

RCW 21.20.210 Registration by qualification—Statements—

Requirements—Audits. Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340, and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary: Its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; and a description of its physical properties and equipment.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His or her name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(3) With respect to any person not named in RCW 21.20.210(2), owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in RCW 21.20.210(2) other than his or her occupation.

(4) With respect to every promoter, not named in RCW 21.20.210(2), if the issuer was organized within the past three years: The information specified in RCW 21.20.210(2), any amount paid to that person by the issuer within that period or intended to be paid to that person, and the consideration for any such payment.

(5) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

(6) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(8) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in RCW 21.20.210 (2), (3), (4), (5) or (7) and by any person who holds or will hold ten percent or more in the aggregate of any such options.

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(10) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(11) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(12) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(13) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(14)(a) The following financial statements:

(i)(A) Balance sheets as of the end of each of the three most recent fiscal years; and, if the date of the most recent fiscal year end is more than four months prior to the date of filing, (B) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement.

(ii)(A) Statements of income, shareholders' equity, and cash flows for each of the three fiscal years preceding the date of the latest balance sheet or for the period of the issuer's and any predecessor's existence if less than three years and (B) statements of income, shareholders' equity, and cash flows for any period between the close of the last fiscal year and the date of the latest balance sheet.

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues are in excess of fifteen percent of the registrant's sales or revenues or involves acquisition of assets in excess of fifteen percent of the registrant's assets, except as specifically exempted by the director, financial statements shall be filed which would be required if that business were the registrant.

(b)(i) If the estimated proceeds to be received from the offering, together with the proceeds from securities registered under this section during the year preceding the date of the filing of this registration statement, exceed one million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the last

fiscal year and the related financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(ii) If such proceeds exceed one million dollars but are not more than five million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the most recent fiscal year and the financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(iii) If such proceeds exceed five million dollars but are not more than twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection as of the end of the last two fiscal years and the related financial statements specified in (a)(ii)(A) of this subsection for the last two fiscal years shall be audited.

(iv) If such proceeds exceed twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection and the related financial statements specified in (a)(ii)(A) of this subsection for the last three fiscal years shall be audited.

(c) The financial statements of this subsection and such other financial information as may be prescribed by the director shall be prepared as to form and content in accordance with generally accepted accounting principles and with the rules prescribed by the director, and when applicable, shall be audited by an independent certified public accountant who is registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office and who is not an employee, officer, or member of the board of directors of the issuer or a holder of the securities of the issuer. An audit report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards. The audit report shall have no limitations on its scope unless expressly authorized in writing by the director. The director may also verify such statements by examining the issuer's books and records.

(15) The written consent of any accountant, engineer, appraiser, attorney, or any person whose profession gives authority to a statement made by him or her, who is named as having prepared or audited any part of the registration statement or is named as having prepared or audited a report or valuation for use in connection with the registration statement. [1994 c 256 § 16; 1979 ex.s. c 68 § 13; 1973 1st ex.s. c 171 § 1; 1959 c 282 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.