

SEC 5

CERTIFICATE

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

STATE OF WISCONSIN  
DEPARTMENT OF STATE  
RECEIVED AND FILED

JAN 23 1976

DOUGLAS LAPOLETTE  
SECRETARY OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Jeffrey B. Bartell, Commissioner of Securities for the State of Wisconsin and custodian of the official records of the Office of the Commissioner of Securities, certify that the attached rules relating to: (1) defining the phrase "device, scheme or artifice to defraud" under s. 551.41(1), Wis. Stats., to include situations in which corporations, partnerships, or other securities issuers having a specified minimum number and percentage of Wisconsin security holders, engage in certain "going private" transactions which are not in compliance with the provisions of the rule; (2) excluding from the term "stock split" as used in the registration exemption provision of s. 551.23(14), Wis. Stats., any action by a corporation having the effect of consolidating securities of a class of outstanding securities into a smaller number of securities of that class; and (3) adding to two existing rule provisions language which removes advertising filing exemptions where proposed transactions by a securities issuer would cause the issuer's securities to be subject to delisting from a national securities exchange, loss of NASDAQ trading authorization, or termination of its reporting status or registration under federal or state securities laws; were duly approved and adopted by the Commissioner of Securities on January 23, 1976.

I further certify that I have compared said copies of the rules with the originals on file in this Office, and that the same are true and correct copies thereof, and of the whole of such originals.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the official seal of this Office on this 23rd day of January, 1976, in the City of Madison.



Jeffrey B. Bartell  
COMMISSIONER OF SECURITIES

(SEAL)

JBB:jkn

Filed January 23, 1976

OFFICE OF THE  
COMMISSIONER OF SECURITIES  
STATE OF WISCONSIN

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In the Matter of  
SEC 5.05, Wis.  
Adm. Code and  
Related Provisions

ORDER ADOPTING  
PERMANENT RULES

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Pursuant to the authority vested in the Wisconsin Commissioner of Securities under section 551.63, Wis. Stats., to make, amend and rescind any rules, forms and orders that are necessary to carry out Chapter 551, the Wisconsin Uniform Securities Law, and to protect public investors, Wisconsin Commissioner of Securities Jeffrey B. Bartell hereby adopts and amends rules as follows:

SECTION 1. Wis. Adm. Code section SEC 2.02(11) is created to read as follows:

SEC 2.02(11) "Stock split" within the meaning of section 551.23(14), Wis. Stats., does not include any action by the corporation having, or intended to have, the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class.

SECTION 2. Wis. Adm. Code section SEC 5.05 is created to read as follows:

SEC 5.05 Going private transactions. (1) An issuer whose equity securities of any class are or have been registered under ch. 551 or predecessor laws or s. 12 of the securities exchange act of 1934, and which, on the date of the initial offer, notice or solicitation relating to the proposed transaction, are held of record by 100 or more persons in this state, which number of

holders constitutes 20 percent or more of the total number of holders of record of such securities, or any affiliated person of such issuer, is deemed to employ a "device, scheme or artifice to defraud" holders of such securities, or to engage in an "act, practice or course of business which operates or would operate as a fraud or deceit" upon such holders, within the meaning of section 551.41, Wis. Stats., if such issuer or person enters into any transaction (including a series of transactions) in this state involving a purchase of any equity security of the issuer, other than an arm's length purchase by a person not affiliated with the issuer, which transaction has, or is intended to have, either of the effects described in subsection (2) hereof, unless:

(a) The terms of the transaction, including compensation for the equity securities to be purchased, are fair to all holders of the securities. The terms of the transaction shall be presumed to be fair if: (i) the compensation is no less than that independently recommended by two qualified, independent appraisers after reasonable investigation considering all relevant factors, and the issuer's board of directors states that such compensation is fair to security holders and was determined in good faith; (ii) the latest public offering of the securities occurred more than ten years prior to the transaction, or the compensation is greater than the public offering price; and (iii) more than 50 percent of the securities held by persons not affiliated with the issuer approve the transaction; provided, however, the absence of one or more of the above conditions shall

create no presumption as to the fairness or unfairness of the terms of the transaction;

(b) Such issuer or person mails or delivers to each holder of record of the securities and files with the commissioner, at least 20 days prior to any purchase or shareholder vote authorizing such purchase (if required), a complete and accurate description of the transaction, including, without limitation, the identity of the parties to the transaction, the source and amount of funds, the purpose of the transaction, any material plans or proposals concerning the issuer, any contracts, arrangements or understandings involving the issuer with respect to its equity securities, a statement of the intentions of all affiliated persons (if known), current financial information concerning the issuer including pro forma data showing the effect of the transaction, federal tax consequences of the transaction to security holders and the issuer, the nature of the market for the securities before and after the transaction, the price at which purchases will be made and the basis therefor, summaries in reasonable detail of all appraisal reports or opinions (including any contrary or additional to those relied upon) and a statement that copies of such reports or opinions will be provided upon request, a statement of all projected expenses in connection with the transaction, and all other material information;

(c) If the transaction includes a tender offer or request

or invitation for tenders, such offeror shall: (i) permit tenders to be withdrawn at any time within seven days and after 60 days from the date of the offer; (ii) purchase on a pro rata basis those securities tendered within ten days from the date of the offer, if more valid tenders are received within that period than the offeror has agreed to accept; and (iii) purchase on substantially identical terms and for identical compensation from all validly tendering security holders;

(d) Security holders of the class not affiliated with the issuer shall be treated not less favorably in connection with the transaction than any who are so affiliated; and

(e) The commissioner does not disallow the transaction by order within 15 days of the filing of the description of the transaction required by subsection (1)(b), upon a finding that the transaction tends to operate as a fraud or deceit upon holders of the securities, or would so operate.

(2) The provisions of subsection (1) apply to a transaction which has, or is intended to have, either of the following effects:

(a) Causing a class of equity securities of the issuer to be subject to delisting from a national securities exchange registered under the securities exchange act of 1934, or cease to be authorized to be quoted in NASDAQ; or

(b) Causing a class of equity securities of the issuer to be eligible for termination of registration, or suspension of reporting requirements, under the securities exchange act

of 1934 or under ch. 551.

(3) "Affiliated" refers to persons who are partners, officers or directors of the issuer (or persons occupying a similar status or performing similar functions), or directly or indirectly in control of, controlled by, or under common control with, the issuer. Control may be presumed by ownership of, or the power to vote, more than 5 percent of the outstanding voting securities of the issuer (either alone or pursuant to an arrangement or understanding with one or more other persons).

SECTION 3. Wis. Adm. Code section SEC 6.02(1)(b) is amended to read as follows:

SEC 6.02(1)(b) Advertising published or circulated relating to a security exempted under section 551.22, Wis. Stats., except under Wis. Adm. Code section SEC 2.01(2); or relating to a transaction exempted under section 551.23(4), (5), (6), (7) or (8), Wis. Stats.; or relating to a transaction exempted under section 551.23(12), (13) or (14), Wis. 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; provided the transaction does not have, nor is intended to have, either of the effects described in Wis. Adm. Code section SEC 5.05(2);

SECTION 4. Wis. Adm. Code section 6.02(1)(e) is amended to read as follows:

SEC 6.02(1)(e) Advertising, including but not limited to annual


reports and proxy statements, published by an issuer specified in section 551.22(3), (4), (5) or (6), Wis. Stats., or registered under section 12 of the securities exchange act of 1934, or exempted from registration by section 12(g)(2)(G) thereof, relating to transactions exempted under section 551.23, Wis. Stats.; provided the transaction does not have, nor is intended to have, either of the effects described in Wis. Adm. Code section SEC 5.05(2); and

EFFECTIVE DATE

The rules and amendments hereinabove shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in section 227.026(1), Wis. Stats.

Issued this 23rd day of January, 1976, at Madison, Wisconsin.

OFFICE OF THE COMMISSIONER OF SECURITIES



JEFFREY B. BARTELL  
Commissioner of Securities

(SEAL)

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