

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 s. 551.22 (1), Stats., if:

1. The enterprise is a public utility described under s. 551.22 (6), 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.

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 s. SEC 2.01 (7), or

3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for the enterprise meeting the requirements of s. SEC 3.22 (1) (p), 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. The financial statement requirement in this subdivision is not applicable if the revenue obligations being offered are the subject of an irrevocable letter of credit from a bank in favor of holders of the revenue obligations providing for payment of principal and interest on the revenue obligations, and the letter of credit is accompanied by an opinion of counsel stating that: a.i. payment of debt service will not constitute a preference under the U.S. bankruptcy code in the event of a filing of a petition in bankruptcy with respect to the enterprise, or ii. the letter of credit will provide for reimbursement to holders of the revenue obligations in the event they are required by order of a U.S. bankruptcy court to disgorge as a preference any payment of a debt service, or a combination of i. and ii.; and stating that b. the enforceability of the letter of credit would not be materially affected by the filing of a petition under the U.S. bankruptcy code with respect to the enterprise or any person obligated to reimburse the bank for payments made pursuant to the letter of credit.

(b) Any guarantee of any security exempt under s. 551.22(1), Stats., is exempted from s. 551.21, Stats.

(c) For purposes of the registration exemption provision of s. 551.22 (1), Stats., requiring the financial statements of certain issuers to be prepared according to generally accepted accounting principles or guidelines which the commissioner of securities designates by rule, a security is exempted from registration thereunder if:

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1. The issuer's annual financial statements for fiscal years commencing on or after January 1, 1982, are prepared according to generally accepted accounting principles as established by the National Council on Governmental Accounting, Statement 1, "Governmental Accounting and Financial Report Principles" (March 1979) or other rule-making body designated under rule 203 of The Professional Ethics Code of the American Institute of Certified Public Accountants; or

2. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1985, are prepared according to generally accepted accounting principles as provided in subd. 1., but where the auditor's opinion is qualified with respect to the fixed asset account group; or

3. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1985, are prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency.

(d) Determination of accounting principles or guidelines. Whether financial statements meet the requirements of par. (c), shall be conclusively determined by the last available auditor's opinion relating to the issuer's financial statements for a fiscal year ending not more than 21 months prior to the offering. The auditor's opinion may be conclusively relied upon by third parties for purposes of such determination. The opinion shall meet the requirements of rule 2.02 of regulation S-X of the U.S. securities and exchange commission in 17 CFR H210.2-02 and provide that:

1. With respect to par. (c) 1, the financial statements are prepared in accordance with generally accepted accounting principles, or equivalent language;

2. With respect to par. (c) 2, the financial statements are prepared in accordance with generally accepted accounting principles, but qualified with respect to the fixed asset account group, or equivalent language;

3. With respect to par. (c) 3, the financial statements are prepared on the basis of accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency, or equivalent language.

(2) For purposes of s. 551.22 (3), 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 the particular securities to be offered and sold.

(3) (a) Any evidence of debt issued by a domestic non-profit corporation to persons other than its members is exempted under s. 551.22 (8), Stats., if the issuer or a licensed broker-dealer files a notice of the proposed issuance with the commissioner prior to the offering, including: 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, the trust indenture and the 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); and such additional information as the commissioner may re-

(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 two 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 three 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 five-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 under s. SEC 2.025.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and rec. 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 rec. (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. 283, 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. (6) (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) (j), Register, December, 1982, No. 324, eff. 1-1-83; cr. (10) (j), Register, August, 1983, No. 332, eff. 9-1-83.

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 ad-

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ministrative 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 lim-

ited 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.

History: Cr. Register, August, 1983, No. 332, eff. 9-1-83.

SEC 2.03 Exemption proceedings. (1) A notice of exemption pursuant to s. 551.22 or 551.23, Stats., shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. SEC 7.01 (2), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the commissioner prior to the effective date of an exemption, in connection with the exami-

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nation of any notice filed pursuant to s. 551.22 or 551.23, 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 s. 551.22 or 551.23 Stats., has the same effect as an order denying or revoking an exemption pursuant to s. 551.24, 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; r. and recr. (1), Register, December, 1981, No. 312, eff. 1-1-82; am. (1), Register, December, 1982, No. 324, eff. 1-1-83.