

Chapter 460-42A WAC

EXEMPT SECURITIES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-42A-010	Employee plans. [Order SD-131-77, § 460-42A-010, filed 11/23/77.] Repealed by WSR 95-11-028, filed 5/6/96, effective 6/6/96. Statutory Authority: RCW 21.20.450.
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WAC 460-42A-020 Government bonds payable from industrial or commercial enterprises. The term "industrial or commercial enterprise" as employed in RCW 21.20.310(1) includes, but is not limited to, a private profit or nonprofit hospital, health care facility, college, university or educational institution, single or multifamily mortgage loan program, port authority concessionaire, or manufacturing or service business.

[Statutory Authority: RCW 21.20.310(1) and 21.20.450. WSR 89-21-031 (Order SDO-160-89), § 460-42A-020, filed 10/11/89, effective 11/11/89. Statutory Authority: RCW 21.20.450. WSR 81-04-048 (Order SDO-15-81), § 460-42A-020, filed 2/3/81.]

WAC 460-42A-030 Exemption of securities pursuant to RCW 21.20.310(1). Any security which would otherwise be exempt from registration under RCW 21.20.310(1) except that it is payable from a nongovernmental industrial or commercial enterprise shall be exempt from registration if it meets the requirements of either subsection (1) or (2) of this section:

(1) The security receives a rating of "AA" or better from Standard and Poor's Corporation or an equivalent rating from *Moody's Investors Service, Inc.*; or

(2)(a) The security is issued to fund a single-family mortgage loan program established and operated by a state housing finance agency; and

(b) The security receives a rating of at least "A+" from Standard and Poor's Corporation or an equivalent rating from *Moody's Investors Service, Inc.*

[Statutory Authority: RCW 21.20.310(1) and 21.20.450. WSR 89-17-080 (Order SDO-128-89), § 460-42A-030, filed 8/17/89, effective 9/17/89.]

WAC 460-42A-080 Blue chip exemption. (1) Any security that meets all of the following conditions is exempted under RCW 21.20.310(8):

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

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

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

(d) The issuer has had annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes) as follows: (i) At least one million dollars in four of its last five fiscal years including its last fiscal year, and (ii) if the offering is of interest bearing securities, at least one and one-half times its annual interest expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds, for its last fiscal year. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.

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

(f) If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least twelve hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners;

(g) Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York Stock Exchange, Inc. or the American Stock Exchange, Inc., and the current original listing standards of that

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exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of (c) of this subsection need be met for only five years and the annual net earnings requirement of (d)(i) of this subsection shall be two hundred fifty thousand dollars;

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

(2) An issuer meets the conditions of WAC 460-42A-080 (1)(b), (c) and (d) if either the issuer or the issuer and the issuer's predecessor, taken together, meet these conditions and if: (a) The succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor, or (b) all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

[Statutory Authority: RCW 21.20.310(8) and 21.20.450. WSR 88-01-061 (Order SDO-115B-87), § 460-42A-080, filed 12/17/87; WSR 82-18-037 (Order SDO-100-82), § 460-42A-080, filed 8/27/82; WSR 80-04-037 (Order SDO-37-80), § 460-42A-080, filed 3/19/80. Statutory Authority: 1979 ex.s. c 68 § 20(8). WSR 79-09-028 (Order SD-57-79), § 460-42A-080, filed 8/14/79.]

WAC 460-42A-081 Exchange and national market system exemption. (1) Any securities listed or designated, or approved for listing or designation upon notice of issuance, on (a) the New York Stock Exchange, (b) the American Stock Exchange, (c) the NASDAQ/NMS interdealer quotation system pursuant to the Memorandum of Understanding between the North American Securities Administrators Association (NASAA) and the National Association of Securities Dealers (NASD) adopted April 28, 1990, (d) the Chicago Board Options Exchange pursuant to the Memorandum of Understanding between NASAA and the Chicago Board Options Exchange dated May 30, 1991, (e) Tier I on the Pacific Stock Exchange pursuant to the Memorandum of Understanding between NASAA and the Pacific Stock Exchange dated October 12, 1994, or (f) Tier I on the Philadelphia Stock Exchange pursuant to the Memorandum of Understanding between NASAA and the Philadelphia Stock Exchange dated October 12, 1994, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing is exempt under RCW 21.20.310(8).

(2) For the purposes of nonissuer transactions only, any security listed or approved for listing upon notice of issuance

on (a) the NASDAQ/NMS interdealer quotation system, (b) the New York Stock Exchange, (c) the American Stock Exchange, (d) the Chicago Stock Exchange, (e) the Chicago Board Options Exchange, (f) the Pacific Stock Exchange, (g) the Philadelphia Stock Exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing, is exempted under RCW 21.20.310(8).

(3)(a) For the purposes of nonissuer transactions only, any security meeting the following requirements is exempted under RCW 21.20.310(8):

(i) The issuer of the security is a reporting issuer in a foreign country or jurisdiction designated in (b) of this subsection, or by rule or order of the director, and has been subject to continuous reporting requirements in such foreign country for not less than one hundred eighty days before the transaction; and

(ii) The security is listed on such foreign country's securities exchange which has been designated in (b) of this subsection, or by rule or order of the director, or is a security of the same issuer which is of senior or substantially equal rank to such listed security or is a warrant or right to purchase or subscribe to any of the foregoing.

(b) For purposes of (a) of this subsection, Canada together with its provinces and territories is a designated foreign jurisdiction and the Toronto Stock Exchange is a designated securities exchange.

(4) The director may by order withdraw the exemptions provided by subsection (1), (2), or (3) of this section as to an exchange or interdealer quotation system or a particular security when necessary in the public interest for the protection of investors.

[Statutory Authority: RCW 21.20.450, 21.20.310(8). WSR 04-07-035, § 460-42A-081, filed 3/9/04, effective 4/9/04. Statutory Authority: RCW 21.20.450. WSR 96-11-016, § 460-42A-081, filed 5/6/96, effective 6/6/96. Statutory Authority: RCW 21.20.310(8) and 21.20.450. WSR 91-04-010, § 460-42A-081, filed 1/25/91, effective 2/25/91; WSR 89-21-032 (Order SDO-161-89), § 460-42A-081, filed 10/11/89, effective 11/11/89; WSR 82-18-037 (Order SDO-100-82), § 460-42A-081, filed 8/27/82.]

WAC 460-42A-082 World class foreign issuer exemption. (1) Any security meeting all of the following conditions is exempted under RCW 21.20.310(8):

(a) The securities are:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase such options, warrants, convertible securities or preferred stock;

(ii) Units consisting of equity securities permitted by (a)(i) of this subsection and warrants to purchase the same equity security being offered in the unit;

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services of Canadian Bond Rating Services or such other rating organization which the administrator by rule or order may designate. For purposes of this subsection (1)(a)(iii) of this section, nonconvertible debt securities means securities that cannot be converted for at

least one year from the date of issuance and then only into equity shares of the issuer or its parent; or

(iv) American Depository receipt representing securities described in (a)(i), (ii) or (iii) of this subsection.

(b) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(c) The issuer, at the time an offer or sale is made under this subsection, has been a going concern engaged in continuous business operations for the immediate past five years and during that period, has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding. For purposes of this subsection (1)(c) of this section, the operating history of any predecessor that represented more than fifty percent of the value of the assets of the issuer that otherwise would have met the conditions of this section may be used toward the five year requirement.

(d) The issuer, at the time an offer or sale is made under this subsection (1)(d) of this section, has public float of one billion dollars (United States) or more.

(e) The market value of the issuer's equity shares, at the time an offer or sale is made under this subsection, is three billion dollars (United States) or more.

(f) The issuer, at the time an offer or sale is made under this subsection (1)(f) of this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in Rule 902 (a)(1) or successor rule promulgated under the Securities Act of 1933 or designated by the U.S. Securities and Exchange Commission under Rule 902 (a)(2) promulgated under the Securities Act of 1933.

(2) For purposes of this section:

(a) "Public float" means the market value of all outstanding equity shares owned by nonaffiliates.

(b) "Equity shares" means common shares, nonvoting equity shares and subordinate or restricted voting equity shares, but does not include preferred shares.

(c) An "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than ten percent of the outstanding equity shares of such person.

[Statutory Authority: RCW 21.20.450 and 21.20.310(8). WSR 97-16-051, § 460-42A-082, filed 7/31/97, effective 8/31/97.]

WAC 460-42A-085 International banks. Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted under RCW 21.20.310(8).

[Statutory Authority: RCW 21.20.310(8) and 21.20.450. WSR 80-04-037 (Order SDO-37-80), § 460-42A-085, filed 3/19/80.]