

damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

[Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

## Title 460 WAC

### FINANCIAL INSTITUTIONS, DEPARTMENT OF (SECURITIES DIVISION)

#### Chapters

460-24A

460-33A

**Investment advisers.**

**Regulations concerning securities involving mortgages, trust deeds or property sales contracts.**

#### Chapter 460-24A WAC

#### INVESTMENT ADVISERS

#### WAC

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**WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers.** An individual employed by or associated with a federal covered adviser is an "investment adviser representative," pursuant to RCW 21.20.005(14), if the representative has a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) Is an "investment adviser representative" pursuant to the Investment Advisers Act of 1940; or

(2) Solicits, offers, or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser, but is not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-020, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-047 Electronic filing with designated entity.** (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository operated by the National Association of Securities Dealers (IARD) to receive and store filings and collect related fees from investment advisers, federal covered advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this chapter, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to Web IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty days' notice is provided by the director. Any documents required to be filed with the director that are not permitted to be filed with or cannot be accepted by IARD shall be filed in paper directly with the director.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(iii) Effective date—Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least twenty business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. Any applications received by the director will be granted or denied within ten business days after the filing of Form ADV-H.

(iii) Effective date—Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-047, filed 7/31/01, effective 10/24/01.]

#### **WAC 460-24A-050 Investment adviser and investment adviser representative registration and examinations.**

(1) Examination requirements. A person applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040 shall provide the director with proof that he or she has obtained a passing score on one of the following examinations:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(2) Grandfathering. (a) Any individual who is registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on the effective date of this amended rule shall not be required to satisfy the examination requirements for initial or continued registration, pro-

vided that the director may require additional examinations for any individual found to have violated the Securities Act of Washington, Chapter 21.20 RCW, or the Uniform Securities Act.

(b) An individual who has not been registered in any jurisdiction for a period of two (2) years shall be required to comply with the examination requirements of subsection (1).

(3) Waivers. The examination requirements shall not apply to an individual who currently holds one of the following professional designations:

(a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

(f) Such other professional designation as the director may by order recognize.

(4) If the person applying for registration as an investment adviser is any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. If the person taking the examination ceases to be a person of authority in the entity, then the investment adviser must notify the director of a substitute person of authority who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.

(5) Registration requirements.

(a) A person applying for initial registration as an investment adviser shall file a completed Form ADV with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) A financial statement demonstrating compliance with the requirements of WAC 460-24A-170, if necessary;

(iii) The application fee specified in RCW 21.20.340; and

(iv) Such other documents as the director may require.

(b) A person applying for initial registration as an investment adviser representative shall file a completed Form U-4 with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-050, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450. 00-01-001, § 460-24A-050, filed 12/1/99, effective 1/1/00; 97-16-050, § 460-24A-050, filed 7/31/97, effective 8/31/97. Statutory Authority: RCW 21.20.450 and 21.20.070. 95-16-026 and 95-17-002, § 460-24A-050, filed 7/21/95 and 8/2/95, effective 8/21/95 and 9/2/95. Statutory Authority: RCW 21.20.070 and 21.20.450. 90-05-003, § 460-24A-050, filed 2/9/90, effective 3/12/90; 89-17-077 (Order SDO-123-89), § 460-24A-050, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-050, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-24A-050, filed 8/1/85. Statutory Authority: RCW 21.20.450 and 21.20.040. 83-03-024 (Order SDO-6-83), § 460-24A-

050, filed 1/13/83. Statutory Authority: RCW 21.20.450. 82-02-033 (Order SDO-149-81), § 460-24A-050, filed 12/31/81; Order SD-131-77, § 460-24A-050, filed 11/23/77; Order 304, § 460-24A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-055 Effective date of license.** All investment adviser and investment adviser representative licenses shall be effective until December 31 of the year of issuance at which time the license shall be renewed, or if not renewed, shall be deemed delinquent.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-055, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-24A-055, filed 7/21/95, effective 8/21/95. Statutory Authority: RCW 21.20.080, 21.20.340 and 21.20.450. 88-17-011 (Order SDO-047-88), § 460-24A-055, filed 8/8/88.]

**WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees.** (1) Registration as an investment adviser or investment adviser representative may be renewed by filing the following with IARD:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form U-4, unless:

(i) The Form U-4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) For any renewal application received by IARD after the expiration date set forth in WAC 460-24A-055, but on or before March 1 of the following year, the licensee shall pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers shall be one hundred dollars. The delinquency fee for investment adviser representatives shall be fifty dollars.

(3) No renewal applications will be accepted after March 1. An investment adviser or investment adviser representative may apply for reregistration by complying with WAC 460-24A-050.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-057, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-058 Completion of filing.** An application for registration or renewal by an investment adviser or investment adviser representative is not considered filed for purposes of RCW 21.20.050 until the required fee and all required submissions have been received by IARD.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-058, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-060 Financial statements required on investment advisers.** Every investment adviser shall file with the director a balance sheet as of the end of the investment adviser's fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles (GAAP) unless the director, on a case-by-case basis, allows another basis of presentation. The balance sheet shall be filed annually with the director not more than ninety days after the end of the investment adviser's fiscal year-end (unless extension of time is granted by the director).

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-060, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450, 85-16-068 (Order SDO-128-85), § 460-24A-060, filed 8/1/85; Order 304, § 460-24A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-070 Notice filings for federal covered advisers.** (1) Notice filing. The notice filing required of a federal covered adviser pursuant to RCW 21.20.050 shall be filed with IARD on a completed Form ADV. A notice filing of a federal covered adviser shall be deemed filed when the fee required by RCW 21.20.340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) Portions of Form ADV not yet accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, Part 2 will be deemed filed if it is provided to the director within five days of the director's request. The federal covered adviser is not required to submit Part 2 of the Form ADV to the director unless requested.

(3) Renewal. The annual renewal of the notice filing for a federal covered adviser shall be filed with IARD. The renewal of the notice filing for a federal covered adviser shall be deemed filed when the fee required by RCW 21.20.340 is filed with and accepted by IARD on behalf of the state.

(4) Updates and amendments. A federal covered adviser must file any amendments to its Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) A federal covered adviser that, because it has received a hardship exemption from the Securities and Exchange Commission (SEC), is not required to file its Form ADV with the SEC through IARD shall, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-070, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-080 Termination of investment adviser and investment adviser representative registration and federal covered adviser notice filing status.** (1) Investment advisers and federal covered advisers. An investment adviser or federal covered adviser may terminate its registration or notice filing status by complying with the instructions to Form ADV-W and filing a completed Form ADV-W with IARD.

(2) Investment adviser representative. The termination of registration as an investment adviser representative pursuant to RCW 21.20.080 shall be reported by complying with the instructions to Form U-5 and filing a completed Form U-5 with IARD.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-080, filed 7/31/01, effective 10/24/01.]

**WAC 460-24A-105 Custody or possession of funds or securities of clients.** It shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(1) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in someplace reasonably free from risk of destruction or other loss; and

(2)(a) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds,

(b) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and

(c) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(3) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(4) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period and all debits, credits and transactions in such client's account during such period; and

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent certified public accountant or public accountant at a time which shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that he has made an examination of such funds and securities, and describing the nature and extent of such examination shall be filed with the director promptly after each such examination.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-105, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-145 Investment adviser brochure rule.** (1) General requirements. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to RCW 21.20.040 shall, in accordance with the provisions of this section, offer and deliver to each advisory client and prospective advisory client written disclosure materials containing at least the information then so required by Part II of Form ADV and such other information as the director may require. If a federal covered adviser may utilize a copy of Part II of its Form ADV to provide the disclosures required pursuant to 17 CFR 275.204-3, then an investment adviser may use a copy of Part II of its ADV to provide the disclosures required by this section.

(2) Delivery.

(a) An investment adviser, except as provided in (b) of this subsection, shall deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or (ii)

at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) Delivery of the materials required by (a) of this subsection need not be made in connection with entering into a contract for impersonal advisory services.

(3) Offer to deliver.

(a) An investment adviser, except as provided in (b) of this subsection, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the materials required by this section.

(b) The delivery or offer required by (a) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than \$200.00.

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200.00 or more, an offer of the type specified in (a) of this subsection shall also be made at the time of entering into an advisory contract.

(d) Any materials requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven days of the receipt of the request.

(4) Delivery to limited partners. If the investment adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then, for purposes of this section, the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) Wrap fee program brochures.

(a) If the investment adviser is a sponsor or a wrap fee program, then the materials required to be delivered, by subsection (2) of this section, to a client or prospective client of the wrap fee program, must contain all information required by Form ADV. Any additional information must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(b) The investment adviser does not have to offer or deliver wrap fee information if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program wrap fee program information containing all the information the investment adviser's wrap fee program brochure must contain.

(6) Delivery of updates and amendments. When the disclosure materials required to be delivered pursuant to subsection (2) of this section become materially inaccurate, the investment adviser must amend and promptly deliver to its clients amendments to such disclosure materials. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within thirty days of the event that requires the filing of the amendment.

(7) Omission of inapplicable information. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, the

investment adviser may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part II of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(8) Other disclosure obligations. Nothing in this section shall relieve any investment adviser from any obligation to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

(9) Definitions. For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (iii) any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(c) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(d) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-145, filed 7/31/01, effective 10/24/01. Statutory Authority: 1998 c 15 § 9. 99-03-052, § 460-24A-145, filed 1/15/99, effective 2/15/99.]

**WAC 460-24A-170 Minimum financial requirements for investment advisers.** (1) An investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, shall maintain at all times a minimum net worth of \$35,000. An investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered under RCW 21.20.040 who has custody or discretion of client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000. Any bond required by this section shall be in the form determined by the director, issued by a company qualified to do business in this state, and shall

be subject to the claim of all clients of the investment adviser regardless of the client's state of residence.

(3) An investment adviser registered or required to be registered under RCW 21.20.040, who accepts prepayment of more than \$500 per client and six or more months in advance, shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under RCW 21.20.040 shall, by the close of business on the next business day, notify the director if the investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(6) For purposes of this section, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. An adviser shall not be deemed to have constructive custody of a client's cash or securities, if such possession is for the sole purpose of immediately forwarding such cash or securities to a third party at the request of the client.

(7) The director may require that a current appraisal be submitted in order to establish the worth of any asset.

(8) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in that state and is in compliance with that state's minimum capital requirements.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100, 01-16-125, § 460-24A-170, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450, 97-16-050, § 460-24A-170, filed 7/31/97, effective 8/31/97; Order 304, § 460-24A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-200 Books and records to be maintained by investment advisers.** (1) Every investment adviser registered or required to be registered pursuant to

RCW 21.20.040 shall make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser.

(f) All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, and income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security: Provided, however, That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser: And provided, That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.



(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(j) A written copy of each agreement entered into by the investment adviser with any client and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, that the investment advisers circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1), the following definitions will apply:

(A) "Advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company,

unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser shall not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than fifty percent of:

(A) Its total sales and revenues; and

(B) Its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommenda-

tions being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iv) An investment adviser shall not be deemed to have violated the provisions of this subsection (1)(m) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part II of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any client or prospective client of the investment adviser as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part II of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the

investment adviser); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(s) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(t) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(u) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(2) If an investment adviser subject to subsection (1) of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section shall include:

(a) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(b) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

(c) Copies of confirmations of all transactions effected by or for the account of any client.

(d) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(3) Every investment adviser subject to subsection (1) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:



(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount of the interest of the client.

(4) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) Every investment adviser subject to subsection (1) of this section shall preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3)(a), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two years in the principal office of the investment adviser.

(b) Partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (n), (o), and (q) through (s), (2), and (3) of this section shall be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number shall be maintained for the period prescribed in (c) of this subsection.

(6) An investment adviser subject to subsection (1) of this section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section

for the remainder of the period specified in this section, and shall notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in (b) of this subsection, on magnetic disk, tape, or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(ii) Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium that the director, by its examiners or other representatives, may request;

(iii) Store, separately from the original, one copy of the film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(v) With respect to records stored on photographic film, at all times have available for the director's examination of its records pursuant to RCW 21.20.100, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(b) Pursuant to (a) of this subsection, an investment adviser may maintain and preserve on computer tape, disk, or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state where it has its principal place of business and is in compliance with that state's recordkeeping requirements.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100, 01-16-125, § 460-24A-200, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives.** (1) Each licensed investment adviser must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to its Form ADV. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment; and

(b) File an updated Form ADV with IARD within ninety days of the end of the investment adviser's fiscal year.

(2) Each investment adviser representative has a continuing obligation to update the information required by Form U-4 as changes occur and must promptly file with IARD any amendments to the representative's Form U-4. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-205, filed 7/31/01, effective 10/24/01. Statutory Authority: RCW 21.20.450 and 21.20.040(2), 90-13-029, § 460-24A-205, filed 6/12/90, effective 7/13/90. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-205, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-24A-205, filed 8/1/85; Order 304, § 460-24A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-210 Notice of complaint.** Each licensed investment adviser who has filed a complaint against any of its partners, officers, directors, agents licensed in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

[Statutory Authority: RCW 21.20.450, 21.20.050, 21.20.100. 01-16-125, § 460-24A-210, filed 7/31/01, effective 10/24/01; Order 304, § 460-24A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

## Chapter 460-33A WAC

### REGULATIONS CONCERNING SECURITIES INVOLVING MORTGAGES, TRUST DEEDS OR PROPERTY SALES CONTRACTS

#### WAC

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460-33A-110	Financial statements and annual reports.
460-33A-115	Books and records.
460-33A-120	Preservation of records.
460-33A-125	Notice of changes by mortgage broker-dealers.
460-33A-130	Notice of complaint.

**WAC 460-33A-010 Application.** (1) The rules contained in these regulations are intended to offer an optional method for the registration of "mortgage paper securities" as defined in WAC 460-33A-015(4). While applications for registration not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain rules of this chapter may be modified or waived by the director, if consistent with the spirit of these rules.

(2) The application of these rules does not affect those issuers to which or to whom the debenture company sections of the Securities Act apply.

(3) These rules do not affect the statutory exemptions provided for by, nor will they be applied to, those securities or transactions exempt under RCW 21.20.310 or 21.20.320. These rules are not intended to expand or restrict the definition of "security" as defined in RCW 21.20.005(12).

(4) The rules contained in this chapter are only applicable to mortgage paper securities, mortgage broker-dealers and mortgage salespersons registering under this chapter.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-010, filed 11/7/01, effective 12/8/01; 89-17-078 (Order SDO-124-89), § 460-33A-010, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-010, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-010, filed 1/13/83.]

**WAC 460-33A-015 Definitions.** As used in this chapter:

(1) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(3) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(2) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(3) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(2) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(4) "Mortgage paper securities" means notes and bonds, or other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(5) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

(6) "Financial institution" means any bank, trust company, savings bank, national banking association, savings

and loan association, building and loan association, mortgage banker, credit union, insurance company, or other similarly regulated financial institution, or holding company for any of the foregoing.

(7) "Construction loan" means a loan in which twenty-five percent or more of the loan proceeds will be used to fund future improvements to real estate securing the loan.

(8) "Income-producing properties" means real property that produces income on a regular basis.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-015, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-015, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-015, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-015, filed 10/20/86; 83-15-043 (Order SDO-90-83), § 460-33A-015, filed 7/19/83; 83-03-025 (Order SDO-7-83), § 460-33A-015, filed 1/13/83.]

**WAC 460-33A-025 Contents of the general offering circular.** (1) The general offering circular shall be in a format prescribed by the director and shall include all information required by the format.

(2) The general offering circular shall set forth the minimum suitability standards for investors as provided in WAC 460-33A-031.

(3) The general offering circular must state that purchases of mortgage paper securities may be made only by check payable to the mortgage broker-dealer's escrow account.

(4) The general offering circular shall disclose the risks to investors of holding a high concentration of their investment portfolio in mortgage paper securities.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-025, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-025, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-025, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-025, filed 1/13/83.]

**WAC 460-33A-030 Contents and filing of the specific offering circular.** The form and content of the specific offering circular and accompanying exhibits shall be prescribed by the director. In registering mortgage paper securities pursuant to this chapter, the registrant undertakes to furnish the specific offering circulars and required exhibits to the director for review upon request. If such a request is made prior to the distribution of a specific offering circular to prospective investors, the registrant must refrain from such distribution pending review and approval by the director.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-030, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-030, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-030, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-030, filed 1/13/83.]

**WAC 460-33A-031 Minimum investor suitability requirements.** In each sale of mortgage paper registered under the rules of this chapter, the mortgage broker-dealer shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both the conditions of subsections (1) through (3) of this section are satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts disclosed by the purchaser as to the purchaser's other security holdings, the purchaser's other mort-

gage paper security holdings, and the purchaser's financial situation and needs.

(2) The purchaser qualifies for at least one of the following:

(a) The purchaser's investment in the mortgage paper securities being offered does not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse: Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(b) The purchaser's investment in the mortgage paper securities being offered does not exceed ten percent of the purchaser's (including spouse) taxable income for federal tax purposes for the last year: Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(c) The purchaser, either alone or with a purchaser representative as defined in WAC 460-44A-501, has, as stated in WAC 460-44A-505, such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment; or

(d) The purchaser is an accredited investor as defined in WAC 460-44A-501.

(3) The mortgage broker-dealer shall document its determination that an investment in mortgage paper securities is appropriate for each investor in accordance with WAC 460-33A-115 (1)(f).

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-031, filed 11/7/01, effective 12/8/01; 89-17-078 (Order SDO-124-89), § 460-33A-031, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-031, filed 10/20/86.]

**WAC 460-33A-035 Limitations on the use of optional registration of this chapter.** Unless the director makes a special notation on the permit issued to the mortgage broker-dealer granting permission to offer the following types of securities based upon a showing that the investors will be adequately protected, the following types of securities cannot be offered or sold under the rules of this chapter:

(1) Offerings involving construction loans may not be sold using the rules of this chapter unless the loan to value ratio, as determined utilizing the current value of the property without considering future improvements, is within the limits established by subsection (7) of this section.

(2) Offerings involving the mortgage broker-dealer, its officers, agents, affiliates, and persons controlling the mortgage broker-dealer or affiliates may not be sold as part of the optional registration of the rules of this chapter unless the registration with the director includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups.

(3) Offerings involving documents reserving the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale.

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration of the rules of this chapter. However, where only first liens are involved and the note amount equals or exceeds one hundred thousand dollars, the registrant may sell to up to twenty five investors. A husband and wife and their dependents may be counted as one investor.

(5) Offerings in which the real property or other collateral securing the notes, bonds or obligations is not within this state unless the general offering circular contains disclosure of all material facts concerning the relevant laws of the state in which the real property is situated and a risk factor discussing the risks of investing in out-of-state real estate.

(6) Offerings involving notes, bonds, or obligations secured by a single mortgage, deed of trust or real estate contract or a single group of mortgages, deeds of trust or real estate contracts that are not identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser or investor is not upon the same terms; provided however, an offering may be subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued.

(7) Offerings in which the aggregate principal amount of the notes, bonds or obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, exceed the following percentages of the current market value (as determined by WAC 460-33A-105) of the real property:

(a) Single-family residences - eighty percent.

(b) Commercial and income-producing properties - seventy percent.

(c) Unimproved property which has been zoned for commercial or residential development - fifty percent. For purposes of this section, "unimproved property" includes real property with structures that cannot be legally occupied, do not substantially conform with the appraisal of the property prepared pursuant to WAC 460-33A-105, or otherwise lack the functional attributes or basic amenities customarily found in the type of structures in question.

(d) Other real property - forty percent.

(8) Offerings involving real estate paper in which a default in any note, bond or obligation will not be a default in all notes, bonds or obligations concerning a specific loan.

(9) Offerings in which the following actions may be taken on behalf of the investors without the consent of investors holding a majority percentage of the unpaid dollar amount of notes, bonds, or obligations:

(a) Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;

(b) Approving any modification to the loan which decreases the rate of interest payable to the investors;

(c) Deferring or forgiving the payment of any principal or interest;

(d) Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;

(e) Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);

(f) Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or

(g) Extending or renewing the loan.

(10) Loans in which investors are required to designate the servicing agent as their attorney-in-fact with respect to documents and instruments, other than those described below, which would otherwise require signing or other action by the investors:

(a) Escrow instructions concerning the closing and collection of the loan;

(b) Instruments necessary to substitute investors; and

(c) Partial or full satisfaction or release of the deed of trust or other security instrument pursuant to the provisions of the deed of trust or security agreement upon receipt of the appropriate payment.

(11) Offerings in which the investors holding a majority percentage of the unpaid dollar amount of any loan may not remove the servicing agent.

(12) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-035, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-035, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-035, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-035, filed 1/13/83.]

**WAC 460-33A-037 Disclosure requirements in the sale of real estate owned property.** The following apply to real property acquired by owners of mortgage paper securities through foreclosure or otherwise in settlement of the note or bond which is the subject of the mortgage paper security (real estate owned or REO):

(1) The mortgage broker-dealer shall provide investors a written disclosure document when making a recommendation to investors to sell REO.

(2) The disclosure document required by subsection (1) of this section shall include an appraisal or updated appraisal meeting the requirements of WAC 460-33A-105 and dated within twelve months of the recommendation unless:

(a) A real estate broker's opinion of value dated within twelve months of the recommendation is obtained pursuant to WAC 460-33A-038;

(b) In offering the mortgage paper securities to the current owners, the loan-to-value ratio was established by relying on the tax assessment valuation pursuant to WAC 460-33A-105(6). In this instance, the specific offering circular required by subsection (1) of this section may use the current tax assessment valuation; or

(c) The investors, excluding the mortgage broker-dealer and its affiliates, holding a majority percentage interest in the unpaid dollar amount of the notes, bonds or obligations consent to the waiver of this requirement. The mortgage broker-dealer may not require investors to consent to this waiver prior to issuing its recommendation to sell REO.

(3) Regardless of whether an appraisal is required or furnished pursuant to subsection (2) of this section, investors holding a majority percentage interest in the unpaid dollar

amount of the notes, bonds or obligations may direct the mortgage broker-dealer to obtain an appraisal or a new appraisal that is dated within twelve months of the mortgage broker-dealer's recommendation. The costs of such an appraisal shall be the responsibility of the mortgage paper security investors unless the mortgage broker-dealer agrees to pay for the appraisal.

(4) The disclosure document required by subsection (1) of this section shall disclose the following:

- (a) A summary of the purchase and sale agreement;
- (b) A summary of property marketing completed prior to receipt of the purchase and sale agreement;
- (c) Estimated marketing period necessary to obtain fair market value of the property established by the current appraisal, if an appraisal is required under subsection (2) or (3) of this section;
- (d) Current appraised value or a real estate broker's opinion of value pursuant to WAC 460-33A-038 of the property, as well as the appraised value of the property at the time the loan was originated, if an appraisal or opinion of value is required under subsection (2) or (3) of this section;
- (e) Current tax assessed value of the property, as well as the tax assessed value at the time the loan was originated;
- (f) A summary of the reasons for which the mortgage broker-dealer is making the recommendation to investors to accept the purchase and sale agreement;
- (g) A summary of the options available to investors should they elect to reject the purchase and sale agreement;
- (h) The right of investors to obtain upon written request a list of all investors holding an interest in the property subject to the purchase and sale agreement and their respective addresses; and
- (i) The right of investors holding a majority percentage of the interest in the property to remove the mortgage broker-dealer as the servicing agent in accordance with WAC 460-33A-035(11).

(5) If the terms of the purchase and sale agreement include seller financing, the disclosure document required in this section shall disclose the following in addition to the disclosure required under subsection (4) of this section:

- (a) A loan application completed by the prospective buyer;
  - (b) The credit report of the prospective buyer;
  - (c) The financial statements of the prospective buyer, if available;
  - (d) A comparison of the loan terms in the original offering with those proposed in the purchase and sale agreement; and
  - (e) A summary of the options available to an individual investor who does not wish to participate in the loan should investors holding a majority percentage of the interest in the property accept the purchase and sale agreement.
- (6) The disclosure document required in this section shall be sent to all the investors holding an interest in the property subject to the purchase and sale agreement at least ten days prior to the closing date of the sale.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-037, filed 11/7/01, effective 12/8/01.]

**WAC 460-33A-038 Real estate broker's opinion of value in the sale of real estate owned property.** (1) As an alternative to the requirement to obtain an updated appraisal in the sale of real estate owned property pursuant to WAC 460-33A-037(2), the mortgage broker-dealer may obtain a real estate broker's opinion of value which discloses the following:

- (a) The identity of the client and any intended users, by name or type;
- (b) The intended use of the opinion of value;
- (c) The identity of the real estate involved in the opinion of value, including the physical and economic property characteristics relevant to the property;
- (d) The purpose of the opinion of value, including the type and definition of value and its source;
- (e) The effective date of the opinion of value;
- (f) Sufficient information to disclose to the client and any intended users of the opinion of value the scope of work used to develop the opinion of value;
- (g) All assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions;
- (h) The information analyzed, the procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
- (i) The use of the real estate existing as of the date of value and the use of the real estate reflected in the opinion of value; and, when the purpose of the assignment is market value, a description of the rationale and support of the real estate broker's opinion of the highest and best use of the real estate; and
- (j) The qualifications of the real estate broker relating to the preparation of the opinion of value.

(2) The real estate broker's opinion of value must be in writing and be signed by the real estate broker. The mortgage broker-dealer must maintain a copy of the opinion of value in accordance with WAC 460-33A-115 (1)(I).

(3) The written consent of any real estate broker who is named as having prepared an opinion of value in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer. The mortgage broker-dealer must maintain a copy of the written consent of the real estate broker in accordance with WAC 460-33A-115 (1)(I).

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-038, filed 11/7/01, effective 12/8/01.]

**WAC 460-33A-040 Net worth or bond requirement.**

(1) All persons and entities meeting the definition of a mortgage broker-dealer must meet and maintain one of the following at all times:

- (a) A minimum tangible net worth, as determined by generally accepted accounting principles, of the greater of one hundred thousand dollars or ten percent of the amount of securities registered pursuant to this chapter up to a maximum of one million dollars; or
- (b) File a surety bond in the face amount of one hundred thousand dollars satisfactory to the securities administrator; or
- (c) In the event the mortgage broker-dealer and any affiliate does not handle the funds of lenders and borrowers, min-

imum tangible net worth of five thousand dollars, as determined by generally accepted accounting principles.

(2) Mortgage broker-dealers failing to maintain the above mentioned minimum net worth must inform the securities division of such failure within seventy-two hours at which time all sales of securities must be suspended.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-040, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-040, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-040, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-040, filed 1/13/83.]

**WAC 460-33A-055 Escrow account.** (1) All funds received from lenders or investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in an escrow account acceptable to the director. The escrow account shall be maintained in a financial institution as set forth in WAC 460-33A-015(6), with an escrow agent registered under chapter 18.44 RCW, or with some other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis. All checks by which purchases or investments are made shall be made payable to the escrow account. All necessary disbursements shall be made from the escrow account. No person acting as a mortgage broker-dealer or its agent shall accept any purchase or investment funds for mortgage paper securities in advance of the time necessary to fund the loan transaction. No such fund shall be maintained in such account for longer than sixty days without disbursing the funds and the escrow agreement must provide that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account. No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates. The escrow agreement must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors.

(2) The escrow agreements shall provide that the funds will not be subject to the mortgage broker-dealer's creditors.

(3) The account shall be subject to an audit at any reasonable time by the securities division.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-055, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-055, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-055, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.250 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-055, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-055, filed 1/13/83.]

**WAC 460-33A-070 Origination and assignment.** Every mortgage broker-dealer or his agent or affiliate that originates loan transactions and later intends to offer these as mortgage paper securities to lenders or investors must obtain the permission of the director. Every mortgage broker-dealer or its agent or affiliate that purchases or takes mortgage paper in its own name, whether for its own account or the account of others, and intends to offer such as mortgage paper securities to lenders or investors must disclose its interest in the

property or the transaction and must not disburse funds from the escrow account until the applicable instrument has been properly recorded in the name of the lenders or investors.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-070, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-070, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-070, filed 1/13/83.]

**WAC 460-33A-075 Advertising.** (1) No person effecting a transaction in mortgage paper securities shall advertise in any manner any statement or representation, with regard to any mortgage paper security, which is false, misleading or deceptive.

(2) Every mortgage broker-dealer or its agent shall file with the director five days prior to use, true copies of all advertising materials. If not disallowed by written notice or otherwise within five days from the date filed, the material may be disseminated. No person shall use any such material in any way after the director gives written notice that such material contains any statement or omission that is false or misleading.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-075, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-075, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-075, filed 1/13/83.]

**WAC 460-33A-080 Registration and examination of mortgage broker-dealers.** (1) Every person acting as a mortgage broker-dealer, unless otherwise exempt, must first obtain a broker-dealer's license under the provisions of this chapter.

(2) Every applicant under this section shall provide the director proof of compliance with WAC 460-33A-040.

(3) Every applicant for registration as a mortgage broker-dealer shall file a completed mortgage broker-dealer application form, together with the applicable filing fee.

(4)(a) Every applicant under this section shall submit to the director proof that the individual applicant, an officer if the applicant is a corporation, a manager if the applicant is a limited liability company, or a general partner if the applicant is a partnership has passed the uniform securities agent law examination (series 63) within the last two years.

(b) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examination in (a) of this subsection or the Washington state securities examination shall not be required to retake the examination in order for the mortgage broker-dealer to be eligible for registration under this chapter.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-080, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-080, filed 7/21/95, effective 8/21/95. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-080, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-080, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-080, filed 1/13/83.]

**WAC 460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure, delinquency fees.** A license issued to a mortgage broker-dealer shall expire on



the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of one hundred dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-081, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-081, filed 7/21/95, effective 8/21/95.]

**WAC 460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure, and delinquency fees.** A license issued to a mortgage securities salesperson shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-086, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.070 and 21.20.450. 95-16-026, § 460-33A-086, filed 7/21/95, effective 8/21/95.]

**WAC 460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers.** The phrase "dishonest and unethical practices" as used in RCW 21.20.110(7) includes the following acts by mortgage broker-dealers or mortgage salespersons:

(1) To cause investors to sign reconveyances of title, quit claim deeds, or any other like instruments before such instruments are required in connection with some transaction such as payoff or foreclosure.

(2) To fail to deliver, within a reasonable time, to the investor proceeds, received by the mortgage broker-dealer, of sale, refinancing, or foreclosure of an obligation owned by the investor.

(3) To engage in any dishonest or unethical practice as set forth in WAC 460-21B-060 or 460-22B-090.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-090, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-090, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-090, filed 1/13/83.]

**WAC 460-33A-095 Fiduciary duty—Mortgage broker-dealers.** In the event a conflict arises in connection with a mortgage broker-dealer acting as an agent for both mortgage borrowers and purchasers of mortgage paper securities, every mortgage broker-dealer shall resolve the conflict in favor of the purchasers of mortgage paper securities.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-095, filed 11/7/01, effective 12/8/01.]

**WAC 460-33A-105 Appraisals.** (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser. The appraisal shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall reflect the value of the property on an "as is" not an "as built" basis.

(3) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) The appraiser shall be appropriately licensed or certified in conformance with the Certified Real Estate Appraiser Act, chapter 18.140 RCW.

(4) An appraisal made within the twelve-month period prior to the sale of the mortgage paper security is sufficient.

(5) The written consent of any appraiser who is named as having prepared an appraisal in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer.

(6) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

(7) The specific offering circular shall disclose the ratio of the aggregate principal amount of the notes, bonds or obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, compared to the most recent tax assessment valuation of the real property or the appraised amount, if an appraisal was obtained pursuant to this section. If the loan to value ratio is disclosed based on the appraised value of the real property, the specific offering circular shall also disclose the most recent tax assessment valuation of the real property.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-105, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-105, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-105, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-105, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-105, filed 1/13/83.]

**WAC 460-33A-110 Financial statements and annual reports.** Every mortgage broker-dealer shall file with the director upon registration under WAC 460-33A-080 and annually, a report containing financial statements prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or by the chief executive and accounting officers of the mortgage broker-dealer who shall certify that they each have verified the material accuracy and completeness of the information contained therein. The annual report shall include, but not be limited to the receipt and disposition of all funds handled in connection with transactions subject to the rules of this chapter. The annual report shall be filed with the director within ninety days after the close of the period of the report unless, for good cause shown, the director in writing, extends the time therefor. The report shall contain the following:

(1) Total number of sales, as principal or agent, subject to the rules of this chapter during the period, and

(2) Total dollar volume of such sales.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-110, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-110, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-110, filed 1/13/83.]

**WAC 460-33A-115 Books and records.** Each mortgage broker-dealer shall make and keep current in this state the following books and records relating to its business:

(1) A file for each loan which the mortgage broker-dealer has funded through sales of mortgage paper, which file shall contain the following:

(a) A copy of each appraisal or tax assessment valuation required by WAC 460-33A-105;

(b) Copies of all documents of title representing current interests in the real property securing the loan;

(c) Copies of title insurance policies and any other insurance policies on the real property securing the loan;

(d) The acknowledgement of receipt by each investor of the specific and general offering circulars;

(e) The subscription agreement for each investor;

(f) A copy of the investor suitability questionnaire for each investor and documentation of the mortgage broker-dealer's determination that an investment in mortgage paper securities is suitable for each investor in accordance with WAC 460-33A-031. If the mortgage broker-dealer has not verified the suitability of an investment in mortgage paper securities for a purchaser within the prior twelve months, the mortgage broker-dealer shall conduct a reasonable inquiry to verify that further investment in mortgage paper securities is suitable based on the criteria set forth in WAC 460-33A-031 and document such a determination. As an alternative to maintaining this documentation in the loan files, the mortgage broker-dealer may maintain this documentation in separate files provided a list of all investors participating in the loan is included in the loan file with an indication of the location of this documentation for each investor;

(g) The specific offering circular for the offering;

(h) All correspondence with investors relating to the loan;

(i) The loan application of the borrower and all supporting documents such as the credit report on the borrower;

(j) Copies of all service agreements with investors relating to the loan;

(k) Copies of the escrow instructions relating to the loan;

(l) Copies of all real estate broker's opinions of value obtained in accordance with WAC 460-33A-038 and their written consent to use their opinions of value in connection with an offering of mortgage paper securities.

(2) A file for each loan for which the mortgage broker-dealer is soliciting funds through the sale of mortgage paper, which file shall contain the same items required under subsection (1) of this section except for those items which are not yet available because the mortgage paper has not yet been sold.

(3) A file containing copies of all service agreements required under WAC 460-33A-065.

(4) Ledgers (or other records) reflecting all assets, liabilities, income, expense, and capital accounts.

(5) Ledgers, accounts (or other records) itemizing separately each cash account of every customer including, but not limited to, all funds in the mortgage broker's escrow and trust

account, all proceeds of sale, refinancing, foreclosure, or similar transaction involving the real or personal property securing a loan funded by sales of mortgage paper, and all moneys collected from the borrower on behalf of the investors.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net liquid assets as of the trial balance date pursuant to WAC 460-33A-040. Such trial balances and computations shall be prepared currently at least once a month.

(7) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

(a) His or her name, address, social security number, and the starting date of his or her employment or other association with the broker-dealer.

(b) His or her date of birth.

(c) The educational institutions attended by him or her and whether or not he or she graduated therefrom.

(d) A complete, consecutive statement of all his or her business connections for at least the preceding ten years, including his or her reason for leaving each prior employment, and whether the employment was part time or full time.

(e) A record of any denial of a certificate, membership or registration, and of any disciplinary action taken, or sanction imposed, upon him or her by any federal or state agency, or by any national securities exchange or national securities association, including a record of any finding that he or she was a cause of any disciplinary action or had violated any law.

(f) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any broker-dealer with which he or she was associated in any capacity when such action was taken.

(g) A record of any permanent or temporary injunction entered against him or her or any broker-dealer with which he or she was associated in any capacity at the time such injunction was entered.

(h) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject.

(i) A record of any other name or names by which he or she has been known or which he or she has used.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-115, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-115, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-115, filed 10/20/86.]

**WAC 460-33A-120 Preservation of records.** The records required in WAC 460-33A-115 of these rules shall be preserved according to the following requirements:

(1) Every mortgage broker-dealer shall preserve in this state for a period of not less than three years, the first two years of which shall be in an easily accessible place:

(a) All records required to be made pursuant to WAC 460-33A-115 of these rules.

(b) All check books, bank statements, cancelled checks and cash reconciliations except for the loan files required to be kept by WAC 460-33A-115(1) which shall be kept in an accessible place for the life of the loans involved.

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

(d) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to his business, as such.

(e) All trial balances, computations of net liquid assets (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

(f) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(g) All written agreements (or copies thereof) entered into by the mortgage broker-dealer relating to its business as such, including agreements with respect to any account.

(2) Every mortgage broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

(3) Every mortgage broker-dealer shall maintain and preserve in an easily accessible place all records required under WAC 460-33A-115(7) of these rules until at least three years after the agent has terminated his or her employment and any other connection with the broker-dealer.

(4) If a mortgage broker-dealer who has been subject to the requirements of this section ceases to hold a certificate as a mortgage broker-dealer, such mortgage broker-dealer shall, for the remainder of the periods of time specified in this section, continue to preserve the records which it theretofore preserved pursuant to this section.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-120, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-120, filed 10/20/86.]

**WAC 460-33A-125 Notice of changes by mortgage broker-dealers.** (1) Each mortgage broker-dealer shall, upon any material change in the information contained in its application for registration promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each mortgage broker-dealer shall notify the director of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he or she was or will be employed by submitting a completed NASD Form U-4 to the director or the director's designee within twenty-one days after the event occurs.

(3) Each mortgage broker-dealer shall notify the director of the termination of employment of any agent in Washing-

ton by submitting a completed NASD Form U-5 to the director or the director's designee, within thirty days after the event occurs.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-125, filed 11/7/01, effective 12/8/01. Statutory Authority: RCW 21.20.045. 92-18-009, § 460-33A-125, filed 8/21/92, effective 9/21/92. Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-125, filed 10/20/86.]

**WAC 460-33A-130 Notice of complaint.** Each mortgage broker-dealer who has filed a complaint against any of its partners, officers, directors, agents licensed in Washington with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

[Statutory Authority: RCW 21.20.450. 01-23-002, § 460-33A-130, filed 11/7/01, effective 12/8/01; 86-21-107 (Order SDO-140-86), § 460-33A-130, filed 10/20/86.]

## Title 467 WAC TRAFFIC SAFETY COMMISSION

### Chapters

#### 467-03

#### Pedestrian bicycle safety equipment rules.

### Chapter 467-03 WAC

### PEDESTRIAN BICYCLE SAFETY EQUIPMENT RULES

#### WAC

#### 467-03-010

#### Pedestrian bicycle safety equipment rules.

**WAC 467-03-010 Pedestrian bicycle safety equipment rules.** The director will cause to be designed a high-visibility protective vest, traffic control flag, warning signs and other equipment to increase the visibility of persons assisting pedestrians and bicycles at crosswalks, including school and playground zones. This equipment will be of strong yellow-green fluorescent color or other highly visible materials and have retro-reflective stripes. Samples are to be made available for viewing at the Washington traffic safety commission office in Olympia, WA.

The director may furnish this equipment to schools and other users through grants from the school zone safety account as provided by RCW 46.61.440(3).

The use of uniforms and equipment designated for use by school patrols, pursuant to WAC 392-151-090 (Standard uniforms) and WAC 392-151-095 (Equipment), by persons assisting pedestrians and bicyclists in school and playground zones, will also be deemed in compliance with this rule.

[Statutory Authority: RCW 34.59.070 and 43.59.150. 01-22-011, § 467-03-010, filed 10/26/01, effective 11/26/01.]