

## **§709. Exempt transactions**

Except as expressly provided in this Section, R.S. 51:703 shall not apply to any offer or sale of a security in connection with any transaction described in Paragraph (1), (2), (6), (7), (8), (9), (11), (12), (13), or (17) of this Section, and R.S. 51:705 shall not apply to any offer or sale of or subscription for any security in connection with any of the following transactions:

(1) Any transaction by an executor, administrator, or guardian who is not an affiliate of the issuer of the security sold or offered for sale or by a sheriff, marshal, conservator, receiver, or trustee in bankruptcy.

(2) Any transaction executed by a bona fide pledgee without any purpose of evading this Part.

(3)(a) Any transaction in securities not involving the issuer of the securities or an underwriter of the securities.

(b) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(4) Any transaction in securities, including the participation therein of affiliates, dealers, or other persons, that is made in compliance with the requirements of Rule 144 ("Rule 144") or Rule 144A ("Rule 144A") of the General Rules and Regulations promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, as it now exists or may hereafter be amended, or any similar successor rule, regulation, or federal statutory exemption of like import, or any federal rule, regulation, or statute that the commissioner determines by rule or regulation to be the functional equivalent of a successor to Rule 144 or Rule 144A.

(5)(a) Any transaction in securities pursuant to a registration statement effective under the Securities Act of 1933, as now or hereafter amended, or of securities exempt from the registration requirements of such Act pursuant to Regulation B, E, or F adopted under Section 3(b) or 3(c) thereof or pursuant to any other exemption under such sections which the commissioner has, by rule or regulation, approved, but only during the continuance of such exemption, provided that the commissioner has received prior to such sale:

(i) A notice of intention to sell which has been executed by the issuer, any other person on whose behalf the offering is to be made, a dealer registered under this Part, or any duly authorized agent of any such person and which sets forth the name and address of the applicant, the name and address of the issuer, and the title of the securities to be offered in this state.

(ii) A copy of the initial registration statement, excluding exhibits, or the notification on Form 1-B, 1-E, or 1-F, or any form substituted therefor, and related

offering circular or offering sheet, but excluding other exhibits, filed with the Securities and Exchange Commission or, in the case of an exemption under Section 3(b) or 3(c) of such Securities Act of 1933 which has been approved by the commissioner under this Paragraph, copies of such information or documents as the commissioner may, by rule or regulation, require.

(iii) A filing fee of one-tenth of one percentum of the aggregate price of the securities to be offered to be sold in this state, but in no case shall the fee be less than one hundred dollars nor more than one thousand dollars, and in addition thereto shall pay a charge of two hundred fifty dollars, to be used to defray the expenses of the commissioner. All fees and charges paid in accordance with this Paragraph, whether paid at the time of filing or at the time of renewal, shall be transmitted to the state treasurer for credit to the state general fund, except that the two hundred fifty dollar fee hereinabove provided shall be retained by the commissioner to be used for the enforcement of this Part generally.

(iv) A consent to service of process in the form prescribed by R.S. 51:718 which has been executed by the person which executed the notice of intention to sell unless such person has previously filed with the commissioner an irrevocable consent to service of process in the form prescribed by R.S. 51:718.

(b) The commissioner, after receiving the items called for by Subparagraphs (i) through (iv) of this Paragraph, shall issue a written and dated receipt therefor to the person which executed the notice of intention to sell. In the event any offer is to be made pursuant to this exemption more than twelve months after the date on which the commissioner issues his receipt under this Paragraph, then it shall be necessary for the issuer to file with the commissioner a copy of the prospectus which the issuer is currently utilizing for the purpose of making such offer and a renewal fee as provided in R.S. 51:709(5)(c). After receiving such prospectus and fee, the commissioner shall issue a written and dated receipt therefor. The issuer shall be required to comply with these renewal requirements every twelve months so long as the offering shall continue in this state. The issuance by the commissioner of any receipt called for by this Paragraph shall not be a condition to the effectiveness of the exemption provided hereby.

(6)(a) Any transaction involving the issuance and delivery of securities by an issuer to its own security holders as a result of a dividend or other distribution, whether the person distributing the dividend or other distribution is the issuer of the security or not, a split of securities, or recapitalization, provided that the recipient does not pay any consideration or surrender the right to a distribution in cash or property other such\* securities; or

(b) The sale of any fractional interest resulting from such dividend, split, distribution, or registration, or from any transaction described in and exempted by Paragraph (12) of this Section.

(7) Any transaction involving the sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, as now or hereafter amended, real estate investment trust, small business investment corporation, pension or profit-sharing plan or trust, other financial institution, or a dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(8) Any transaction pursuant to an offer exclusively to existing security holders of the issuer or a subsidiary of the issuer, including persons who at the time of the transaction are holders of convertible securities of the issuer or a subsidiary of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting any security holder in this state.

(9) Any transaction involving the issuance of a security:

(a) In connection with a stock bonus or acquisition plan requiring payment of no consideration other than services.

(b) In connection with an employee stock purchase plan as defined in Section 423 of the Internal Revenue Code of 1954, as now or hereafter amended, or a stock bonus plan, pension plan, profit-sharing plan, or retirement plan for employees or self-employed individuals qualified under Section 401 of the Internal Revenue Code of 1954, as now or hereafter amended, or individual retirement accounts qualified under Section 408 of the Internal Revenue Code of 1954, as now or hereafter amended; provided, however, the issuance of any such security representing an interest in a collective investment fund shall be exempt only if such security is issued pursuant to a plan established and administered by a bank organized under the laws of the United States or any bank or trust company organized and supervised under the laws of any state of the United States or sponsored by an investment company registered under the Investment Company Act of 1940, as now or hereafter amended, or sponsored by an insurance company licensed to do business in this state.

(c) In connection with a stock option plan in which no person except an employee of the issuer or of an affiliate of such issuer may participate, if no consideration is paid for any options granted other than services.

(d) In connection with the issuance of securities upon the exercise of options granted pursuant to such a stock option plan.

(10) Any offer, but not a sale, of a security for which a registration statement has been filed under the Securities Act of 1933, as now or hereafter amended, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under such act.

(11) Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(12) Any transaction involving the issuance or transfer of securities of the issuer by the issuer or by a subsidiary of the issuer to a corporation or its shareholders or to a partnership, limited liability company, or a business or real estate investment trust or the holders of interests or beneficial interest therein in connection with a merger, consolidation, reclassification of securities, or sale or transfer of corporate, partnership, limited liability company, or trust assets in consideration of the issuance or transfer of such securities, where the transaction must be approved by the vote of the shareholders of the corporation or the holders of interests or beneficial interest of such partnership, limited liability company, or trust pursuant to its articles or certificate of incorporation, corporate charter, partnership agreement, articles of organization, operating agreement, or trust instrument, or the applicable corporation, partnership, limited liability company, or trust statute.

(13) Any transaction involving the issuance of securities of a majority owned subsidiary to its parent or any other majority owned subsidiary of such parent, or the issuance of securities upon organization of an issuer to the parent of such issuer or to the majority owned subsidiaries of such parent, if, after such issuance, the issuer is a majority owned subsidiary of such parent.

(14) Any transaction involving the issuance of a security in connection with a pooled income fund if all of the following conditions are met:

(a) The fund qualifies as a recipient of tax deductible contributions under Section 642(c)(5) of the Internal Revenue Code of 1954, as now or hereafter amended.

(b) Each prospective donor is furnished written disclosures which fully and fairly describe the operation of the fund.

(c) Each person soliciting gifts by means of the fund is either a volunteer or a person who is employed in the overall fundraising activities of the charity that is the beneficiary of the fund and who receives no commission or other special compensation based on the amount of gifts transferred to the pooled income fund.

(d) Either:

(i) A bank organized under the laws of the United States or any bank or trust company organized and supervised under the laws of any state of the United States serves as trustee, investment adviser, or investment manager of the fund; or

(ii) An investment company registered under the Investment Company Act of 1940, as now or hereafter amended, or an insurance company licensed to do business in this state serves as investment adviser or investment manager of the fund.

(15) Any transaction exempted by rule adopted under this Paragraph: The commissioner is granted authority to adopt by rule or regulation limited offering transactional exemptions and procedures pertaining thereto for transactions not involving any public offering, which shall further the objectives of compatibility with federal exemptions and uniformity among the states and which shall set forth such terms and conditions and requiring the filing of such notices and the payment of such fees as the commissioner shall by rule prescribe. The Private Offering Exemptions contained in LAC 10.XIII, Subpart 1, Chapter 7 issued by the commissioner under authority of R.S. 51:710(D), as in effect immediately prior to the effective date of this Paragraph,<sup>1</sup> shall be deemed issued by the commissioner under authority of this Paragraph until thereafter amended or superceded by rule or regulation.

(16) Bonds or notes secured by mortgage upon real estate where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(17) Any offer or sale of a pre-organization certificate or subscription if:

(a) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) The number of subscribers in this state does not exceed thirty-five; and

(c) No payment is made by any subscriber.

Acts 1985, No. 722, §1; Acts 1986, No. 252, §1; Acts 1989, No. 30, §1, eff. June 15, 1989; Acts 1992, No. 233, §1, eff. June 10, 1992; Acts 1993, No. 475, §7, eff. June 9, 1993; Acts 2006, No. 544, §1, eff. June 22, 2006; Acts 2014, No. 224, §1.

\*As appears in enrolled bill.

<sup>1</sup>Paragraph (15) was added by Acts 1985, No. 722.