.02(10)(j)3a of the draft.
- (2) Acceptance of Rules Clearinghouse recommendations in part; (3) Rejection of recommendations; and (4) Reasons for not accepting recommendations.
- Not applicable.

* * * * *

WISCONSIN LEGISLATIVE COUNCIL

LCRC
FORM 2

RULES CLEARINGHOUSE

RONALD SKLANSKY
DIRECTOR
(Phone 266-1946)



ROOM 147 NORTH, STATE CAPITOL
MADISON, WI 53702
PHONE 608-266-1304

RICHARD SWEET
ASSISTANT DIRECTOR
(Phone 266-2982)

BONNIE REESE
EXECUTIVE SECRETARY

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.029, STATS., AS CREATED BY CH. 34, LAWS OF 1979. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 83-79

AN ORDER to create SEC 2.02 (10) (j) and 7.01 (2) (g), relating to adopting a uniform limited offering exemption from securities registration and prescribing a fee.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

5- 5-83. Received by Legislative Council.
6- 3-83. Report sent to Agency.

RS:DS:kja;nam

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Pursuant to s. 227.029, Stats.)

1. REVIEW OF STATUTORY AUTHORITY [s. 227.029 (2) (a)]
 - a. Rules appear to be within the agency's statutory authority
 - b. Rules appear to be unsupported by statutory authority, either in whole or in part
 - c. Comment attached yes no

2. REVIEW OF RULES FOR FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.029 (2) (c)]
 - a. Rules satisfactory
 - b. Rules unsatisfactory
 - c. Comment attached yes no

3. REVIEW OF RULES FOR CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.029 (2) (d)]
 - a. Conflict or duplication not noted
 - b. Conflict or duplication noted
 - c. Comment attached yes no

4. REVIEW OF RULES FOR ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.029 (2) (e)]
 - a. References appear to be adequate
 - b. References appear to be inadequate
 - c. Comment attached yes no

5. REVIEW OF LANGUAGE OF RULES FOR CLARITY, GRAMMAR, PUNCTUATION AND PLAINNESS [s. 227.029 (2) (f)]
 - a. Rules satisfactory
 - b. Rules unsatisfactory
 - c. Comment attached yes no

6. REVIEW OF RULES FOR POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.029 (2) (g)]
 - a. No problems noted
 - b. Problems noted
 - c. Comment attached yes no

WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

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BONNIE REESE
EXECUTIVE SECRETARY

June 3, 1983

CLEARINGHOUSE RULE 83-79

COMMENTS

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council, dated April 1982.]

2. Form, Style and Placement in Administrative Code

a. Considering the length and complexity of the proposed rule and the difficulties in drafting it as a single paragraph in s. SEC 2.02 (10), perhaps SECTION 1 of the rule should be redrafted as a separate section in ch. SEC 2 [e.g., create s. SEC 2.025, LIMITED OFFERING EXEMPTION] with a cross-reference to that new section in s. SEC 2.02 (10) (j). The rule would then be structured as follows:

SECTION 1. SEC 2.02 (10) (j) is created to read:

SEC 2.02 (10) (j) Any offer or sale of securities under s. SEC 2.025.

SECTION 2. SEC 2.025 is created to read:

SEC 2.025 (title) ...

(1) Except under sub. (6), any offer or sale of securities...release no. 33-6389, if the offer or sale also satisfies the conditions and limitations in this section and the commissioner...notice required under sub. (4).

(2) No commission or other remuneration shall be paid or given...in reliance on the exemption under this section.

(3) (a) Unless the cause for disqualification is waived by the commissioner under par. (b), no exemption under this section shall be available...the securities act of 1933:

1. The person or party has filed a registration...revoking the effectiveness of, the registration statement;

2. The person or party has been convicted of...conspiracy to defraud;

3. The person or party, other than a broker-dealer licensed in this state,...filing the notice required under sub. (4) for use of this exemption;

4. The person or party is subject to any state's administrative order...purchase of securities; or

5. The person or party is subject to any order...filing with any state.

(b) The commissioner may waive any disqualification under this subsection...exemption be denied.

(4) The issuer shall file with...comprised of:

(a) An offering document...;

(b) A completed form D...;

(c) A consent...;

(d) The fee...; and

(e) A cover letter....

(5) In all sales in this state...are satisfied:

(a) The investment is suitable...; and

(b) The purchaser either...securities.

(6) The exemption under this section is not available for offers or sales of:

- (a) Any investment...; or
- (b) Any certificate of interest...lease.

If the above structure is used, the entire rule should be reviewed to make sure that cross-references (e.g., to subsections and paragraphs in the rule) are correct.

b. s. SEC 2.02 (10) (j) 2. In the third line, "this rule" should be "this paragraph" (or, as redrafted above, "this section"). [See s. 1.07 (1) (a), Manual.]

In the fourth and fifth lines, "subparagraphs" should be "subpars." and "paragraphs" should be "pars." Also, "(c) through (f)" should be "(c) to (f)." A citation from the Code of Federal Regulations should be used if possible. [See s. 1.07 (3), Manual.]

In subd. 2 c, substitute "this state" for "Wisconsin" in lines 2 and 6. Also, in the last line, substitute "the exemption under this paragraph" for "this exemption."

In subd. 2 f, in line 2, "subparagraphs" should be "subpars." Also, there should be no periods after "a., c., d. or e."

c. s. SEC 2.02 (10) (j) 3, 4 and 5. In the (intro.), substitute "this state" for "Wisconsin."

In subd. 3 e, substitute "the exemption under this paragraph" for "this exemption."

In subd. 4, delete the parentheses and insert commas in their place. Parentheses should be avoided in rules if possible. [See s. 1.01 (6), Manual.] The same comment applies to subd. 4 a.

In subd. 5 (intro.), substitute "The registration exemption under this paragraph" for "This registration exemption."

d. s. SEC 7.01 (2) (g). Delete ", Wis. Adm. Code."

e. Effective date. The phrase "Wis. Stats." should just be "Stats."

5. Clarity, Grammar, Punctuation and Plainness

a. s. SEC 2.02 (10) (j) (intro.) and 2. The words "Release" and "Commissioner" should not be capitalized.

In the seventh line, "provided that" should be "if" and "shall satisfy" should be "satisfies." In line 8, substitute "additional" for "further."

In par. (j) 2, "Commissioner" should not be capitalized.

b. s. SEC 2.02 (10) (j) 3 a. Insert a comma after "offering."