

CR 84-5

CERTIFICATE

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

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Richard R. Malmgren, Commissioner of the State of Wisconsin Office of the Commissioner of Securities and custodian of the official records of said agency, do hereby certify that the annexed copy of rules concerning the operation of ch. 551., Stats., the Wisconsin Uniform Securities Law, relating to repeal of certain limited offering registration exemption provisions and examination fees, and amending a definition affecting securities advertising, were duly approved and adopted by this agency on April 16, 1984.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the city of Madison this 17th day of April, 1984.

(SEAL)

Richard R. Malmgren

RICHARD R. MALMGREN
Commissioner of Securities
State of Wisconsin

6-1-84

ORDER OF THE
OFFICE OF THE
COMMISSIONER OF SECURITIES
STATE OF WISCONSIN
REPEALING AND AMENDING RULES

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To repeal SEC 2.02(10)(j), SEC 2.025 and SEC 7.01(2)(g); and to amend SEC 1.02(1)(b) and SEC 7.01(2)(e), relating to repeal of certain limited offering registration exemption provisions and examination fees, and amending a definition affecting securities advertising.

Pursuant to authority vested in the Office of the Commissioner of Securities by secs. 551.23(18), 551.52(3), 551.53 and 551.63(1), Wis. Stats., the Wisconsin Commissioner of Securities amends and repeals rules interpreting secs. 551.23(18), 551.23(19), 551.52(3) and 551.53, Wis. Stats. as follows:

SECTION 1. SEC 1.02(1)(b) is amended to read:

SEC 1.02(1)(b) "Circulation" means advertising mailed, delivered or communicated in substantially similar form to more than 10 persons in this state (exclusive of persons exempt designated under s. 551.23(8), Stats.), ~~except with respect to s. 551.23(10), Stats., more than 15 persons (exclusive of persons exempt under s. 551.23(8), Stats.)~~ that for purposes of s. 551.53(1)(b), Stats., the distribution of written offering materials in the form of a confidential memorandum or other offering or disclosure document in connection with an offering exempt from registration under ss. 551.23(10) or (19), Wis. Stats., shall not be deemed circulation; and

SECTION 2. SEC 2.02(10)(j) and SEC 2.025 are repealed.

SECTION 3. SEC 7.01(2)(e) is amended to read:

SEC 7.01(2)(e) Notice filed under s. 551.22(8), Stats., or under s. 551.23(3), ~~(10)~~ (11) or (15), Stats., or under s. SEC 6.05 \$150.

SECTION 4. SEC 7.01(2)(g) is repealed.

SECTION 5. APPLICABILITY. The repeal of ss. SEC 2.02(10)(j) and SEC 2.025 does not apply to offers or sales of securities made pursuant to an offering for which the registration exemption under those sections was available as a result of a filing made prior to January 1, 1984.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in sec. 227.026(1), (Intro.), Stats.

Dated at Madison, Wisconsin this 16th day of April, 1984.

(SEAL)

Richard R. Malmgren
RICHARD R. MALMGREN
Commissioner of Securities

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Bureau

Report Prepared by the
Office of the Commissioner of Securities
Relating to Adopted Repeals and Amendments to the
Rules of the Commissioner of Securities

(a) Adopted Findings of Fact

- (1) Emergency rules regarding the subject matter of the attached permanent rules were adopted December 12, 1983 by the Office of the Commissioner of Securities for effectiveness on January 1, 1984.
- (2) A Notice of Hearing was issued December 15, 1983 designating February 13, 1984 as the public hearing date for receiving public testimony regarding the attached permanent rules.
- (3) The emergency rules, together with the form of the proposed permanent rules and an announcement of the public hearing on the proposed permanent rules, were reprinted in the December, 1983 Wisconsin Securities Bulletin and distributed to the general public, securities licensees and registrants, securities law practitioners, securities and trade associations and regulatory bodies, and to other interested persons, soliciting written comments on the proposed revisions or testimony at the public hearing.
- (4) The public hearing was held as noticed at 10:00 a.m. on February 13, 1984 in Room 318 Southwest of the State Capitol in Madison, Wisconsin.
- (5) During the comment period one letter was received setting forth specific comments on the proposed permanent rules.
- (6) At the public hearing, no members of the general public gave testimony, although the staff of the Office of the Commissioner of Securities presented exhibits and provided testimony.
- (7) The comments contained in the comment letter resulted in modifications to the attached rules as identified in sub. (c) of this Report.
- (8) It is appropriate in the public interest and for the protection of Wisconsin investors for the Commissioner to exercise his rule-making authority under secs. 551.23(18), 551.23(19), 551.52(3) and 551.53, Wis. Stats., to act to repeal, amend and adopt the attached rules in order to carry out the purposes of the Wisconsin Uniform Securities Law.

(b) Statement Explaining Need for Attached Rules

These rules and amendments--which act to adopt permanent rules to supercede emergency rules on this subject that were previously adopted and became effective January 1, 1984--are being promulgated because of the recent enactment of a Uniform Limited Offering Exemption ("ULOE") in sec. 551.23(19), Wis. Stats., by 1983 Wisconsin Act 87 (effective November 17, 1983). The enactment of the statutory ULOE renders the administrative rule ULOE in secs. SEC 2.02(10)(j) and SEC 2.025, Wis. Adm. Code, duplicative and unnecessary. Additionally, such a situation is confusing to securities issuers, members of the securities industry and the securities bar who are planning securities offerings to be made on a non-public offering registration exemption procedure established under Regulation D of the federal Securities Act of 1933. Further, the legislation in 1983 Wisconsin Act 87 contains provisions in secs. 551.23(10) and (19), Wis. Stats., relating to securities advertising that conflict with the current definition of "circulation" in the Rules of the Commissioner of Securities as it applies to securities advertising. Consequently, it is important that the conflicting rule provisions be amended to make the rule provisions consistent with the statutory requirements.

These rules do the following: (1) In SECTION 1, the definition of "circulation" as it relates to advertising is amended to be consistent with the language and requirements of secs. 551.23(10) and (19), Wis. Stats.; (2) In SECTION 2, the administrative rule ULOE set forth in secs. SEC 2.02(10)(j) and SEC 2.025, Wis. Adm. Code, is repealed; (3) In SECTION 3, the examination fee for exemption filings under sec. 551.23(10), Wis. Stats., is removed from section SEC 7.01(1)(e), Wis. Adm. Code. This is necessary because sec. 551.23(10), Wis. Stats., as enacted in 1983 Wisconsin Act 87, does not require a Notice to be filed for the exemption to be available for an offering thereunder; (4) In SECTION 4, the examination fee for exemption filings under the administrative rule ULOE is repealed because of the repeal of the administrative rule ULOE; and (5) In SECTION 5, an Applicability provision is adopted which provides that the repeal of the administrative rule ULOE does not apply to offers or sales of securities made pursuant to an offering for which the administrative rule ULOE exemption had been perfected as a result of a filing made under the rules prior to January 1, 1984. This provision is necessary to provide continuing exempt status throughout the offering period for offers and sales of securities in offerings for which the administrative rule ULOE was perfected in a filing received on or before December 31, 1983. The December 31, 1983 date corresponds with the Effective Date of the Emergency Rules on this subject that repealed the administrative ULOE provisions to no longer be available for exemption filings made after December 31, 1983.

(c) Explanation of Modifications Made As a Result of Public Comment Letters Received and Public Hearing Testimony

-- Section 1 of the attached rules relating to the definition of "circulation" is modified as a result of the suggestions in the comment letter received and as a result of the agency staff identifying a language error in the current form of the rule. The modifications consist of: (1) moving underscored language from its location in the comment draft form of the rule to the end of the section and adding language to expressly state that the distribution of written offering materials under s. 551.23(10) and (19), Wis. Stats., shall not be deemed "circulation" of advertising for purposes of the advertising filing provisions of s. 551.53, Wis. Stats.; (2) substituting the word "designated" for the word "exempt" in line 3 of the proposed final form of the rule to correct a language error [namely, the statutory section the word modifies (s. 551.23(8), Wis. Stats.) does not "exempt" persons from the registration requirement, but rather designates persons to whom offers and sales may be directed for purposes of that transactional registration exemption].

(d) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities, Richard R. Malmgren as Hearing Officer.

-- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to summarize the substantive rule revisions.

(e) Response to Legislative Council/Rules Clearinghouse Report Recommendations.

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

-- Consistent with the Rules Clearinghouse comment in para. a., the "Applicability" section was placed at the end of the attached rule. Also, the word "thereunder" in that section was deleted.

-- Consistent with the Rules Clearinghouse comment para. b., "Wis." was deleted from the citation to the Wisconsin Statutes in the effective date section.

-- Consistent with the Rules Clearinghouse comment in para. c., the language "of the Rules of the Commissioner of Securities" was deleted from the introductory clause to the attached rule.

(2), (3), (4) Not Applicable.

WISCONSIN LEGISLATIVE COUNCIL

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.029, STATS., AS CREATED BY CH. 34, LAWS OF 1979. 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 84-5.

AN ORDER to repeal SEC 2.02 (10) (j), 2.025 and 7.01 (2) (g); and to amend SEC 1.02 (1) (b) and 7.01 (2) (e), relating to limited offering registration exemption provisions and examination fees and securities advertising.

Submitted by OFFICE OF THE COMMISSIONER OF SECURITIES.

1-13-84. Received by Legislative Council.

2-7-84. Report sent to Agency.

RNS:RW:kja;las

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

(Pursuant to s. 227.029, Stats.)

1. REVIEW OF STATUTORY AUTHORITY [s. 227.029 (2) (a)]

- a. Rules appear to be within the agency's statutory authority
- b. Rules appear to be unsupported by statutory authority, either in whole or in part
- c. Comment attached yes no

2. REVIEW OF RULES FOR FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.029 (2) (c)]

- a. Rules satisfactory
- b. Rules unsatisfactory
- c. Comment attached yes no

3. REVIEW OF RULES FOR CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.029 (2) (d)]

- a. Conflict or duplication not noted
- b. Conflict or duplication noted
- c. Comment attached yes no

4. REVIEW OF RULES FOR ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.029 (2) (e)]

- a. References appear to be adequate
- b. References appear to be inadequate
- c. Comment attached yes no

5. REVIEW OF LANGUAGE OF RULES FOR CLARITY, GRAMMAR, PUNCTUATION AND PLAINNESS [s. 227.029 (2) (f)]

- a. Rules satisfactory
- b. Rules unsatisfactory
- c. Comment attached yes no

6. REVIEW OF RULES FOR POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.029 (2) (g)]

- a. No problems noted
- b. Problems noted
- c. Comment attached yes no

WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

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BONNIE REESE
EXECUTIVE SECRETARY

February 7, 1984

CLEARINGHOUSE RULE 84-5

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, dated April 1982.]

2. Form, Style and Placement in Administrative Code

- a. The "applicability" section should be placed at the end of the proposed rule. Also, it appears that the word "thereunder" could be omitted without altering the meaning of the provision.
- b. The citation in the effective date section to the Wisconsin statutes should be "s. 227.026 (1) (intro.), Stats."
- c. In the introductory clause to the proposed rule, "of the Rules of the Commissioner of Securities" should be deleted.