

WAC 460-44A-100 Nonissuer transactions pursuant to RCW 21.20.320(2)—Manual exemption. Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days shall be exempt pursuant to RCW 21.20.320(2) provided that, at the time of the transaction:

(1) The issuer of the security is actually engaged in business and not in the organizational stage, bankruptcy, or receivership;

(2) The issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(3) The security is sold at a price reasonably related to its current market price;

(4) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(5) A nationally recognized securities manual or its electronic equivalent designated by the director pursuant to WAC 460-10A-160 or a document filed with and publicly available through the U.S. Securities and Exchange Commission that is publicly available contains:

(a) A description of the business and operations of the issuer;

(b) The names of the issuer's executive officers and the names of the issuer's directors, if any, or, in the case of a non-U.S. issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(c) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) An audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter or, in the case of a reorganization or merger where the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(6) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(a) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(b) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(c) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger where parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

[Statutory Authority: RCW 21.20.450 and 21.20.320(2). WSR 17-05-002, § 460-44A-100, filed 2/1/17, effective 3/4/17; WSR 98-17-012, § 460-44A-100, filed 8/10/98, effective 9/10/98.]