

Chapter SEC 32

EXEMPTION AND REGISTRATION OF FRANCHISES

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History: Emergency rules covering general subject matter were adopted effective July 1, 1972.

SEC 32.01 Requirement for exemption of franchises. Franchisors desiring to offer to sell or sell their franchises in this state pursuant to the exemption provided by s. 553.22, Stats., shall, at least 10 days prior to making an offer to sell or a sale in this state:

(1) Advise the commissioner of their plans to offer to sell or to sell franchises in this state;

(2) Include in the advice a showing of qualifications under s. 553.22 (1) and (2), Stats., and ss. SEC 31.01 (1) and (4), Wis. Adm. Code, respectively;

(3) File with the commissioner a copy of the offering circular, prospectus or disclosure document containing the information required to be disclosed under s. 553.22 (3), Stats., to prospective investors, together with a consent to service of process as required by s. 553.22 (4), Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; am. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.02 Transitional measures with regard to registration of franchises. **History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.02 Periodic reports required for exempt franchisors. Franchisors, or their agents, or representatives offering to sell or selling franchises in this state under s. 553.22, Stats., shall file with the commissioner within a period of 120 days from the last date of each of their fiscal years a copy of their annual report and audited certified financial statements or unaudited financial statements prepared by a certified public accountant if the requirement for submission of audited financial statements has been waived by the commissioner under s. SEC 35.05 (1) (b) 2., Wis. Adm. Code.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.03 and am. (1) and r. (2), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.03 Material events or material changes affecting exempted franchisors and their franchises. Franchisors whose franchises are exempted under ss. 553.22, 553.23 or 553.25, Stats., shall

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be required, as a condition of maintenance of the exemption after confirmation thereof as required by s. SEC 32.01, Wis. Adm. Code, to notify the commissioner in writing within 30 days after the happening of any material event or material change within the meaning of s. SEC 31.01 (3), Wis. Adm. Code, affecting the exempted franchises or the franchisor.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.04 and am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.04 Exemption information filings. If any information is reasonably required by the commissioner to establish an exemption under ss. 553.22, 553.23 or 553.25, Stats., and the request is communicated by the commissioner to the applicant or interested person in any form within 10 days of the date of receipt by the commissioner of the application, the effective date of the exemption will not commence until the information so required is received by the commissioner and a reasonable period of time, not to exceed 10 days thereafter, shall have expired, unless a shorter period of time is permitted by the commissioner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.04 and am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.05 Exemptions by the commissioner. (1) The following transactions, in addition to those transactions exempted under s. SEC 32.02, Wis. Adm. Code, shall, pursuant to s. 553.25, Stats., be exempted from s. 553.21, Stats.;

(a) Any offer to sell or sale by a governmental entity of a franchise for cable telecommunications rights except offers to sell and sales of such franchises where 1) the franchisee of a governmental entity offering or selling such rights sells or offers rights to participate in such a business or a prospective business of a cable telecommunications nature, or 2) a franchisee or prospective franchisee of a governmental entity advertises, offers to sell or sells an interest in such franchise or prospective franchise which may consist of, but not be limited to, access to the use of existing facilities, rights granted by the governmental entity, or rights or facilities to be acquired. Any offer to sell or sale of a franchise which is within the scope of this particular exemption shall not be subject to the provisions of s. SEC 34.02, Wis. Adm. Code.

(b) Any offer to sell or sale of a franchise which includes payment by a person for the right to participate in a distribution or marketing plan where such payment, computed on an annual basis, does not exceed \$100 in excess of the bona fide wholesale price for such product or service in wholesale transactions.

(c) Any offer to sell or sale of an interest in a franchise by a person, whether or not a franchisor, a franchisee, a subfranchisor or a subfranchisee, to any person.

(2) Unless otherwise specified, nothing in this rule shall be construed so as to make inapplicable the provisions of s. SEC 34.02, Wis. Adm. Code, nor shall this rule prevent the commissioner from exercising his authority under s. 553.28 (1) (a), (b), (c), (e), (f) or (h), Stats.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.06, Register, December, 1980, No. 300, eff. 1-1-81.

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SEC 32.06 Form of application. (1) All applications for registration of an offer to sell or sale of a franchise, all registration renewal statements and all applications to amend the registration statement shall be filed upon the uniform franchise registration application adopted in September, 1975 by the Midwest Securities Commissioners Association and adopted in April, 1980 by the North American Securities Administrators Association.

(2) In determining whether an applicant has complied with the requirements of the uniform franchise registration application, the commissioner shall follow the Guidelines for Preparation of the Uniform Franchise Offering Circular and Related Documents adopted in October, 1977 by the Midwest Securities Commissioners Association and in April, 1980 by the North American Securities Administrators Association. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of \$10.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.07 Prospectus or offering circular requirements. **History:** Cr. Register, October, 1972, No. 202, eff. 11-1-72; r. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.07 Renewal or amendment of registration statements.

(1) A registration renewal statement under s. 553.30, Stats., shall be filed on a form prescribed by the commissioner not less than 15 business days prior to the end of one year from the effective date of the registration statement, and shall be accompanied by the latest form of prospectus or offering circular, meeting the requirements of s. SEC 32.06, used in connection with the sale of the registered franchises together with a balance sheet of the franchisor as of a date within 120 days of the proposed renewal date and an income statement and analysis of surplus of the franchisor for its last fiscal year preceding the date of the balance sheet and for the period between the close of the franchisor's last fiscal year and the date of the balance sheet, all meeting the requirements of s. SEC 35.05. If no stop order or other order under s. 553.28, Stats., is in effect, renewal of the registration statement becomes effective on the day on which the prior registration statement expires or at an earlier time as the commissioner determines.

(2) An application to amend a registration statement under s. 553.31, Stats., shall be filed on a form prescribed by the commissioner at any time during the effectiveness of a registration statement under s. 553.29, Stats. The commissioner may take, upon such filing, action appropriate in the public interest or for the protection of investors under s. 553.26 (20) or 553.28, Stats. The registration statement or registration renewal statement filed with the commissioner remains in effect while an application to amend such registration statement or registration renewal statement is being reviewed by the commissioner. If the commissioner does not require additional information under s. 553.26 (20), Stats., or if no stop order or other order under s. 553.28, Stats., is in effect, the amendment to the registration statement or registration renewal statement becomes effective 15 business days after receipt by the commissioner of the application to amend the registration statement or registration renewal statement or at an earlier time determined by the commissioner. In the case of an application for registration or a registration renewal statement, the effective date of the original application for registration or, as the case may be, registration renewal statement shall remain the date from which time is measured for purposes of renewal of

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registration statements under s. SEC 32.07, Wis. Adm. Code, and the filing of periodic reports under s. SEC 32.08, Wis. Adm. Code.

(3) In the absence of the filing of a registration renewal statement under s. 553.30, Stats., or of an application to amend a registration statement under s. 553.31, Stats., the commissioner may by order extend the offering period of a registration statement subject to conditions the commissioner prescribes for the protection of investors.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.08 and am. Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.08 Periodic reports for franchisors or franchise registrants. (1) Each franchisor or registrant of franchises under s. 553.29 (2), Stats., shall file with the commissioner quarterly commencing 90 days after the effective date of its registration statement any reports required by order, on a form prescribed by the commissioner, specifying the number of franchises sold in the state pursuant to the registration statement, the selling prices of each of the franchises, and graphic representations of the exclusive areas, if any, sold to the franchisees.

(2) Each franchisor or registrant of franchises under s. 553.29 (2), Stats., shall file with the commissioner any additional reports of sales of franchises and financial statements required by order, and shall furnish the commissioner, pursuant to s. 553.31 (1), Stats., with written notice within 30 days after the happening of any material event or material change affecting the franchisor or the franchises registered.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.09 and am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.09 Registration proceedings. If, in connection with the examination of any application for registration under s. 553.26, Stats., any information is reasonably required by the commissioner prior to the effective date of an application for registration under s. 553.29 (1), Stats., and the request is communicated by the commissioner to the applicant or interested person in any form within the 15 business day period specified in s. 553.29 (1), Stats., which period shall commence on the date of receipt by the commissioner of the application for registration, the filing of an application for registration is made when the additional information so required is received by the commissioner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.10 and am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.10 Underscoring changes. If any registration renewal statement under s. 553.30, Stats., or any application for amendment to a registration statement under s. 553.31, Stats., alters the text of the prospectus or offering circular, or of any item, exhibit or other document previously filed as a part of the application for registration under s. 553.26, Stats., the changes in the text shall be indicated by means of underscoring or in some other appropriate manner.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.11 and am., Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.11 Signing of applications. An application for registration under s. 553.26, Stats., a registration renewal statement under s. 553.30, Stats., or an application to amend a registration statement under s. 553.31, Stats., should be signed by an officer or general partner of the applicant, as the case may be, however, it may be signed by another per-

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son holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, should include, as an additional exhibit, a copy of said power of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.12, Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.12 Escrow of franchise fees and other consideration. (1)

In a case where the applicant has failed, within the meaning of s. 553.27 (2), Stats., to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the commissioner may impose, as a condition to the registration of a franchise offering, an escrow of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

(2) When an escrow condition is imposed under sub. (1) of this rule, 100% of franchise fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of the funds, be placed with the depository until the commissioner takes further action pursuant to sub. (1) of this rule. All checks shall be made payable to the depository.

(3) When an escrow condition is imposed under sub. (1) of this rule, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt, in a form approved by the commissioner. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor.

(4) Funds subject to an escrow condition imposed under sub. (1) of this rule, shall be placed in a separate trust account with a national bank located in Wisconsin or a Wisconsin bank or trust company. A written consent of the depository to act in such capacity shall be filed with the commissioner.

(5) (a) The commissioner shall authorize the depository to release to the franchisor such amounts of the escrowed funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement or that for other reasons the escrow is no longer required for the protection of franchisees.

(b) An application for an order of the commissioner authorizing the release of escrowed funds to the franchisor shall be verified and shall contain:

1. A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound or escrow condition;

2. A statement of the depository signed by an appropriate officer setting forth the aggregate amount of escrow funds placed with the depository;

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3. The names of each franchisee (or subfranchisor) and the amount held in the escrow for the amount of each franchisee (or subfranchisor);

4. A showing that the franchisor, with respect to each franchise the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training or other items, as the case may be; and

5. Such other information as the commissioner may reasonably require.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.13 and am. (2), Register, December, 1980, No. 300, eff. 1-1-81.

SEC 32.13 Surety bond in lieu of escrow. In lieu of the imposition of an escrow condition under s. 553.27 (2), Stats., and s. SEC 32.13, a franchisor may post a surety bond in such amount as shall be required by the commissioner. Such bond shall be issued by a corporate surety authorized to transact business in the state of Wisconsin, conditioned upon the completion by the franchisor of his obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering.

History: Cr. Register, October, 1972, No. 202, eff. 11-1-72; renum. from SEC 32.14, Register, December, 1980, No. 300, eff. 1-1-81.