



(JCFAR-Senate cc)

SEP 05 2001

State of Wisconsin
Department of Financial Institutions

Scott McCallum, Governor

John F. Kundert, Secretary

August 31, 2001

The Honorable Fred Risser, President
Wisconsin State Senate
Attn: Donna Doyle
c/o Office of Senate Journal and Records
119 Martin Luther King Blvd, Ste. 501
Madison, WI 53702

The Honorable Scott Jensen
Speaker of the Assembly
Attn: Ken Stigler
c/o Office of Assembly Records
1 E. Main St., Ste. 402
Madison, WI 53702

Re: Clearinghouse Rule 01-083/Administrative Rule-Making Notice and Report to
Legislative Standing Committees Under secs. 227.19(2) and (3), Wis. Stats.

Gentlemen:

The Division of Securities of the Department of Financial Institutions hereby submits for filing with the Wisconsin Legislature pursuant to the administrative rule-making requirements of secs. 227.19(2) and (3), Wis. Stats., copies in triplicate of the Notice and Report required thereunder consisting of:

- (1) Proposed administrative rules in proposed final form as specified in sec. 227.14(1), Wis. Stats.
- (2) A Report as prescribed in sec. 227.19(3), Wis. Stats.
- (3) A fiscal estimate for the proposed rules.
- (4) A copy of the Clearinghouse Report of the Wisconsin Legislative Council relating to the public comment draft form of the proposed rules.

If you have any comments or questions regarding the above, please telephone me at 266-3414.

Very truly yours,

Randall E. Schumann
Legal Counsel for the Division

Attachments

- cc: Revisor of Statutes Bureau
- Joint Committee for Review of Administrative Rules
- Patricia D. Struck, Administrator, Division of Securities
- Mark Schlei, DFI Deputy General Counsel



Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768
Voice: (608) 266-1064

Fax: (608) 256-1259

Courier: 345 W. Washington Ave. 4th Floor Madison, WI 53703
TTY: (608) 266-8818
Internet: www.wdfi.org

**PROPOSED 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:

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;

- 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

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.),

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

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.

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-

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.

* * * * *

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

**REPORT PREPARED BY THE
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF SECURITIES
RELATING TO PROPOSED FINAL FORM OF 2001 CAPITAL FORMATION RULES**

(a) Statement Explaining Need for Proposed Rules

The rulemaking procedures under Chapter 227 of the Wisconsin Statutes are being implemented to propose for adoption a package of securities registration exemption rule provisions (and a related advertising filing exclusion) for use by businesses in raising investment capital. The registration exemption rule proposals 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. Additional Securities Law-related capital formation proposals stemming from the Summit will be contained in statutory revisions to the securities registration exemptions in secs. 551.23(8)(g), 551.23(10) and 551.23(11) of the Wisconsin Uniform Securities Law to be considered by the Wisconsin legislature during the 2001-2002 Session.

The proposed capital formation subject matter rules, together with a related advertising filing exemption rule, are set forth in five Sections that do the following:

1. Create a new securities transaction 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 Model Accredited Investor Exemption have been enacted in rule or statute form by a total of 26 states.
2. Increase 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) under the exemption authority granted in sec. 551.23(18), Wis. Stats.
3. 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 sec. 551.23(8)(f), Wis. Stats., to include a limited liability company (which definition currently is limited to entities organized as corporations, partnerships or associations).
4. Add to the list in DFI-Sec 7.02(1)(b) of exemptions from the advertising filing requirements of sec. 551.53(1)(b), Wis. Stats., the advertising materials separately filed by businesses and other issuers with the Division to claim use of the new proposed registration exemption in DFI-Sec 2.02(9)(n) based on the NASAA Model Accredited Investor Exemption.
5. Adopt 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.

* * * *

(b) Explanation of Modifications Made as a Result of the Public Hearing and Comment Process

- As a result of the public comment process, the Exemption created in new rule DFI-Sec 2.02(9)(n) in SECTION 3 of the Public Comment Draft, based upon the North American Securities Administrators Association Model Accredited Investor Exemption, was modified in the following respects: (1) 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.; and (2) The filing requirement language in subd. 9. of the Exemption was modified from its Public Comment Draft form. Because the NASAA Model Accredited Investor Exemption upon which the 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.
- As a result of the public comment process, the language of the amendment in SECTION 4 relating to DFI Sec 7.02(1)(b) was modified from its Public Comment Draft form to reflect the changes made to the filing requirements in subd. 9. of the new Wisconsin Exemption in DFI-Sec 2.02(9)(n). Because subd. 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, the advertising filing exclusion language was modified to so provide.

* * * *

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Administrator Patricia D. Struck, Division of Securities, Department of Financial Institutions, as Hearing Officer, and Comment Letters Received.

- Randall E. Schumann, Legal Counsel for the Division of Securities, Department of Financial Institutions, made an appearance on behalf of the Division's staff to submit documents and information for the record and to be available both to ask questions and to respond to questions regarding hearing testimony.
- Kenneth L. Hojnacki, Director of the Bureau of Licensing & Compliance for the Division of Securities, Department of Financial Institutions, was present on behalf of the Division's staff to be available both to ask questions and to respond to licensing-related questions regarding hearing testimony.
- David A. Cohen, Supervising Attorney of the Bureau of Registration & Enforcement for the Division of Securities, Department of Financial Institutions, was present on behalf of the Division's staff to be available both to ask questions and to respond to registration-related questions regarding hearing testimony.
- Attorney Joseph P. Hildebrandt, Foley & Lardner, Madison, WI.
- Attorney Terry D. Nelson, Foley & Lardner, Madison, WI.

* * * *

Comment Letters Received

- (1) Comment letter dated August 22, 2001 from Attorney Joseph P. Hildebrandt, Foley & Lardner, Madison, WI.

* * * *

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

(1) Acceptance of recommendations in whole:

Under 1. Statutory Authority

--Consistent with the Rules Clearinghouse comment in paragraph a. regarding the ANALYSIS for new rule DFI-Sec 2.02(9)(n), the Division added language to the ANALYSIS setting forth the basis upon which the Division has found that registration of offerings based on the Exemption is not necessary or appropriate for the protection of investors.

--Consistent with the Rules Clearinghouse comment in paragraph b. regarding the ANALYSIS for new rule DFI-Sec 2.02(9)(n), the Division added language to the ANALYSIS setting forth a reference to the statutory authority in s. 551.52(3), Stats., permitting the Division to prescribe fees as adopted by rule.

Under 2. Form, Style and Placement in Administrative Code

--Consistent with the Rules Clearinghouse comment in paragraph a., the order of SECTIONS 2 and 3 are reversed.

Under 5. Clarity, Grammar, Punctuation and Use of Plain Language

--In response to the Rules Clearinghouse comment in paragraph a. regarding DFI-Sec 2.02(9)(n)5., language was added to both: (i) clarify that the general announcement contain each of the listed information items only; and (ii) add a clause containing the language "except as provided in subd. 6."

(2) Rejection of recommendations

Under 5. Clarity, Grammar, Punctuation and Use of Plain Language

--The Rules Clearinghouse comment in paragraph b (which suggested that the Division may wish to include an "Initial Applicability" provision in section DFI-Sec 2.02(9)(n)), was not accepted because this is a newly created rule whose applicability will not commence until its effectiveness, such that there is no need for an Initial Applicability section.

* * * *

(e) No final regulatory flexibility analysis is included on the basis that the Division of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the rules will not have a significant economic impact on a substantial number of small businesses.

* * * *



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. 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 01-083

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

Submitted by **DEPARTMENT OF FINANCIAL INSTITUTIONS**

07-13-01 RECEIVED BY LEGISLATIVE COUNCIL.

08-10-01 REPORT SENT TO AGENCY.

RS:RW:jal;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 01-083

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 Staff, dated September 1998.]

1. Statutory Authority

a. The agency cites s. 551.23 (18), Stats., as statutory authority for the rule, along with other statutes. A reference to this section is also included in the analysis following s. DFI-Sec 2.02 (9) (n). That analysis states that the proposed change will "... enable businesses to substantially increase the amount of investment capital that can be raised under this existing registration exemption." However, s. 551.23 (18), Stats., authorizes the agency to exempt transactions which it "... finds that registration is not necessary or appropriate for the protection of investors." There does not appear to be such a "finding" in the rule.

b. The agency may wish to include a reference to the statutory authority that permits the collection of fees, as s. DFI-Sec 2.09 (9) (n) 9. requires an issuer to pay a fee of \$200.

2. Form, Style and Placement in Administrative Code

The order of SECS. 2 and 3 should be reversed.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. DFI-Sec 2.02 (9) (a) 5., it is not clear whether *all* of the listed information must be provided, or what the consequences are if the information does not comply with

requirements. Also, since subpar. b. expands those items contained in subd. 5., a clause stating that "except as provided in subd. 6." should be included in subd. 5.

b. The agency may wish to include an "Initial Applicability" section to clarify which applications will be subject to the revised rule.



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Comment Attached YES NO

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[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

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REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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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:

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

enable businesses to substantially increase the amount of investment capital that can be raised under this existing registration exemption.

cf.
s. 551.23
(18)

SECTION 3. DFI-Sec 2.02(9)(n) is created to read:

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DFI-Sec 2.02(9)(n) Any offer or sale of a security by an issuer in a transaction that meets ^{all} 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 ^(a) or ^(b) 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

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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 any prospectus, circular or other material to be delivered to offerees, 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

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development stage which have no business plan, or whose business plan is to acquire an unidentified company/entity--See subd. 2.), 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 to be submitted.

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

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 Model Accredited Investor Exemption.

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