

## 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.

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., or meet the conditions of s. 551.235 (1) to (4) and (5) (c) 1, 2 and 3a., Stats.; or

3. A notice of the proposed offering is filed with the commissioner prior to the offering, including a trust indenture meeting the requirements of s. SEC 3.24, an official statement or a prospectus meeting the requirements of s. SEC 3.23 that contains financial statements for the enterprise meeting the requirements of s. SEC 3.22 (1) (p) and subject to the standards in s. SEC 3.06 (2), and 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, or any put option or similar agreement to purchase from a holder of, any security exempt under s. 551.22 (1), Stats., is exempted from s. 551.21, Stats.

(c) For purposes of the registration exemption provision of s. 551.22 (1), Stats., requiring the financial statements of certain issuers to be prepared according to generally accepted accounting principles or guidelines which the commissioner of securities designates by rule, a security is exempted from registration thereunder if:

1. The issuer's annual financial statements for fiscal years commencing on or after January 1, 1982, are prepared according to generally accepted accounting principles as established by the National Council on Governmental Accounting, Statement 1, "Governmental Accounting and Financial Report Principles" (March 1979) or other rule-making body designated under rule 203 of The Professional Ethics Code of the American Institute of Certified Public Accountants; or

2. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1990, are prepared according to generally accepted accounting principles as provided in subd. 1., but where the auditor's opinion is qualified with respect to the fixed asset account group; or

3. The issuer's annual financial statements relating to fiscal years ending on or before December 31, 1990, are prepared in compliance with accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency.

4. The issuer's annual general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the omission of component units required to be included by governmental accounting standards board statement no. 14.

5. The issuer's annual general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the unaudited financial statements of an included component unit.

6. The issuer's general purpose financial statements relating to fiscal years ending on or before December 31, 1997, are prepared according to generally accepted accounting principles as provided in subd. 1, except that the auditor's opinion is qualified with respect to the general purpose financial statements for component units whose financial statements are not presented in accordance with generally accepted accounting principles, but which are included in the reporting entity in accordance with governmental accounting standards board statement no. 14.

(d) Determination of accounting principles or guidelines. Whether financial statements meet the requirements of par. (c), shall be conclusively determined by the last available auditor's opinion relating to the issuer's financial statements for a fiscal year ending not more than 21 months prior to the offering. The auditor's opinion may be conclusively relied upon by third parties for purposes of such determination. The opinion shall meet the requirements of rule 2.02 of regulation S-X of the U.S. securities and exchange commission in 17 CFR H210.2-02 and provide that:

1. With respect to par. (c) 1, the financial statements are prepared in accordance with generally accepted accounting principles, or equivalent language;

2. With respect to par. (c) 2, the financial statements are prepared in accordance with generally accepted accounting principles, but qualified with respect to the fixed asset account group, or equivalent language;

3. With respect to par. (c) 3, the financial statements are prepared on the basis of accounting guidelines or procedures mandated by state law or by rule of any state agency, or recommended by any state agency, or equivalent language.

4. With respect to par. (c) 4, the financial statements are prepared in accordance with generally accepted accounting principles, except that the auditor's opinion is qualified with respect to component units required to be included by governmental accounting standards board statement no. 14, or equivalent language.

5. With respect to par. (c) 5, the financial statements are prepared according to generally accepted accounting principles, except that the au-

ditor's opinion is qualified with respect to the unaudited financial statements of an included component unit, or equivalent language.

6. With respect to par. (c) 6, the financial statements are prepared according to generally accepted accounting principles, except that the auditor's opinion is qualified with respect to the general purpose financial statements for component units whose financial statements are not presented in accordance with generally accepted accounting principles, but which are included in the reporting entity in accordance with governmental accounting standards board statement no. 14, or equivalent language.

(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) The exemption provided under s. 551.22 (7), Stats., relating to the national market system of the national association of securities dealers, inc. is subject to the authority of the commissioner to terminate the exemption for the system or for a specific issue of securities or category of securities designated on the system. The commissioner may, by order, terminate an exemption upon a determination that the system's requirements for designation or maintenance set forth in securities act release No. 6810 (Dec. 18, 1988), 53 Federal Register 52550 (December 28, 1988), as amended in the form adopted April 28, 1990 by membership of the North American Securities Administrators Association, Inc. published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The issuance of any such order by the commissioner shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(b) The Chicago board options exchange is designated as a national securities exchange qualifying for registration exemption status under s. 551.22 (7), Stats., subject to the authority of the commissioner by order to revoke the designation based upon a determination that the exchange's requirements for listing or maintenance as set forth in securities act release No. 34-28556 (October 19, 1990) 55 Federal Register 43233 (October 26, 1990), as contained in the Memorandum of Understanding dated May 30, 1991, entered into between the Chicago Board Options Exchange and the North American Securities Administrators Association, Inc., and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The commissioner also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the commissioner under this paragraph shall be in accordance with the provisions of the release relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(4) (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 pro-

posed issuance with the commissioner prior to the offering, including: a trust indenture meeting the requirements of s. SEC 3.24, under which the 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 s. 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. In addition, if the domestic non-profit corporation is or operates as a church, the offering shall meet the requirements of s. SEC 3.14, and if the domestic non-profit corporation is or operates as a health care facility, the offering shall meet the requirements of s. SEC 3.145.

(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.

(5) "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 the paper which is likewise limited, or any guarantee of the paper or the renewal;

(b) Is offered or sold through a broker-dealer that is in compliance with s. 551.31 (1), Stats., or an institution described in s. 551.22 (3), Stats., or a state or any agency or political subdivision thereof, whether the 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.

(6) 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 one-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 s. 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 employe 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 employe's compensation is limited to not more than 10% of the compensation each pay period;

(g) All shares issued under the plan have voting, dividend and liquidation rights meeting the requirements of s. 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.

(7) 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 prior to the offering a notice of the proposed issuance and such additional information as the commissioner requires, 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.

(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.

(9) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted under s. 551.22 (17), Stats., if it is a security which matures within 16 months of date of issue and the issuer has levied a direct annual irrepealable tax under Art. XI, s. 3, Wis. Const. or otherwise pledged levied taxes sufficient in amount to pay the interest on the securities as it falls due and also to pay and discharge the principal on the securities at maturity.

(10) (a) Any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States or an agency or corporate instrumentality of the United States, is exempted under s. 551.22 (17), Stats., if a notice of the proposed offering containing the information in par. (b) is filed with the commissioner prior to the offering and the commissioner does not by order deny the exemption within 10 days of the date the notice is filed.

(b) A notice filed under par. (a) shall include the following information:

1. The nature and cost of the project to be financed with the borrowed funds;
2. A statement of any other funds which may be needed to complete the project;
3. Reference to the statutory authority for issuance of the securities;
4. Whether the securities are general obligations of the issuer secured by a constitutionally mandated irrevocable tax levy;
5. Equalized value and, if available, assessed value relating to the property located in the geographical boundaries of the issuer for the preceding 5 years;
6. The issuer's debt limit and the aggregate amount of existing constitutional debt and unused borrowing margin;
7. The most recent U.S. census population and current estimated population within the geographic boundaries of the issuer;
8. The issuer's net tax rate for the last 5 years based upon equalized value and, if available, upon assessed value;
9. The dollar amount of tax levies of the issuer for the last 5 years;
10. A statement relating to any pending litigation which may have a material adverse financial impact upon the issuer or upon the securities;
11. The 5 largest employers in the relevant geographic area;
12. The 5 largest taxpayers in the issuer's geographic boundaries;
13. The executive officers of the issuer;
14. The issuer's financial statements for the preceding 3 years for which such statements are available. If the date of the financial statements for the issuer's most recent fiscal year is more than 180 days prior to the date of a filing for exemption under this subsection, the financial statements shall be updated by providing interim statements, that may be unaudited, to within 180 days of the date of filing;
15. The issuer's current general fund and debt service fund balances as at the end of the month preceding the filing of the notice; and
16. Whether the securities will be accompanied at delivery by an opinion of bond counsel to the effect that the securities are validly authorized and issued and are exempt from present federal income taxes.

(c) The requirements of par. (b) may be satisfied by an Official Statement or other disclosure document relating to the securities being offered containing at least the information required in par. (b).

(d) A notice filed under par. (a) shall be accompanied by:

1. A copy of any proposed resolution or resolutions of the governing body of the issuer relating to the authorization and issuance of the securities;
2. An opinion of bond counsel, or counsel to the issuer, to the effect that all appropriate steps to date necessary for the sale of the securities have been duly taken;

3. A proposed form of the securities;
4. A copy of the notice of sale, if applicable, relating to the securities or a reference to the same indicating where it may be located;
5. A consent to service of process and resolution relating to the same, certified by the secretary or clerk of the issuer;
6. A copy of the disclosure document for the offering to be provided to offerees containing the information required in par. (b);
7. A cross-reference sheet indicating where each information item listed in par. (b) can be found in the Official Statement or disclosure document for the offering;
8. The fee prescribed by s. SEC 7.01 (2); and
9. Such additional information as the commissioner may require.

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; emerg. am. (1) (a) 2., eff. 10-1-78; am. (1) (a) 2., Register, January, 1979, No. 277, eff. 2-1-79; am. (7) (d) and (h), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a) 1. to 3., (3) (a), (4) (a) and (b), (5) (f), (6) (a) and (7) (a) and (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (a) 3. and (3) (a), cr. (7m), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (1) (c) and (d), (10), (11) and (12), eff. 5-1-82; cr. (1) (c) and (d), (9), (10) and (11), Register, September, 1982, No. 321, eff. 10-1-82; am. (7) (d), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a) 3., Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (a) 3., r. (10), renum. (11) to be (10), Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (1) (a), r. (7), eff. 1-1-86; r. (7), renum. (8) to (10) to be (7) to (9), Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a), Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (1) (c) 3., eff. 7-1-86; am. (1) (b), (c) 2. and 3., (3) (a) and (4) (b), r. (7m), Register, December, 1986, No. 372, eff. 1-1-87; emerg. am. (1) (c) 3., eff. 7-1-88; am. (1) (c) 3. and (9) (b) 14., Register, December, 1988, No. 396, eff. 1-1-89; renum. (3) to (9) to be (4) to (10), cr. (3), Register, December, 1990, No. 420, eff. 1-1-91; renum. (3) to be (3) (a), cr. (3) (b), Register, December, 1991, No. 432, eff. 1-1-92; emerg. cr. (1) (c) 4. to 6., (d) 4. to 6., eff. 5-1-94, cr. (1) (c) 4. to 6., (d) 4. to 6., Register, September, 1994, No. 465, eff. 10-1-94.

**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

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