

Chapter SEC 2

REGISTRATION EXEMPTIONS

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SEC 2.01 Exempt securities. (1) (a) Any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, is exempted under s. 551.22(1), Stats., if:

1. The enterprise is a public utility described under s. 551.22(6), Stats., having securities registered under section 12 of the Securities Exchange Act of 1934, or is a wholly-owned subsidiary of one or more of such utilities, and a notice of the proposed offering including the offering statement or prospectus is filed with the commissioner prior to the offering;

2. Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale or loan arrangement, are exempt under s. 551.22(7), Stats., and notice of the proposed offering including the offering statement or prospectus is filed with the commissioner prior to the offering; or

3. A notice of the proposed offering is filed with the commissioner, including a trust indenture meeting the requirements of Wis. Adm. Code section SEC 3.24, an official statement or a prospectus meeting the requirements of Wis. Adm. Code section SEC 3.23, and such additional information as the commissioner may require, and the commissioner does not by order deny the exemption within 20 days of the date the notice is filed.

(b) Any guarantee of any security exempt under s. 551.22(1), Stats., is exempted from s. 551.21, Stats.

(2) For purposes of s. 551.22(3), Stats., an issuer or a guarantor is "subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority" if that governmental authority has authority to regulate the issuer's or guarantor's business and the terms of the particular securities to be offered and sold.

(3) (a) Any evidence of debt issued by a domestic non-profit corporation to persons other than its members is exempted under s. 551.22(8), Stats., if the issuer or a licensed broker-dealer files a notice of the proposed issuance in the form prescribed by the commissioner, including: a trust indenture meeting the requirements of Wis. Adm. Code section SEC 3.24 under which such evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in Wis. Adm. Code section SEC 3.23(1); and such additional information as the commissioner may require; and the commissioner does not by order deny or revoke the exemption within 10 days.

(b) A person does not become a "member" for purposes of s. 551.22(8), Stats., solely by reason of the purchase of the issuer's securities.

(4) "Commercial paper" exempted under s. 551.22(9), Stats., means any note, draft or bill of exchange, which:

(a) Evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, any renewal of such paper which is likewise limited, or any guarantee of such paper or such renewal;

(b) Is offered or sold through a broker-dealer, or an institution described in s. 551.22(3), Stats., or a state or any agency or political subdivision thereof, whether such person is acting for itself or for the account of a customer;

(c) Is not offered or sold to the general public by means of the publication or circulation of any advertising; and

(d) Is issued to finance liquid current assets (including inventories and receivables) or current operating expenses.

(5) A notice filed under s. 551.22(10), Stats., shall consist of a complete description of the plan, including any advertising to be published, circulated or used. The exemption may be denied if the plan is unfair or inequitable to purchasers of securities thereunder. If the plan involves purchases of the employer's securities, a plan may be deemed unfair or inequitable unless:

(a) The formula price at which employes may purchase shares is calculated at least annually, and is not less than 85% of the fair market value of the stock at the beginning of the 1-year purchase period or the end of the purchase period, whichever is lower, and shares purchased are fully paid for at the end of each period, stock certificates are issued and no fractional shares are issued;

(b) The issuer files an undertaking to deliver to all participating employes copies of the issuer's annual financial statements;

(c) A participating employe has the right to withdraw from the plan at any time without penalty;

(d) If there is no adequate public market for the issuer's shares as defined in Wis. Adm. Code section SEC 3.02(1)(b), the issuer offers to repurchase the shares at a price determined by the same formula pursuant to which the shares were purchased by the employee under the issuer's plan, upon the happening of either of the following events:

1. The employe ceases to be employed by the issuer (or a subsidiary), and a written request for repurchase is received by the issuer within 180 days after termination of employment; or

2. The employe experiences severe financial hardship due to illness or death in the immediate family, major uninsured casualty loss, or other unforeseen events, and delivers to the issuer a written irrevocable election to have the issuer repurchase the shares, including a statement in reasonable detail as to the nature of the employe's financial hardship, and within 20 days the issuer's board of directors does not determine that no severe financial hardship exists.

(e) All funds contributed to the plan for the purchase of shares are protected from claims of creditors of the issuer;

(f) Any withholding from an employee's compensation is limited to not more than 10% of such compensation each pay period;

(g) All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of Wis. Adm. Code section SEC 3.07; and

(h) If the securities to be purchased under the plan are not registered under the Securities Act of 1933, the issuer files a satisfactory opinion of counsel as to its exempt status under that act.

(6) Any security issued by a licensed broker-dealer to its officers, partners or employes is exempted under s. 551.22 (14), Stats., if:

(a) The issuer files with the commissioner a notice of the proposed issuance and such additional information as he may require, and the commissioner does not by order disallow the exemption within 10 days; or

(b) The security evidences a temporary subordinated borrowing by a broker-dealer that is a member of a national securities exchange, which is made in accordance with the rules of that exchange.

(7) Any security that meets all of the following conditions is exempted under s. 551.22 (17), Stats.:

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the 3 years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last 7 years or the issuer's existence in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of 3 years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds 5 percent of the issuer's (and its consolidated subsidiaries) total assets, or if the arrearage in required dividend payments on preferred stock is not cured within 30 days;

(d) The issuer has had annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes) as follows: (i) at least one million dollars in 4 of its last 5 fiscal years including its last fiscal year, and (ii) if the offering is of interest bearing securities, at least 1½ times its annual interest expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds, for its last fiscal year. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements

cover a fiscal period ended not more than 15 months from the commencement of the offering;

(e) If the offering is of stock or shares (other than preferred stock or shares), and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares (other than preferred stock or shares), with respect to (i) the number of votes per share, and (ii) the right to vote on the same general corporate decisions;

(f) If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within 6 months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price, of at least \$3,750,000. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners;

(g) Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York Stock Exchange, Inc. or the American Stock Exchange, Inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of clause (c) need be met for only 5 years and the annual net earnings requirement of clause (d) (i) shall be \$250,000;

(h) And provided further that, if the issuer of the securities is a finance company with liquid assets of at least 105 percent of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock and surplus) at the end of each of its last 5 fiscal years, the net income requirement of clause (d) (ii), but before deduction for interest expense, shall be $1\frac{1}{4}$ times its annual interest expense. "Finance company" means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, banking or factoring. "Liquid assets" means cash, receivables payable on demand or not more than 12 years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

(8) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted under s. 551.22 (17), Stats.

History: Cr. Register, December 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; cr. (6), Register, October, 1974, No. 226, eff. 11-1-74; r. (1), renum. (6) to be (1) and am., renum. (2) to (5) to be (3) to (6), am. (3) and (4), r. and recr. (5), cr. (2) and (7), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), r. (3), renum. (4), (5) and (7) to be (3), (4) and (5), am. (3) (a), cr. (7) and (8), Register, September, 1978, No. 273, eff. 10-1-78.

SEC 2.02 Exempt transactions. (1), An "isolated nonissuer transaction" within the meaning of s. 551.23 (1), Stats., includes:

(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; but if the sale is effected through a broker-dealer, the transaction is deemed isolated only if all transactions in the security effected by or through the broker-