



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Assembly Bill 350

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to Assembly
Substitute Amendment 1**

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ASSEMBLY BILL 350

Generally, 2013 Assembly Bill 350 modifies the definitions of “accredited investor” and “institutional investor” as those terms relate to securities exemptions, modifies certain “limited offeree” and “limited securities holder” exemptions from Wisconsin securities registration requirements, and creates two new securities exemptions related to “crowd-funding,” a type of capital funding under which relatively small amounts of capital are raised through sales of small amounts of securities to a large number of purchasers. One of the crowd-funding exemptions relates to transactions conducted through an Internet site registered with the Department of Financial Institutions (DFI). The other crowd-funding exemption relates to offers and transactions conducted using more traditional methods.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Accredited Investors

Assembly Substitute Amendment 1 does not modify the definition of “accredited investor.” Instead, the substitute amendment creates a new class of investor titled, “certified investor.” Under the substitute amendment, a certified investor is defined as an individual who is a resident of Wisconsin and satisfies one of the following tests:

- The individual has an individual net worth, or joint net worth with his or her spouse of \$750,000, including the individual’s primary residence as an asset and any debt associated with the residence as a liability.
- The individual has individual income in excess of \$100,000, or joint income in excess of \$150,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year.

The substitute amendment creates a new securities exemption for sales of securities to a certified investor, or a person whom the issuer reasonably believes is a certified investor at the time of the sale or offer, if the transaction meets the requirements of the federal exemption for intrastate offerings.

Additionally, the substitute amendment lowers the asset threshold for entities of an institutional character to \$2,500,000, in the same manner as Assembly Bill 350.

Exemptions for Limited Wisconsin Offerees and Limited Wisconsin Securities Holders

The substitute amendment does not modify existing securities exemptions relating to limited offerees or limited securities holders. Instead, the substitute amendment creates two new securities exemptions for limited offerees and limited securities holders involving Wisconsin residents. The first new exemption relates to transactions completed pursuant to an offer directed to not more than 100 Wisconsin residents, excluding institutional, accredited, and certified investors.

In order to qualify for the first exemption, the issuer must be a business entity organized under Wisconsin law and authorized to do business in the state, and must have its principal office in the state and a majority of its full-time employees must work in the state. No commissions may be paid in connection with the offer or sale of securities unless the person receiving the commission is registered as a broker-dealer or agent under ch. 551, Stats. Additionally, no general solicitation or general advertising may be made in connection with the offer or sale of securities unless permitted by DFI.

The second new exemption applies to sales of securities by an issuer to a Wisconsin resident, if certain conditions apply, including the following:

- The issuer must be a business entity organized under Wisconsin law and authorized to do business in the state, and must have its principal office in the state and a majority of its full-time employees must work in the state.
- The aggregate number of persons holding the issuer's securities after the sales are completed does not exceed 100, excluding institutional, accredited, and certified investors.
- No commissions are paid for soliciting any person in connection with the offer to sell, except to broker-dealers and agents licensed by the state.
- No advertising is published in connection with the offer to sell unless permitted by DFI.

Crowd-Funding Exemptions

Assembly Substitute Amendment 1 creates two new crowd-funding exemptions in substantially similar form as proposed by Assembly Bill 350. Notable differences regarding the exemptions as created in the substitute amendment include:

- Recognition of exclusions for sales to certified investors in similar fashion to the exclusions for sales to accredited and institutional investors.

- Disclosure of additional information relating to price per share, unit, or interest of the securities being offered, restrictions on transfer of securities being offered, and anticipated future issuance of securities that might dilute the value of the securities being offered.
- Revision to the acknowledgment of the purchaser to recognize that investment losses may exceed the total investment under some circumstances.
- For the second crowd-funding exemption, revision to certain DFI notice requirements to require notice to DFI before the 101st offer of securities rather than prior to the 100th sale of securities.

For purposes of the Internet-based crowd-funding exemption, the substitute amendment also includes provisions relating to registration of the Internet site operators as broker-dealers and the potential classification of Internet site operators as funding portals under future rules adopted by the Securities and Exchange Commission.

Financial Institution Holding Companies

Assembly Substitute Amendment 1 specifies certain disclosure requirements applicable to financial institution holding companies. Generally, under the substitute amendment, a financial institution holding company may not be required to prepare or distribute financial statements, information, or reports to its shareholders or to DFI, except the report to shareholders required by s. 180.1620, Stats., and the report to DFI required by s. 180.1622, Stats. Except as required by s. 180.1620, Stats., financial statements required of a financial institution holding company are not required to be prepared in accordance with generally accepted accounting principles and are not required to be examined, reported upon, reviewed, or compiled by a certified public accountant.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Under the crowd-funding exemptions proposed by Assembly Substitute Amendment 1, investors who are not accredited, certified, or institutional investors may purchase no more than \$5,000 of securities from an issuer. Assembly Amendment 1 to Assembly Substitute Amendment 1 raises the securities purchase limit under the crowd-funding exemptions from \$5,000 to \$10,000.

Additionally, Assembly Amendment 1 amends the substitute amendment to apply certain “bad actor” provisions from federal rule 506 to the new exemptions created by the substitute amendment. Generally, under the “bad actor” provisions, a securities transaction is disqualified from exemption if the issuer, its executives or management, or significant owners of the issuer’s securities have been convicted of crimes or subject to regulatory enforcement actions relating to securities fraud.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 were offered by Representatives Craig and Weininger. On October 1, 2013, the Assembly Committee on Financial Institutions recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 12; Noes, 1. The committee recommended

adoption of Assembly Substitute Amendment 1, as amended, and recommended passage of Assembly Bill 350, as amended, on successive votes of Ayes, 13; Noes, 0.

SG:jal