

**ORDER OF THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN
AMENDING AND ADOPTING RULES**

To amend DFI-Sec 2.02(4)(a)3.b., 2.028(4), and 7.02(1)(b); and to create 2.02(9)(n) and 9.01(1)(e); relating to securities registration exemptions involving capital formation by businesses.

Pursuant to sections 551.63(1) and (2), 551.23(8)(f), 551.23(18), and 551.53(1)(b), Wis. Stats., the Division of Securities of the Department of Financial Institutions amends and adopts rules interpreting those sections as follows:

Final Adopted Rules
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

SECURITIES LAW REGISTRATION EXEMPTION
CAPITAL FORMATION RULES

SECTION 1. DFI-Sec 2.02(4)(a)3.b. is amended to read:

DFI-Sec 2.02(4)(a)3.b. Being a corporation, partnership, limited liability company or association whose net assets exceed \$1,000,000 and either whose principal purpose as stated in its articles, by-laws or other organizational instruments is investing in securities, or whose primary business is investing in developmental stage companies or eligible small business companies as defined in the regulations of the small business administration at 13 CFR 108.2.

ANALYSIS: This SECTION and those following comprise a package of securities registration exemption rule provisions (and a related advertising filing exclusion) for use by businesses in raising investment capital. They are part of a series of recommendations stemming from the February 28, 2001 Governor's Summit on Venture Capital which focused on ways to develop equity capital for businesses. This SECTION contains an amendment to expand the definition of "venture capital company" in DFI-Sec

2.02(4)(a)3.b. for purposes of the so-called “institutional investor” rule under the registration exemption in s. 551.23(8)(f), Stats., to include a limited liability company. The current definition is limited to entities organized as corporations, partnerships or associations, and the amendment is needed to specifically enable a venture capital company organized as an LLC to qualify for use of this institutional investor exemption rule when the LLC is investing in the securities of issuers/businesses seeking capital.

SECTION 2. DFI-Sec 2.02(9)(n) is created to read:

DFI-Sec 2.02(9)(n) Any offer or sale of a security by an issuer in a transaction that meets each of the following requirements based on the North American Securities Administrators Association Model Accredited Investor Exemption:

1. Sales of the securities shall be made only to persons who are accredited investors as defined in 17 CFR 230.501(a), or who the issuer reasonably believes are accredited investors.
2. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
3. The issuer reasonably believes that all purchasers are purchasing for investment

and not with the view to or for sale in connection with a distribution of the security. Any

resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under s. 551.25 or 551.26, Stats., or to an accredited investor pursuant to an exemption available under ch. 551, Stats.

4. Neither the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's officers, directors, general partners, beneficial owners of 10 % or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. 551.23(19)(c), Stats., absent an applicable waiver under s. 551.23(19)(c)2., Stats., and with the timing of the disqualification events described in s.551.23(19)(c)1., Stats., computed for purposes of this exemption from the date of the filing under subd. 9. of this section.

5. A general announcement of the proposed offering may be made by any means, which shall include each of the following information items only, except as provided in subd. 6., and unless additional information is specifically permitted by the division:

- a. The name, address and telephone number of the issuer of the securities;
- b. The name, a brief description and price, if known, of any security to be issued;

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- c. A brief description of the business of the issuer in 25 words or less;
- d. The type, number and aggregate amount of securities being offered;
- e. The name, address and telephone number of the person to contact for additional

- information; and
- f. A statement disclosing that sales will only be made to accredited investors, that no money or other consideration is being solicited or will be accepted by way of this general announcement, and that the securities have not been registered with or approved by any state securities agency or the U. S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.
6. The issuer, in connection with an offer, may provide information in addition to the general announcement under subd. 5., if the information meets either of the following requirements of this subdivision:
 - a. The information is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
 - b. The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
 7. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
 8. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.
 9. The issuer shall file with the division within 15 days after the first sale in this state in reliance on this exemption, a copy of the general announcement, a consent to service of process, a fee of

\$200, and a completed Form AI as prescribed in s DFI-Sec 9.01(1)(e) for use of this exemption.

ANALYSIS: This SECTION creates a new transactional registration exemption rule in DFI-Sec 2.02(9)(n) pursuant to the authority under sec. 551.23(18), Wis. Stats., based upon the Model Accredited Investor Exemption developed by the North American Securities Administrators Association (“NASAA”) that was adopted on April 27, 1997 by vote of the NASAA membership, including Wisconsin. To date, securities registration exemptions based on the NASAA Model Accredited Investor Exemption have been enacted in rule or statute form by a total of 26 states to permit issuers of securities to raise capital on a multistate basis and in coordination with a federal registration exemption.

The Division has determined that the regulatory structure of the NASAA Model Exemption, which applies to offerings directed solely to “accredited investors” meeting substantial income and/or

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net worth requirements, together with the requirements for use of the Exemption as set forth therein, including a filing requirement with the Division, provides the basis for the Division’s finding that, for offerings meeting the Model Exemption rule’s requirements, registration is not necessary or appropriate for the protection of investors.

This exemption rule incorporates all of the aspects of the NASAA Model Exemption which enables issuers to raise capital from persons who qualify as “accredited investors” (as defined federally in Rule 501 under Regulation D of the Securities Act of 1933), and where the requirements for use of the exemption are met. The exemption permits issuers to use general advertising in the form of a general announcement containing prescribed information (see subd. 5.) and to offer through an electronic/Internet database (ACE-Net, as developed with the U.S. Small Business Administration) of persons who have been prequalified as accredited investors (See subd. 6.a.). The exemption is not available for use by so-called “blind pool” issuers (that are in the development stage which have no business plan, or whose business plan is to acquire an unidentified company/entity--See subd. 2.),

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and the exemption contains the same type of “bad boy disqualification-from-use” provision (see subd. 4.) that is currently contained both in the Wisconsin registration exemption in s. 551.23(19)(c), Wis. Stats. for federal Regulation D, Rule 505 exempt offerings, and the Wisconsin-Issuer-Exemption-By-Filing provision in rule DFI-Sec 2.028(3). The filing requirement in subd. 9. necessitates a filing with the Division within 15 days after the first sale in Wisconsin, and specifies the information,

materials and fee (of \$200) to be submitted, which fee is authorized to be adopted by rule pursuant to s. 551.52(3), Stats.

As a result of the public comment process, the so-called “bad boy disqualification” provision in subd. 4. of the rule was revised to add language that both: (i) specifically cross-references the disqualification waiver language in subd. (c)2. of 551.23(19)(c); and (ii) provides that the timing of the disqualification events for purposes of the Exemption is computed from the date of the filing under subd. 9. Also as a result of the public comment process, the filing requirement language in subd. (9)(n)9. of this Exemption was modified from its Public Comment Draft form. Because the NASAA Model Accredited Investor Exemption upon which this

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Exemption is based does not require the filing of any offering circular or prospectus, in order to have the Wisconsin exemption be uniform with the NASAA Model which has been adopted in 26 states, language in the Public Comment Draft that had required the filing of a copy of the offering circular or prospectus was deleted.

SECTION 3. DFI-Sec 2.028(4) is amended to read:

DFI-Sec 2.028(4) The aggregate offering price of the securities sold in the offering to

persons in Wisconsin pursuant to this exemption does not exceed ~~\$1,000,000~~ \$5,000,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502 (a) of Regulation D under the securities act of 1933.

ANALYSIS: This amendment increases to \$5 million (from the current \$1 million) the maximum offering amount that can be raised from investors under the existing Wisconsin-Issuer-Registration-Exemption-by-Filing provision in DFI-Sec 2.028(4) adopted pursuant to s. 551.23(18), Stats. This amendment will enable businesses to substantially increase the amount of investment capital that can be raised under this existing registration exemption.

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SECTION 4. DFI-Sec 7.02(1)(b) is amended to read:

DFI-Sec 7.02(1)(b). Advertising published or circulated relating to a security exempted under s. 551.22, Stats., except under DFI-Sec 2.01(4)(a); or relating to a transaction exempted under s. 551.23(4), (5), (6), (7), or (8), Stats. or s. DFI-Sec 2.02(9)(m) ; or relating to a transaction exempted under s. 551.23(12), (13) or (14), Stats., if the issuer has any securities registered under section 12 of the securities exchange act of 1934 or exempted from registration by section 12 (g) (2) (G) thereof or is an investment company registered under the investment company act of 1940; or relating to investment company registered under the investment company act of 1940; or relating to

a transaction exempt from registration under s. DFI-Sec 2.028 where the advertising has been filed with the division under s. DFI-Sec 2.028(8)(c) ; or relating to a transaction exempt from registration under s. DFI-Sec 2.02(9)(n); or relating to a transaction subject to the filing requirements of section 14 (d) of the securities exchange act of 1934; provided the transaction is not subject to the filing requirements of s. DFI-Sec 6.05(1).

ANALYSIS: This SECTION amends the current rule in DFI-Sec 7.02(1)(b) that lists various exemptions from the advertising filing requirements of s. 551.53(1)(b), Stats. The amendment adds to the list of various securities registration exemptions for which advertising materials are exempt from having to be separately filed, a cross-reference to the new Exemption created in rule DFI-

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Sec 2.02(9)(n) above based on the NASAA Model Individual Accredited Investor Exemption.

The amendment language in this SECTION was modified from its Public Comment Draft form to reflect the changes made in the preceding SECTION to the filing requirements in subd. (n)9. of the Exemption. Because subd. (n)9. of the new Exemption, as modified to be uniform with the NASAA Model Exemption filing requirement, contains language providing that only the general announcement advertising materials

relating to the offering be filed with the Division, there is no need for a separate filing of such general announcement materials under the advertising filing requirements of s. 551.53(1)(b), Stats.

SECTION 5. DFI-Sec 9.01(1)(e) is created to read:

DFI-Sec 9.01(1)(e) AI. Model accredited investor exemption uniform notice of transaction.

ANALYSIS: This SECTION adopts the NASAA notice form to be submitted in connection with the filing for use of the Wisconsin Exemption that is based on the NASAA Model Exemption.

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The rules and amendments contained in this Order shall take effect as provided in s. 227.22(2)(intro.), Stats., on the first day of the month following the date of publication in the Wisconsin Administrative Register.

DATED at Madison, Wisconsin, this _____ day of _____, 2001.

[SEAL]

PATRICIA D. STRUCK
Administrator
Division of Securities