

Title 460 WAC

SECURITIES DIVISION

(DEPARTMENT OF LICENSING)

Chapters

460-10A	Definitions.
460-16A	General rules.
460-20A	Broker-dealers and salesmen.
460-24A	Investment advisers.
460-28A	Advertisements.
460-32A	Real estate programs.
460-36A	Real estate investment trusts.
460-40A	Investment companies.
460-42A	Exempt securities.
460-44A	Exempt transactions.
460-52A	Nonprofit organizations.
460-60A	Financial statements and reports—Contents and filing requirements.
460-64A	Capital requirements—Definitions.
460-80	Franchise registration.
460-82	Broker/Selling agent.
460-90	Camping clubs.

Reviser's note: The Securities Division of the Department of Licensing in accordance with RCW 21.20.460 and RCW 19.100.270, etc. have adopted Comprehensive rules and forms for the implementation of the Franchise Act and the readoption and recodification of security rules (codified as chapter 308-132 WAC) is now recodified as part of Title 460 WAC (chapters 460-80 and 460-82 WAC). [Order 11, filed March 3, 1972.]

DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 460-10 DEFINITIONS

460-10-040	Definitions—Costs of selling. [Order 11, § 460-10-040, filed 3/3/72. Formerly WAC 308-132-020.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-10A WAC.
460-10-100	Definitions—Recognized securities manuals. [Order 11, § 460-10-100, filed 3/3/72. Formerly WAC 308-132-178.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-10A WAC.

Chapter 460-16 GENERAL RULES FOR ISSUANCE

460-16-050	Opinion of counsel. [Order 11, § 460-16-050, filed 3/3/72. Formerly WAC 308-132-080.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-060	Bond on treasurer. [Order 11, § 460-16-060, filed 3/3/72. Formerly WAC 308-132-070.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-080	Subscription agreement. [Order 11, § 460-16-080, filed 3/3/72. Formerly WAC 308-132-186.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.

460-16-100	Offering circular. [Order 11, § 460-16-100, filed 3/3/72. Formerly WAC 308-132-100.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-150	Other documents required for registration by coordination. [Order 11, § 460-16-150, filed 3/3/72. Formerly WAC 308-132-184.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-210	Nonvoting stock. [Order 10, § 460-16-210, filed 11/12/71. Formerly WAC 308-132-310.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-220	Cheap stock. [Order 10, § 460-16-220, filed 11/12/71. Formerly WAC 308-132-340.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-260	Options and warrants. [Order 10, § 460-16-260, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-270	Standards for options and warrants. [Order 10, § 460-16-270, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-320	Quarterly reports. [Order 11, § 460-16-320, filed 3/3/72. Formerly WAC 308-132-174.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-350	Financial statements. [Order 11, § 460-16-350, filed 3/3/72. Formerly WAC 308-132-176.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-390	Notice of termination of offering—Change of officers. [Order 11, § 460-16-390, filed 3/3/72. Formerly WAC 308-132-090.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-400	Promoter's investment. [Order 10, § 460-16-400, filed 11/12/71. Formerly WAC 308-132-180.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-410	Promotional securities—Standard. [Order 11, § 460-16-410, filed 3/3/72. Formerly WAC 308-132-110.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-420	Reimbursement for promotion expense—Standard. [Order 11, § 460-16-420, filed 3/3/72. Formerly WAC 308-132-120.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-430	Escrow. [Order 11, § 460-16-430, filed 3/3/72. Formerly WAC 308-132-030.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-440	Consent to transfer. [Order 11, § 460-16-440, filed 3/3/72. Formerly WAC 308-132-040.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16-450	Waivers. [Order 11, § 460-16-450, filed 3/3/72. Formerly WAC 308-132-050.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.

Title 460 WAC**Title 460 WAC: Securities Division (Dept. of Licensing)**

- 460-16-460 Voting rights. [Order 11, § 460-16-460, filed 3/3/72. Formerly WAC 308-132-060.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
- 460-16-510 Rules relating to impound—Impound of funds. [Order 11, § 460-16-510, filed 3/3/72. Formerly WAC 308-132-170.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
- 460-16-520 Release of funds from impound. [Order 11, § 460-16-520, filed 3/3/72. Formerly WAC 308-132-172.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.

Chapter 460-20
BROKER-DEALERS

- 460-20-100 Minimum net capital requirement rule. [Order 11, § 460-20-100, filed 3/3/72. Formerly WAC 308-132-130.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-120 Minimum net capital requirement rule—Definitions. [Order 11, § 460-20-120, filed 3/3/72. Formerly WAC 308-132-132.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-130 Minimum net capital requirement rule—Exceptions. [Order 11, § 460-20-130, filed 3/3/72. Formerly WAC 308-132-134.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-200 Rules relating to broker-dealers—Records required of dealers. [Order 11, § 460-20-200, filed 3/3/72. Formerly WAC 308-132-162.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-300 Rules relating to broker-dealers—Unethical conduct. [Order 11, § 460-20-300, filed 3/3/72. Formerly WAC 308-132-164.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-320 Rules relating to broker-dealers—Switching mutual funds. [Order 11, § 460-20-320, filed 3/3/72. Formerly WAC 308-132-166.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-400 Rules relating to broker-dealers—Salesman for only one issuer. [Order 11, § 460-20-400, filed 3/3/72. Formerly WAC 308-132-180.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.
- 460-20-410 Rules relating to broker-dealers—Part-time salesman. [Order 11, § 460-20-410, filed 3/3/72. Formerly WAC 308-132-182.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-20A WAC.

Chapter 460-24
INVESTMENT ADVISERS

- 460-24-010 Investment advisers—Where rules apply. [Order 11, § 460-24-010, filed 3/3/72. Formerly WAC 308-132-200.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-030 Use of the term "Investment Counsel". [Order 11, § 460-24-030, filed 3/3/72. Formerly WAC 308-132-330.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-050 Use of the term "Investment Counsel"—Examination required. [Order 11, § 460-24-050, filed 3/3/72. Formerly WAC 308-132-210.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-060 Use of the term "Investment Counsel"—Financial statements required of investment advisers. [Order 11, § 460-24-060, filed 3/3/72. Formerly WAC 308-132-220.] Repealed by Order 304, filed

2/28/75, effective 4/1/75. See chapter 460-24A WAC.

- 460-24-100 Advertising—General policy. [Order 11, § 460-24-100, filed 3/3/72. Formerly WAC 308-132-230.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-110 Advertising—Matters of general application. [Order 11, § 460-24-110, filed 3/3/72. Formerly WAC 308-132-240.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-120 Advertising—Opinions and conclusions. [Order 11, § 460-24-120, filed 3/3/72. Formerly WAC 308-132-250.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-130 Advertising—Descriptive superlatives. [Order 11, § 460-24-130, filed 3/3/72. Formerly WAC 308-132-260.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-140 Advertising—Guarantees of success. [Order 11, § 460-24-140, filed 3/3/72. Formerly WAC 308-132-270.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-150 Advertising—Selected past recommendations. [Order 11, § 460-24-150, filed 3/3/72. Formerly WAC 308-132-280.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-160 Advertising—Refunds. [Order 11, § 460-24-160, filed 3/3/72. Formerly WAC 308-132-290.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-200 Records required of investment advisers. [Order 11, § 460-24-200, filed 3/3/72. Formerly WAC 308-132-300.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-210 Compensation. [Order 11, § 460-24-210, filed 3/3/72. Formerly WAC 308-132-310.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-220 Authority of investment adviser. [Order 11, § 460-24-220, filed 3/3/72. Formerly WAC 308-132-340.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-300 Inequitable and fraudulent practices. [Order 11, § 460-24-300, filed 3/3/72. Formerly WAC 308-132-320.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.

Chapter 460-28
ADVERTISING

- 460-28-010 Advertising. [Order 11, § 460-28-010, filed 3/3/72.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-28A WAC.

Chapter 460-32
RULES FOR LIMITED PARTNERSHIPS

- 460-32-010 Preamble. [Order 10, § 460-32-010, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-020 Definitions. [Order 10, § 460-32-020, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-030 Investors, stockholders, officers, directors. [Order 10, § 460-32-030, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-040 Duration. [Order 10, § 460-32-040, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-050 Dissolution. [Order 10, § 460-32-050, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.

- 460-32-060 Promotional interests. [Order 10, § 460-32-060, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-070 Participation in profits. [Order 10, § 460-32-070, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-080 Transferability. [Order 10, § 460-32-080, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-090 Affiliates—fees, commissions. [Order 10, § 460-32-090, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-100 Real estate transactions. [Order 10, § 460-32-100, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-110 Limited partnership assessments. [Order 10, § 460-32-110, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-120 Default. [Order 10, § 460-32-120, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-130 Promissory notes. [Order 10, § 460-32-130, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-140 Finders fees. [Order 10, § 460-32-140, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-150 Disclaimer. [Order 10, § 460-32-150, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-160 Obligations. [Order 10, § 460-32-160, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-170 Surrounding property. [Order 10, § 460-32-170, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-180 Financial disclosures. [Order 10, § 460-32-180, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-190 Impound. [Order 10, § 460-32-190, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-200 Trust accounts. [Order 10, § 460-32-200, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-210 Insurance. [Order 10, § 460-32-210, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-220 Offering circular disclosures. [Order 10, § 460-32-220, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.
- 460-32-230 Exceptions. [Order 10, § 460-32-230, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-32A WAC.

Chapter 460-36

RULES FOR REAL ESTATE INVESTMENT TRUSTS

- 460-36-010 Preamble. [Order 10, § 460-36-010, filed 11/12/71. Formerly WAC 308-132-136.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-100 Trustees. [Order 10, § 460-36-100, filed 11/12/71. Formerly WAC 308-132-140.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-110 Self dealing. [Order 10, § 460-36-110, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-120 Fees and expenses. [Order 10, § 460-36-120, filed 11/12/71. Formerly WAC 308-132-152.] Repealed

by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-130 Leverage. [Order 10, § 460-36-130, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-140 Minimum capital. [Order 10, § 460-36-140, filed 11/12/71. Formerly WAC 308-132-146.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-150 Other limitations. [Order 10, § 460-36-150, filed 11/12/71. Formerly WAC 308-132-158.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-160 Advisory contract. [Order 10, § 460-36-160, filed 11/12/71. Formerly WAC 308-132-150.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-170 Reports and meetings. [Order 10, § 460-36-170, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

- 460-36-180 Application to prior filings. [Order 10, § 460-36-180, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

Chapter 460-48A

RESTRICTED REAL ESTATE SECURITIES

- 460-48A-020 Filing of restricted real estate securities application. [Order 342, § 460-48A-020, filed 9/29/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
- 460-48A-030 Filing of completion report. [Order 342, § 460-48A-030, filed 9/29/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
- 460-48A-040 Restricted real estate salesmen. [Order 342, § 460-48A-040, filed 9/29/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
- 460-48A-050 Examinations for restricted real estate securities. [Order 342, § 460-48A-050, filed 9/29/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.

Chapter 460-60

RULES FOR FILING OF ANNUAL FINANCIAL REPORTS FOR INTRASTATE OFFERINGS

- 460-60-001 General. [Order 10, § 460-60-001, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-010 Definitions. [Order 10, § 460-60-010, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-100 Qualifications of accountants. [Order 10, § 460-60-100, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-110 Accountants' certificates. [Order 10, § 460-60-110, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-120 Certification by foreign government auditors. [Order 10, § 460-60-120, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-130 Certification of financial statements of persons other than the registrant. [Order 10, § 460-60-130, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-140 Certification of financial statements by more than one accountant. [Order 10, § 460-60-140, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-200 Form, order, and terminology. [Order 10, § 460-60-200, filed 11/12/71.] Repealed by Order 304, filed

Title 460 WAC

Title 460 WAC: Securities Division (Dept. of Licensing)

	2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-300	Consolidated and combined statements. [Order 10, § 460-60-300, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-205	Generally accepted accounting principles. [Order 10, § 460-60-205, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-310	Consolidated statements of the registrant and its subsidiaries. [Order 10, § 460-60-310, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-210	Items not material. [Order 10, § 460-60-210, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-320	Group statements of subsidiaries not consolidated. [Order 10, § 460-60-320, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-215	Inapplicable captions and omission of unrequired or inapplicable financial statements. [Order 10, § 460-60-215, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-330	Statement as to principle of consolidation or combination followed. [Order 10, § 460-60-330, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-220	Omission of substantially identical notes. [Order 10, § 460-60-220, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-340	Reconciliation of investment of parent in subsidiaries and fifty-percent owned persons and equity of parent in their net assets. [Order 10, § 460-60-340, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-225	Omission of names of certain subsidiaries. [Order 10, § 460-60-225, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-350	Reconciliation of dividends received from, and earnings of, unconsolidated subsidiaries. [Order 10, § 460-60-350, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-230	Additional information. [Order 10, § 460-60-230, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-360	Minority interests. [Order 10, § 460-60-360, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-235	Changes in accounting principles and practices and retroactive adjustments of accounts. [Order 10, § 460-60-235, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-370	Intercompany items and transactions. [Order 10, § 460-60-370, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-240	Summary of accounting principles and practices. [Order 10, § 460-60-240, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-400	Balance sheets for commercial and industrial companies. [Order 10, § 460-60-400, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-245	Conversion of items in foreign currencies. [Order 10, § 460-60-245, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-420	Statement of income (loss). [Order 10, § 460-60-420, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-250	Valuation and qualifying reserves. [Order 10, § 460-60-250, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-440	Statement of source and application of funds. [Order 10, § 460-60-440, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-255	Basis of determining amounts—Book value. [Order 10, § 460-60-255, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-460	What schedules are to be filed. [Order 10, § 460-60-460, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-260	Current assets. [Order 10, § 460-60-260, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-500	Schedule I. Marketable securities—Other security investments. [Order 10, § 460-60-500, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-265	Current liabilities. [Order 10, § 460-60-265, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-505	Schedule II. Amounts due from directors, officers, and principal holders of equity securities other than affiliates. [Order 10, § 460-60-505, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-270	Reacquired evidences of indebtedness. [Order 10, § 460-60-270, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-510	Schedule III. Investments in securities of affiliates. [Order 10, § 460-60-510, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-275	Reacquired shares. [Order 10, § 460-60-275, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-515	Schedule IV. Indebtedness of affiliates. [Order 10, § 460-60-515, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-280	Discount on capital shares. [Order 10, § 460-60-280, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-520	Schedule V. Property, plant, and equipment. [Order 10, § 460-60-520, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-285	Commitments. [Order 10, § 460-60-285, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.	460-60-525	Schedule VI. Reserves for depreciation, depletion, and amortization of property, plant, and equipment. [Order 10, § 460-60-525, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
460-60-290	General notes to balance sheets. [Order 10, § 460-60-290, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.		
460-60-295	General notes to profit and loss statements. [Order 10, § 460-60-295, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.		

- 460-60-530 Schedule VII. Intangible assets. [Order 10, § 460-60-530, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-535 Schedule VIII. Reserves for depreciation and amortization of intangible assets. [Order 10, § 460-60-535, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-540 Schedule IX. Bonds, mortgages, and similar debt. [Order 10, § 460-60-540, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-545 Schedule X. Indebtedness to affiliates—Not current. [Order 10, § 460-60-545, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-550 Schedule XI. Guarantees of securities of other issuers. [Order 10, § 460-60-550, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-555 Schedule XII. Reserves. [Order 10, § 460-60-555, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-560 Schedule XIII. Capital shares. [Order 10, § 460-60-560, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-565 Schedule XIV. Warrants or rights. [Order 10, § 460-60-565, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-570 Schedule XV. Other securities. [Order 10, § 460-60-570, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-575 Schedule XVI. Supplementary income or loss information. [Order 10, § 460-60-575, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-580 Schedule XVII. Income from dividends. [Order 10, § 460-60-580, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.

Chapter 460-10A WAC DEFINITIONS

WAC

- 460-10A-001 Effect of adoption of rules.
- 460-10A-00101 Definitions.
- 460-10A-010 Administrator.
- 460-10A-015 Division.
- 460-10A-020 Charter documents.
- 460-10A-025 Code.
- 460-10A-030 Default or arrears.
- 460-10A-035 Seasoned corporation.
- 460-10A-050 Promotional shares defined.
- 460-10A-055 Acquisition fee.
- 460-10A-060 Affiliate.
- 460-10A-065 Appraised value.
- 460-10A-070 Assessments.
- 460-10A-075 Capital contribution.
- 460-10A-080 Cash flow.
- 460-10A-090 Cash available for distribution.
- 460-10A-095 Construction fee.
- 460-10A-100 Cost of property.
- 460-10A-105 Development fee.
- 460-10A-110 Net worth.
- 460-10A-115 Nonspecified property program.
- 460-10A-120 Organization and offering expenses.
- 460-10A-125 Participant.
- 460-10A-130 Person.

- 460-10A-135 Program.
- 460-10A-140 Program interest.
- 460-10A-145 Program management fee.
- 460-10A-150 Property management fee.
- 460-10A-155 Sponsor.
- 460-10A-160 Recognized securities manual.
- 460-10A-165 Real estate investment trusts.
- 460-10A-170 Officer.
- 460-10A-175 Director.
- 460-10A-180 Promoter.

WAC 460-10A-001 Effect of adoption of rules.

Those registration statements received prior to the effective date of these rules and regulations, concerning the form and content of that statement, will be governed by the rules and regulations in existence at the time of the filing of the registration statement with the Securities Division. [Order 304, § 460-10A-001, filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

WAC 460-10A-00101 Definitions. The terms used in these rules shall have the meanings set forth in the statutes pursuant to which these rules are adopted, if defined therein, or the meanings expressed in the definitions contained in these rules. [Order 304, § 460-10A-000 (codified § 460-10A-00101), filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

WAC 460-10A-010 Administrator. Means the administrator of the Washington Securities Act appointed pursuant to RCW 21.20.460. [Order 304, § 460-10A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

WAC 460-10A-015 Division. Means the Securities Division of the Department of Licensing. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-10A-015, filed 3/19/80; Order 304, § 460-10A-015, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-020 Charter documents. Means certificate of incorporation, articles of incorporation, agreement of consolidation or merger, and by-laws of a corporation; declaration of trust; agreement of partnership, certificate of limited partnership, or any other document or instrument adopted to establish or regulate any association, joint stock company, trust, or other entity; as such documents are currently in effect. [Order 304, § 460-10A-020, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-025 Code. Means the Washington Securities Act. Chapter 21.20 RCW et seq. [Order 304, § 460-10A-025, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-030 Default or arrears. Means default or arrears in payment of dividends, interest, sinking fund payment, or principal, on the date due. [Order 304, § 460-10A-030, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-035 Seasoned corporation. Ordinarily means an issuer which has been conducting bona fide business operations, either directly or through a predecessor, for more than two years, and has operated at a profit during at least one of the last three fiscal years.

[Order 304, § 460-10A-035, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-050 Promotional shares defined. "Promotional shares" means any securities which are:

(1) Issued in consideration for services rendered in connection with the founding or organizing of a business enterprise, or

(2) Issued to a promoter in consideration for any tangible or intangible property, such as patents, copyrights or goodwill, to the extent that the value has not been satisfactorily established, or

(3) Issued to a promoter in the recent past or proposed to be issued at a price substantially lower than the price at which other securities of the same class or substantially similar class have been or are to be sold without any change in the conditions of the market or in the circumstances of the issuer which would justify such different prices. [Order 304, § 460-10A-050, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-055 Acquisition fee. The total of all fees and commissions paid by any party in connection with the purchase, construction, or development of property by a program. Included in the computation of such fees or commissions shall be any real estate commission, acquisition fee, selection fee, development fee, construction fee, non-recurring management fee, or any fee of a similar nature, however designated. [Order 304, § 460-10A-055, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-060 Affiliate. Means (1) any person directly or indirectly controlling, controlled by or under common control with another person,

(2) A person owning or controlling ten percent or more of the outstanding voting securities of such other person,

(3) Any officer, director, partner or employee, or such person, and if such other person is an officer, director, partner or employee, any company for which such person acts in any such capacity. [Order 304, § 460-10A-060, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-065 Appraised value. Value according to an appraisal prepared according to the standards of the American Institute of Real Estate Appraisers by a competent, independent appraiser who is a member of the Appraisal Institute, or designated member of the Society of Real Estate Appraisers, or approved for such appraisal problem by the Washington State Department of Highways. [Order 304, § 460-10A-065, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-070 Assessments. Additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond his subscription commitment. [Order 304, § 406-10A-070, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-075 Capital contribution. The gross amount of investment in a program by a participant, or

all participants as the case may be. [Order 304, § 460-10A-075, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-080 Cash flow. Program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payment, capital improvements and replacements. [Order 304, § 460-10A-080, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-090 Cash available for distribution. Cash available for distribution means cash flow less amount set aside for restoration or creation of reserves. [Order 304, § 460-10A-090, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-095 Construction fee. A fee for acting as general contractor to construct improvements on a program's property either initially or at a later date. [Order 304, § 460-10A-095, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-100 Cost of property. The sum of the price paid by the buyer for property plus all costs, payments, and expenses and cost of improvements, if any, reasonably and properly allocable to the property in accordance with generally accepted accounting principles (cost may include acquisition fees, loan "points", and debts). [Order 304, § 460-10A-100, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-105 Development fee. A fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date. [Order 304, § 460-10A-105, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-110 Net worth. The excess of total assets over total liabilities as determined by generally accepted accounting practices. [Order 304, § 460-10A-110, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-115 Nonspecified property program. A program where, at the time a securities registration is ordered effective, less than seventy-five percent of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties. [Order 304, § 460-10A-115, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-120 Organization and offering expenses. Those expenses incurred in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the program. [Order 304, § 460-10A-120, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-125 Participant. The holder of a program interest. [Order 304, § 460-10A-125, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-130 Person. Any natural person, partnership, corporation, association or other legal entity. [Order 304, § 460-10A-130, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-135 Program. A limited or general partnership, joint venture, unincorporated association or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of, or gain from an interest in real property. [Order 304, § 460-10A-135, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-140 Program interest. The limited partnership unit or other indicia of ownership in a program. [Order 304, § 460-10A-140, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-145 Program management fee. A fee paid to the sponsor or other persons for management and administration of the program. [Order 304, § 460-10A-145, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-150 Property management fee. The fee paid for day-to-day professional property management services in connection with a program's real property projects. [Order 304, § 460-10A-150, filed 2/28/75, effective 4/1/74.]

WAC 460-10A-155 Sponsor. A "sponsor" is any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, including the general partner(s) and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests. [Order 304, § 460-10A-155, filed 2/28/75, effective 4/1/75.]

WAC 460-10A-160 Recognized securities manual. For the purpose of RCW 21.20.320(2) "recognized securities manual" shall mean: Fitch Investors Service, Moodys Investors Service, and Standard & Poor's Corporations. [Order 342, § 460-10A-160, filed 9/29/75.]

WAC 460-10A-165 Real estate investment trusts. A real estate investment trust is defined as an unincorporated trust or association which complies with sections 856, 857 and 858 of the Internal Revenue Code of 1954, as amended. [Order SD-131-77, § 460-10A-165, filed 11/23/77.]

WAC 460-10A-170 Officer. The term "officer" means a president, treasurer or secretary, or any person occupying a similar status and performing a similar function with respect to any organization, whether incorporated or unincorporated. [Order SD-131-77, § 460-10A-170, filed 11/23/77.]

WAC 460-10A-175 Director. The term "director" means any director of a corporation or any person occupying a similar status and performing a similar function with respect to any organization, whether incorporated or unincorporated. [Order SD-131-77, § 460-10A-175, filed 11/23/77.]

WAC 460-10A-180 Promoter. The term "promoter" includes, but is not limited to: (1) Any person who, acting alone or in conjunction with one or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or (2) any person who, in connection with the founding or organizing of the business or enterprise of the issuer, directly or indirectly receives in consideration of services or property, ten percent or more of any class of securities or of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds, either solely as underwriting commissions or solely in consideration of property, shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise. [Order SD-131-77, § 460-10A-180, filed 11/23/77.]

Chapter 460-16A WAC GENERAL RULES

WAC

460-16A-005	Application.
460-16A-010	Appearance and practice before the Securities Division.
460-16A-015	Telephone transceiving equipment.
460-16A-020	Interpretive opinions.
460-16A-025	Applications and reports.
460-16A-030	Payment of fees and refunds.
460-16A-035	Voting rights of common stock.
460-16A-040	Voting rights of preferred stocks.
460-16A-045	Protective provisions for preferred shares.
460-16A-050	Opinion of counsel.
460-16A-055	Corporate resolution.
460-16A-065	Convertible senior securities.
460-16A-070	Assessments.
460-16A-075	Selling expenses.
460-16A-080	Subscription agreement.
460-16A-085	Options to underwriters.
460-16A-090	Pro rata options to shareholders.
460-16A-095	Options to purchasers of debt securities.
460-16A-100	Number of outstanding options.
460-16A-105	Amount of promotional shares.
460-16A-106	Cheap stock.
460-16A-107	Amount of cheap stock.
460-16A-110	Rights of promotional shares.
460-16A-111	Equity investment of promoters.
460-16A-115	Reimbursement of expenses incurred by promoters.
460-16A-120	Price variance.
460-16A-125	Prospectus or offering circular.
460-16A-126	Annual revision of offering circular.

460-16A-127	Offering registered with the Securities and Exchange Commission ("SEC").
460-16A-130	Escrow.
460-16A-135	Operation of escrow.
460-16A-140	Consent to transfer escrowed shares.
460-16A-145	Restrictions on dividends/distribution for promotional shares.
460-16A-150	Imposition of impound condition.
460-16A-155	Operation of impound condition.
460-16A-156	Source of impound deposits.
460-16A-160	Subscription agreements and purchase receipts.
460-16A-165	Depository.
460-16A-170	Release of impounds.
460-16A-175	Failure to comply with impound condition.
460-16A-180	Technical reports.
460-16A-185	Technical reports prepared by state employee.
460-16A-190	Petition for repeal or adoption of new rules.
460-16A-390	Notice of termination of offering—Change of officers.

WAC 460-16A-005 Application. (1) The rules contained in these regulations apply to general registrations. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain regulations may be modified or waived by the administrator.

(2) Where the individual characteristics of specific offerings warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these rules. [Order 304, § 460-16A-005, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-010 Appearance and practice before the Securities Division. In any proceeding before the Division, any person may be represented by an attorney at law admitted to practice before the highest court of any state or territory of the United States, or the Court of Appeals or the District Court of the United States, or for the District of Columbia. Any individual may, however, appear before the Division in his own behalf, an authorized member of a partnership may represent the partnership, and an authorized officer of a corporation, trust or association may represent such corporation, trust or association, however no such officer may participate in contested cases as defined in RCW 34.04.010 unless such officer is also an attorney at law. [Order 304, § 460-16A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-015 Telephone transceiving equipment. Messages directed to the Division by means of Xerox Telecopier, Magnafax, or other compatible telephone transceiving equipment will be accepted by the administrator as complying with the requirement of notification under RCW 21.20.190 of the Securities Act concerning the date and time unless a federal registration statement has become effective and with respect to the content of the price amendment, if any. Such notification must be followed up by filing of a post-effective amendment to the application containing the information and documents in the price amendment and telephone transceiving equipment may not be utilized for that filing. [Order 304, § 460-16A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-020 Interpretive opinions. Each request for a written interpretive opinion of the administrator shall be made in writing and shall fully set forth the question presented and the particular facts and circumstances upon which the opinion is requested. Each interpretive opinion is applicable only to the transaction identified in the request therefor, and may not be relied upon in connection with any other transaction, and are discretionary with the division. [Order 304, § 460-16A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-025 Applications and reports. Each application or report filed with the administrator must be in the form, if any, prescribed by these rules, unless the administrator consents to the use of a different form. Only the original of any application or report need be submitted, unless otherwise provided in these rules or otherwise requested by the administrator. [Order 304, § 460-16A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-030 Payment of fees and refunds. Fees required by RCW 21.20.340 are due and payable upon filing of the application regardless of the action taken thereon and should be submitted together with the application or other filing to which they refer. Checks should be made payable to the "State Treasurer" and need not be certified. Refunds of fees paid the Division are made in accordance with RCW 21.20.340. Request for refunds must be submitted no later than 12 months after the refund becomes due. A request for any refund due should specify the following:

- (1) The name of the applicant;
- (2) The provision of chapter 21.20 RCW which the application was filed and the date of filing the application;
- (3) The total amount paid and how paid (check, cash);
- (4) The amount of the refund claimed as due and the grounds upon which the claim is made. [Order 304, § 460-16A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-035 Voting rights of common stock. Common shares and similar equity securities should normally carry equal voting rights on all matters where such vote is permitted by applicable law. [Order 304, § 460-16A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-040 Voting rights of preferred stocks. The charter documents of a corporation proposing to issue preferred shares (which are non-participating and non-convertible) without full voting rights should normally provide that the holders of such preferred shares shall have the right to reasonable representation on the board of directors upon a cumulative default, whether consecutive or not, of dividend payments for two years and that such shall continue until

the full payment of all arrears in dividends on such preferred shares. The right to elect a majority of the board is presumptively reasonable. [Order 304, § 460-16A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-045 Protective provisions for preferred shares. The charter documents of a corporation proposing to issue preferred shares which are non-participating and non-convertible should normally provide reasonable protective provisions for the preferred shareholders, including where appropriate:

(1) A provision that the dividends on such shares shall be cumulative;

(2) A provision prohibiting any dividends on common stock during the existence of any arrears on the preferred shares;

(3) An appropriate requirement for the approval by the vote or written consent of a specified percentage of the preferred shares of any substantial sale of assets or any adverse change in the rights of such shares and of the issuance of any shares having priority over such preferred shares; and

(4) Appropriate dividend restrictions on the common stock. [Order 304, § 460-16A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-050 Opinion of counsel. There shall be submitted a signed or conformed copy of an attorney's opinion as to:

(1) The legality of form and status of existence of the registrant;

(2) Status of litigation in which the registrant is involved or of which the attorney has actual notice that may be pending. [Order 304, § 460-16A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-055 Corporate resolution. There shall be submitted a copy of the corporate resolution authorizing the registrant's filing the registration statement and authorizing the issue. [Order 304, § 460-16A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-065 Convertible senior securities. The charter documents of a corporation proposing to issue convertible preferred shares or the indenture or other instrument pursuant to which convertible debt securities or options or warrants are proposed to be issued should normally contain an appropriate anti-dilution provision providing for an adjustment of the number of shares into which such shares or units are convertible or the number of shares purchasable pursuant to such options or warrants upon any stock split or stock dividend or other recapitalization of the issuer. Such charter documents or indenture or other instrument may also provide for a similar adjustment upon the issuance of additional common stock by the issuer for a consideration less than the conversion price of the options or warrants for less than the then current market price for the common stock.

[Order 304, § 460-16A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-070 Assessments. Securities should be non-assessable, except that issuers organized solely to supply services or property to their members on a continuing basis may provide for an equitable assessment corresponding to the services or property supplied. [Order 304, § 460-16A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-075 Selling expenses. No issuer of securities shall incur more selling expenses than are reasonably necessary for the sale and issuance of such securities. Selling expenses which do not exceed 15 percent of the aggregate offering price (before deducting discounts and commissions) are presumed to be reasonable if the said percentage is computed only on the portion of the aggregate offering price when and as paid to the issuer. "Selling expenses", as used in these Regulations, means the total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys paid by the issuer) paid in connection with the offering plus all other expenses actually incurred by the issuer relating to printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositaries, and engineers and other experts, expenses of qualification of the sale of the securities under Federal and State laws, including taxes and fees, and any other expenses actually incurred by the issuer and directly related to the offering and sale of the securities, but excluding accountants' and the issuer's attorneys' fees and options to underwriters.

Stock acquired or to be acquired by the underwriter, a person associated with an underwriter, underwriters' counsel, finder, financial advisor, or related parties in connection with the offering is considered part of the underwriters' compensation and is valued for such purposes on a formula basis taking into account the difference between the cost of such stock and the public offering price and other factors. However, the fact that stock has been held, or that there is an obligation to hold it, for a substantial period of time, and the method of payment therefore, may alter the valuation placed thereon. [Order 304, § 460-16A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-080 Subscription agreement. The subscription agreement shall contain among other things an acknowledgment by the subscriber that he has received a copy of the offering circular. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of three years after the transaction. [Order 304, § 460-16A-080, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-085 Options to underwriters. Options granted by the issuer to underwriters or other persons as compensation, in whole or in part, for the sale of

securities must be reasonable in amount and in terms and conditions under the circumstances of the particular issue. Options which meet the following requirements are presumptively reasonable:

(1) The number of shares or units called for by such option does not exceed ten percent of the number of shares or units underwritten for the issuer in the offering.

(2) The options do not exceed five years in total duration.

(3) The options are exercisable at an exercise price which is initially not less than the public offering price of the securities underwritten and the options provide for an increase of the exercise price by seven percent of the initial exercise price for each full year such options are outstanding; or the options are exercisable at a price which is not less than 120 percent of the public offering price of the securities underwritten.

(4) The options are not deliverable to the underwriters until the entire issue has been sold, whether it is underwritten on a firm commitment or a best-efforts arrangement.

(5) The options are nontransferable other than by will or pursuant to the laws of descent and distribution, except to a partner of the underwriter when the underwriter is a partnership or to a stockholder of the underwriter or beneficiary of a trust which is a stockholder of such underwriter when the underwriter is a corporation.

(6) Either the exercise of the options, or the resale, transfer and assignment of the shares underlying the options, is prohibited for a period of at least one year from the date of the offering. [Statutory Authority: RCW 21.20.450, 80-04-037 (Order SDO-37-80), § 460-16A-085, filed 3/19/80; Order 304, § 460-16A-085, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-090 Pro rata options to shareholders. Options may be issued to all of the shareholders of an issuer (or all of the holders of a particular class of stock) to purchase additional shares on a pro rata basis and having a term of not more than 90 days following their issuance, provided the exercise price is not so low in relation to the market price, or the underlying value of the shares where no market exists, as to be unreasonably prejudicial to those shareholders unable to exercise or sell their options and provided that the relative equity positions of different classes of outstanding shares will not be unfairly prejudiced thereby. An exercise price which is not more than 15 percent below the pre-existing market price is presumptively reasonable under this Section. Such options to shareholders should normally be freely transferable. [Order 304, § 460-16A-090, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-095 Options to purchasers of debt securities. Options may be issued to the purchasers of

debt securities from the issuer provided the terms of such options are reasonable and their issuance is reasonably necessary in order to obtain the debt financing. If the term of such options does not exceed the maximum life of the debt securities or 15 years, whichever is less, the number of shares of equity securities issuable upon exercise of shares that could be purchased at the exercise price with the face amount of the debt securities and the exercise price is not less than the market price at the date of the grant of such options, the terms and conditions of such options are presumptively reasonable. [Order 304, § 460-16A-095, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-100 Number of outstanding options. The maximum number of shares called for by all outstanding options (exclusive of options described in WAC 460-16A-090 of these rules) should not be unreasonably large in relation to the capitalization of the issuer. If all such outstanding options call for a number of shares not in excess of 20 percent of the then outstanding shares of the issuer, such number is presumptively reasonable. [Order 304, § 460-16A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-105 Amount of promotional shares. In connection with the financing of an unseasoned corporation, a number of promotional shares (considered in conjunction with any selling expenses paid to promoters) may be issued which is not unreasonable. A number of promotional shares which does not exceed 25 percent of all of the common shares issued and proposed to be issued by the corporation is presumptively reasonable. However, additional promotional shares may be authorized in the light of the services rendered and other consideration given to the corporation by the promoters, the nature and circumstances of the business enterprise being promoted, and the identity of the investors. Normally, no promotional shares may be issued in connection with the financing of a seasoned corporation. [Order 304, § 460-16A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-106 Cheap stock. Any securities sold or issued within five (5) years prior to the public offering date to persons for consideration lower than the proposed net public offering price of such securities, including options and warrants exercised, in the absence of any public market for such securities or any substantial change in the earnings or financial position of the issuer, shall be presumed to be "cheap stock". [Order 304, § 460-16A-106, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-107 Amount of cheap stock. In no event shall the amount of cheap stock and promotional shares exceed 40% of the outstanding securities of the issuer after the completion of the issue. [Order 304, § 460-16A-107, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-110 Rights of promotional shares. Promotional shares shall be equity securities without preference as to dividends, assets, or voting rights and shall have no greater rights per share than the securities issued for cash or its equivalent. Normally promotional shares should be subject to Escrow as provided by WAC 460-16A-130 of these rules. [Order 304, § 460-16A-110, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-111 Equity investment of promoters. (1) The offering or proposed offering of an issuer which is in the promotional or developmental stage shall be considered unfair and inequitable to public investors unless the fair value of the equity investment of the officers, directors, and promoters of such issuer, determined as of the offering date, equals at least five percent of the total equity investment resulting from the sale of all of the securities which are the subject of the offering or proposed offering.

(2) For purposes of this policy:

(a) An issuer which is in the "promotional or developmental stage" shall mean an issuer which has no significant record of operations or earnings prior to the proposed offering date or the offering of whose securities cannot be justified on the basis of such record.

(b) The "fair value of the equity investment" of the officers, directors and promoters shall mean and total of all sums contributed to the issuer in cash together with the reasonable value of all tangible assets contributed to the issuer, as determined by independent appraisal or otherwise, and as adjusted by the earned surplus or deficit of the issuer subsequent to the dates of contribution.

(c) The term "total equity investment" shall mean the total of

(i) the par or stated value of all securities outstanding or offered or proposed to be offered, and

(ii) the amount of capital contributed in excess of par or stated value; regardless of description and whether or not restricted.

(d) Upon the application and justification of the registrant, the director or administrator may waive, in whole or in part, the applicability of this rule if it is found in the public interest to grant such relief. [Order SD-131-77, § 460-16A-111, filed 11/23/77.]

WAC 460-16A-115 Reimbursement of expenses incurred by promoters. Actual and necessary expenses paid by a promoter in connection with the founding or organizing of a business enterprise, the offering of its securities and the acquisition of assets with which the issuer is to carry on its business may be reimbursed out of the proceeds of the sale of securities, subject, however, in the case of selling expenses to the limitation on total selling expenses contained in WAC 460-16A-075 of these rules. [Order 304, § 460-16A-115, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-120 Price variance. No permit will be issued for the sale of securities pursuant to a contract whereby the price of the securities sold varies among

different purchases of the same offering. [Order 304, § 460-16A-120, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-125 Prospectus or offering circular.

(1) The Administrator shall require the use of an offering circular or prospectus for each registration that is filed with the division.

(2) The prospectus or offering circular may be printed, mimeographed, lithographed, or typewritten, or prepared by any similar process which will result in clear legible copies. If printed, it shall be set in clear roman type at least as large as ten point modern type, with financial data or other statistical or tabular matter at least as large as eight point (all type shall be leaded at least two point).

(3) Every offering circular or prospectus must disclose all material facts affecting the sale of securities. Contents of prospectus for real estate programs are set out in WAC 460-32A-195 and should be used for other types of securities where appropriate. [Order 304, § 460-16A-125, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-126 Annual revision of offering circular. The prospectus or offering circular shall be amended whenever there are material changes which would affect the offering and in no event shall it be revised less often than every twelve months. [Order 304, § 460-16A-126, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-127 Offering registered with the Securities and Exchange Commission ("SEC"). With respect to offerings registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, and qualified with the administrator by co-ordination, a prospectus which is part of a registration statement which has been declared effective by the SEC shall be deemed to comply with all requirements as to form of this rule; provided, however; that the administrator reserves the right to require additional disclosure of substance in his discretion. [Order 304, § 460-16A-127, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-130 Escrow. Promotional shares may be required to be placed in escrow with an escrow holder first to be approved by the director. [Order 304, § 460-16A-130, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-135 Operation of escrow. Promotional shares required to be escrowed pursuant to the provisions of WAC 460-16A-130 of these rules, shall be maintained in an escrow account for at least one year beyond the end of the public offering unless released prior thereto by the administrator. In any case shares may be released only upon the order of the administrator upon a demonstration of compliance with the maximum allowances for promotional shares and cheap stock as set

forth in WAC 460-16A-105 and 460-16A-107. [Order SD-131-77, § 460-16A-135, filed 11/23/77; Order 304, § 460-16A-135, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-140 Consent to transfer escrowed shares. Escrowed shares or any interest therein shall not be sold or transferred until the written consent of the Administrator shall have been first obtained. [Order 304, § 460-16A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-145 Restrictions on dividends/distribution for promotional shares. Promotional shares shall carry a waiver of dividend rights and rights to participate in dissolution in favor of the shareholders who have paid cash or its equivalent so long as the administrator requires. [Order 304, § 460-16A-145, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-150 Imposition of impound condition. In a case where the offering of securities is not firmly underwritten, the administrator considers that one or more of the following circumstances require the imposition of an impound condition:

(1)(a) That a specific minimum amount of funds is necessary to finance the proposed undertaking as described in the application; and

(b) That it is inadvisable for the issuer to expend the proceeds from the sale of securities prior to receipt of such minimum amount.

(2)(a) That promotional shares and/or cheap stock will be issued in connection with the issue; and

(b) That it is inadvisable for the issuer to expend the proceeds from the sale of securities prior to receipt of an amount necessary to evidence compliance with the maximum amount of allowances for promotional shares and/or cheap stock as set forth in WAC 460-16A-105 and 460-16A-107. [Order SD-131-77, § 460-16A-150, filed 11/23/77; Order 304, § 460-16A-150, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-155 Operation of impound condition. When an impound condition is imposed in connection with the sale of securities, the issuer may not issue any certificates or other evidences of securities, except subscription agreements, unless and until the impound condition has been satisfied and the impounds have been released to the issuer pursuant to an order of the Administrator. All checks shall be made payable to the depository.

One hundred percent of any amounts received from the sale of securities, including any amounts to be allowed as selling expenses, shall within 48 hours of the receipt be placed with the depository until the Administrator takes further action. [Order 304, § 460-16A-155, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-156 Source of impound deposits. All funds deposited into the impound account shall be derived solely from the sale of the securities for which the impound condition has been imposed. [Statutory Authority: RCW 21.20.250. 79-09-028 (Order SD-57-79), § 460-16A-156, filed 8/14/79.]

WAC 460-16A-160 Subscription agreements and purchase receipts. When an impound condition is imposed, the issuer shall deliver to each subscriber a subscription agreement, in a form approved by the Administrator. Such subscription agreements shall be consecutively numbered and prepared in quadruplicate and the original given to the subscriber, the first copy to the depository together with the payment received, the second copy to the issuer, and the third copy shall be retained by the broker, if any. In addition, if the securities are to be paid for in installments, each subscriber shall be given a receipt, in a form satisfactory to the Administrator, for each installment payment made subsequent to the first payment. [Order 304, § 460-16A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-165 Depository. Funds subject to an impound condition shall be placed in a separate trust account with a bank located in Washington or a Washington bank, savings and loan or trust company, or (if the issuer is a corporation located in another state) a foreign bank, savings and loan or trust company approved by the Administrator. A written consent of the depository to act in such capacity shall be filed with the Division, on a form satisfactory to the Administrator. [Order 304, § 460-16A-165, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-170 Release of impounds. The Administrator will authorize the depository to release the impounds to the issuer when the full amount of impounds specified in the impound condition has been deposited with the depository, and any other conditions to such release have been satisfied, unless there have been changes in the plan of operation or in other circumstances that would render that amount of impounds inadequate to finance the proposed plan of operations. In unusual cases a partial release or modification of impounds may be approved based upon the individual circumstances. An application for an order of the Administrator authorizing the release of impounds to the issuer shall contain the following:

(1) A statement of the issuer that all required proceeds from the sale of securities have been placed with the depository in accordance with the terms and conditions of the impound condition and that there have been no material adverse changes in the financial condition of the issuer and any changes in the plan of operation or in other circumstances that would render the amount of the impounds inadequate to finance the proposed plan of operation.

(2) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depository, a list of all subscribers to the offering whose funds have been deposited in the account together with the addresses of the subscribers and the amount of each such deposit.

(3) Such other information as the Administrator may require in a particular case. [Statutory Authority: RCW 21.20.450, 79-09-028 (Order SD-57-79), § 460-16A-170, filed 8/14/79; Order 304, § 460-16A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-175 Failure to comply with impound condition. If the specified amount of impounds has not been obtained as of the date specified in the impound condition, or upon the earlier issuance of a stop order or order suspending or revoking the permit, the Administrator will issue an order directing the depository to return directly to each subscriber the amount of impounds which correspond to his payments; except that in unusual cases an extension of time may be granted upon application. [Order 304, § 460-16A-175, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-180 Technical reports. (1) The Administrator may require the submission of a technical report whenever he determines that such a report is necessary in resolving a matter pending before him. The cost of the technical report shall be borne by the person requested by the Administrator to submit it. The Administrator may require or permit a technical report to be prepared by an employee of the State of Washington.

(2) The engineer, appraiser or other skilled person preparing a technical report shall submit with such report a statement as to his qualifications and experience and a statement of any material relationship or other factors which tends to impair his independence from the subject matter to which or the person to whom the technical report relates. [Order 304, § 460-16A-180, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-185 Technical reports prepared by state employee. When a technical report is to be prepared by an employee of the State of Washington, the Administrator shall estimate the expense of making such report and notify the applicant thereof. Before any preparation of the technical report is commenced, the applicant shall deposit with the Administrator the estimate cost thereof in cash, accompanied by written instructions authorizing the disbursement of the funds. If it appears that the expense of preparing the report will exceed the estimate, an additional deposit may be required before the report is filed. When the deposit exceeds the actual expense incurred in preparing the report, the excess will be returned to the applicant. [Order 304, § 460-16A-185, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-190 Petition for repeal or adoption of new rules. Any interested persons may petition the Administrator in writing, requesting the promulgation, amendment or repeal of any rule under the Washington Securities Act. Such petition may be in the form of a letter addressed to the Administrator and shall set forth the proposed change, including the exact language of any proposed rule or amendment, and the reasons why such change is considered desirable. The Administrator shall consider the petition and shall reach a determination within a reasonable time, which he shall communicate to the petitioner. [Order 304, § 460-16A-190, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-390 Notice of termination of offering—Change of officers. An issuer who has completed or discontinued the sale of securities registered with the Department of Motor Vehicles shall notify the administrator in writing to that effect. Until such notice has been given, notices of all withdrawals or changes of officers, directors, trustees, partners or other principal members of registrants shall be made to the administrator of securities as soon as possible, but within five days, after such withdrawals or changes in the personnel of such organization shall become effective. [Order 304, § 460-16A-390, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

Chapter 460-20A WAC BROKER-DEALERS AND SALESMEN

WAC

460-20A-005	Definitions.
460-20A-010	Churning.
460-20A-015	Confirmation of transactions.
460-20A-020	Disclosure of control of issuer.
460-20A-025	Disclosure of interest in distributions.
460-20A-030	Record of transactions in discretionary accounts.
460-20A-035	Control of the market.
460-20A-045	Transmission or maintenance of payments received in connection with underwritings.
460-20A-050	Disclosure and other requirements when extending or arranging credit in certain transactions.
460-20A-100	Minimum net capital requirement for broker-dealers.
460-20A-105	Net capital defined.
460-20A-200	Books and records of broker-dealers.
460-20A-205	Preservation of records.
460-20A-210	Notice of changes by broker-dealer.
460-20A-215	Notice of complaint.
460-20A-220	Salesperson examinations.
460-20A-225	Exemptions from salesmen examinations.
460-20A-230	Broker-dealer examinations.
460-20A-235	Condominium salesmen and broker-dealers.
460-20A-400	Dual representation and affiliation.
460-20A-410	Part-time salesman or investment adviser salesman.
460-20A-415	Broker-dealer financial statement.

WAC 460-20A-005 Definitions. As used in any section of these rules:

(1) The term "customer" does not include a broker-dealer.

(2) The phrase "the completion of the transaction" means:

(a) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in Clause (b) of this Subsection, the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(b) In the case of a customer who purchases a security through or from a broker-dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(c) In the case of a customer who sells a security through or to a broker-dealer, except as provided in Clause (d) of this Subsection, if the security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer or the time when the broker-dealer transfers the security from the account of such customer;

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer. [Order 304, § 460-20A-005, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-010 Churning. The phrase "employ any device, scheme, or artifice", as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for any customer's account with respect to which such broker-dealer or his agent or employee is vested with any discretionary power, or with respect to which he is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account. [Order 304, § 460-20A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-015 Confirmation of transactions. The phrase "employ any device, scheme, or artifice", as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for the account of a customer any transaction in any security unless such broker-dealer or agent, at or before the completion of each such transaction, gives or sends to such customer written notification disclosing:

(1) Whether he is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or a broker for both such customer and some other person; and

(2) In any case in which he is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such

customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction. [Order 304, § 460-20A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-020 Disclosure of control of issuer. The phrase "employ any device, scheme, or artifice", as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security unless such broker-dealer or agent, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction. [Order 304, § 460-20A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-025 Disclosure of interest in distributions. The phrase "employ any device, scheme, or artifice," as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker-dealer or agent is participating or is otherwise financially interested unless such broker-dealer or agent, at or before the completion of each such transaction, notifies such customer of the existence of such participation or interest. [Order 304, § 460-20A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-030 Record of transactions in discretionary accounts. The phrase "employ any device, scheme, or artifice", as used in RCW 21.20.010(1), is hereby defined to include any act of any broker-dealer or agent designed to effect with or for any customer's account in respect to which such broker-dealer or his agent or employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker-dealer or agent makes a record of such transaction which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place. [Order 304, § 460-20A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-035 Control of the market. The phrase "employ any device, scheme, or artifice", as used in RCW 21.20.010(1), is hereby defined to include any

representation made to a customer by a broker-dealer or agent that any security is being offered to such customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated, or by any person controlled by, controlling, or under common control with him. A written notification to a customer at or prior to the completion of the transaction that a broker-dealer making the principal market in a security may be in control of the market, by virtue of the fact that he is the only broker-dealer regularly appearing in the sheets or by reason of the volume of his transactions in relation to the total volume of trading by all broker-dealers, shall be sufficient to negate any representation which might otherwise be implied that he is selling "at the market". [Order 304, § 460-20A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-045 Transmission or maintenance of payments received in connection with underwritings. It shall constitute a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any broker-dealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(1) the money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) if the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred. [Order 304, § 460-20A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-050 Disclosure and other requirements when extending or arranging credit in certain transactions. (1) It shall constitute a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1) for any broker-dealer or agent to offer to sell any security by, any person, in connection with which such broker-dealer or agent, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer or agent, before any purchase, loan or other related element of the transaction is entered into:

(a) Delivers to such person a written statement setting forth the exact nature and extent of;

(i) Such person's obligations under the particular loan arrangement, including, among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended.

(ii) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement, and

(iii) all commissions, discounts, and other remuneration received and to be received, in connection with the entire transaction including the loan arrangement, by the broker-dealer or agent, by any person controlling, controlled by, or under common control with the broker-dealer or agent, and by any other person participating in the transaction; and

(b) Obtains from such person information concerning his financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person, and delivers to such person a written statement setting forth the basis upon which the broker-dealer or agent made such determination.

(2) This rule shall not apply to any credit extended or any loan arranged by any broker-dealer only for the purpose of purchasing or carrying the security offered to be sold in compliance with the requirements of Regulation T, Regulation U or Regulation G (issued by the Board of Governors of the Federal Reserve System). [Order 304, § 460-20A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-100 Minimum net capital requirement for broker-dealers. Every licensed broker-dealer shall meet the minimum net capital requirements required by the United State Securities and Exchange Commission as now in effect. Copies of these requirements may be obtained from the Securities Division. [Order 304, § 460-20A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-105 Net capital defined. The definition of "net capital" shall be the same as the definition promulgated by the United State Securities and Exchange Commission as now in effect. Copies of this definition may be obtained from the Securities Division. [Order 304, § 460-20A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-200 Books and records of broker-dealers. (1) Every licensed broker-dealer shall make and keep current the following books and records relating to his business:

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the amount for which each such

transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

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

(c) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of such broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account and all other debits and credits to such account.

(d) Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and monies loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(iv) Securities failed to receive and failed to deliver.

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting positions to all securities short, including long security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(f) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of a discretionary power by such broker-dealer, or any agent or employee thereof, shall be so designated.

For the purpose of this Clause (f), the following definitions apply:

(i) "Instruction" includes instructions between partners, agents, and employees of a broker-dealer.

(ii) "Time of entry" means the time when such broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(g) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received showing the time or receipt, the terms and conditions of the order, and the account in which it was entered.

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and

credits for securities, cash and other items for the account of customers and partners of such broker-dealer.

(i) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided, however, that in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such accounts.

(j) A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(k) 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 aggregate indebtedness and net capital as of the trial balance date pursuant to WAC 460-20-105 and 460-20-110 [See Title Digest for disposition of chapter 460-20 WAC] of these rules; provided, however, that any exchange member exempted from the requirements of WAC 460-20-100 shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges of which he is a member. Such trial balances and computations shall be prepared currently at least once a month.

(l) 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:

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

(ii) His date of birth.

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

(iv) A complete, consecutive statement of all his business connections for at least the preceding 10 years, including his reason for leaving each prior employment, and whether the employment was part-time or full-time.

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

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

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

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

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

If such agent has been registered as a representative of such broker-dealer or his employment has been approved by the National Association of Securities Dealers, Inc., or the New York Stock Exchange, the American Stock Exchange, or the Pacific Coast Stock Exchange, Inc., the retention of a full, correct and complete copy of any and all applications for such registration or approval shall satisfy the requirements of this Clause (1).

(2) This Section does not require a member of the New York Stock Exchange, the American Stock Exchange, or the Pacific Coast Stock Exchange, Inc. to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

(3) This Section does not require a broker-dealer to make or keep such records as are required by Subsection (1) of this Section reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F, and G.

(4) The records specified in Subsection (1) of this Section shall not be required with respect to any cash transaction of \$100.00 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof. [Order 304, § 460-20A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-205 Preservation of records. The records required in WAC 460-20A-200 of these rules shall be preserved according to the following requirements:

(1) Every broker-dealer shall preserve 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 460-20A-200 of these rules.

(b) All check books, bank statements, cancelled checks and cash reconciliations.

(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 aggregate indebtedness and net capital (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 broker-dealer relating to his business as such, including agreements with respect to any account.

(2) Every broker-dealer shall preserve for a period of not less than three years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(3) Every 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.

(4) Every broker-dealer shall maintain and preserve in an easily accessible place all records required under Subsection (1)(1) of WAC 460-20A-200 of these rules until at least three years after the agent has terminated his employment and any other connection with the broker-dealer.

(5) After a record or other document has been preserved for two years, a photograph thereof on film may be substituted therefor for the balance of the required time; provided that the records required to be maintained and preserved pursuant to WAC 460-20A-200 and 460-20A-205 of these rules, may be immediately produced or reproduced on microfilm and be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a member, broker, or dealer, he shall (1) at all times have available for the Administrator's examination of his records, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements, (2) arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record, (3) be ready at all times to provide, and immediately provide, any facsimile enlargements which the Administrator by his examiners or other representatives may request, and (4) store separately from the original one other copy of the microfilm for the time required.

(6) If a person who has been subject to the requirements of WAC 460-20A-205 of these rules ceases to hold a certificate as a broker-dealer, such person shall, for the remainder of the periods of time specified in this Section, continue to preserve the records which he theretofore preserved pursuant to this Section. [Order 304, § 460-20A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-210 Notice of changes by broker-dealer. (1) Each licensed broker-dealer shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information (and in any event within 30 days after the change occurs).

(2) Each licensed broker-dealer shall notify the Administrator 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 was or will be employed, within 10 days after the event occurs.

(3) With respect to any broker-dealer registered under the Securities Exchange Act of 1934, it shall be a sufficient compliance with Subsection (1) of this Section if a copy of an amendment to Form BD of the Securities and Exchange Commission containing the required information, or transmitted for filing to, the Administrator not later than the date on which such amendment is required to be filed with the Securities and Exchange Commission. [Order 304, § 460-20A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-215 Notice of complaint. Each licensed 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 Administrator, within 10 days following its filing with such other agency or bonding company. [Order 304, § 460-20A-215, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-220 Salesperson examinations. (1) Every applicant for registration as a securities salesperson, unless exempt as provided herein, shall pass the Washington state securities salesperson examination. Every applicant shall pass such examination unless such applicant:

(a) Has within the preceding five years passed a National Association of Securities Dealers (N.A.S.D.) series 1, series 7, series 40 or nonmember test series 1 examination and has been continuously employed as a securities salesperson since such passage by broker-dealers who were at the time of said employment members of N.A.S.D. or were registered brokers with the state of Washington; or

(b) Has within the preceding five years passed the Uniform Securities Agent State Law Exam (U.S.A.S.L.E.) series 63 and has been continuously employed as a securities salesperson since such passage by broker-dealers who were at the time of said employment members of N.A.S.D. or were registered brokers with the state of Washington: *Provided*, That in addition to such passage of U.S.A.S.L.E. such applicant shall demonstrate proof of passage of a general securities exam conducted by N.A.S.D.; or

(c) Is exempt under the original offering provision of RCW 21.20.070.

(2) Employment with broker-dealers who are members of N.A.S.D. or registered with the state of Washington as required in (1)(a) and (b) shall be deemed continuous if the securities salesperson has been

absent from securities sales employment for no more than two years.

(3) The time and place for the Washington state securities salesperson examination will be available from the division upon request. Applications for examination must be received in the division at least two weeks prior to the examination date in order to be scheduled for that examination. If the applicant fails to show up for a scheduled examination he will automatically be rescheduled for the next examination. Unexcused failure to show up for two scheduled examinations will result in the application being denied. In order to reapply it will be necessary for the applicant to submit a new application along with the appropriate fees. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-20A-220, filed 3/19/80; Order 304, § 460-20A-220, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-225 Exemptions from salesmen examinations. Those applicants who are exempt from the Washington written examination will file the regular salesmen application along with the fees provided for by RCW 21.20.340(6).

(1) If the applicant is exempt because of successfully passing an acceptable national examination, he must submit evidence to that effect.

(2) If the applicant is exempt because of being an officer of an issuer for an original offering then he must state the basis for the exemption and sign a statement that he has not claimed this exemption at any time during the immediately preceding five years.

For the purposes of Subsection (2), "officers of an issuer" means (1) any officer of a corporation when the securities sought to be registered are corporate securities, (2) any general partner or officer of a general partner when the securities sought to be registered are limited partnership interest. [Order 304, § 460-20A-225, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-230 Broker-dealer examinations. The time and places for examination will be available from the Division upon request. Applications for examination must be received in the division at least two weeks prior to examination date in order to be scheduled for that examination. If the applicant fails to show up for a scheduled examination, he will automatically be rescheduled for the next examination. Unexcused failure to show up for two scheduled examinations will result in the application being denied. In order to reapply it will be necessary for the applicant to submit a new application along with the appropriate fees.

If the applicant is an individual then he must successfully pass the Washington Broker-Dealer examination.

If the applicant is a corporation then an officer must successfully pass the Washington Broker-Dealer examination. If the individual who takes the examination on behalf of a corporate applicant ceases to be employed by that corporation then a substitute officer must successfully pass the Washington Broker-Dealer examination

within two months in order to maintain the Broker-Dealer license.

If the applicant is a partnership then one of the general partners must successfully pass the Washington Broker-Dealer examination. If the general partner who takes the examination ceases to be a general partner of the partnership then a substitute general partner must successfully pass the Washington Broker-Dealer examination within two months in order to maintain the Broker-Dealer license. [Order 342, § 460-20A-230, filed 9/29/75; Order 304, § 460-20A-230, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-235 Condominium salesmen and broker-dealers. An exemption from registration as a broker-dealer or salesman will be granted to those engaged in exclusively selling condominium securities provided;

(1) That the person claiming the exemption give written notice of their intention to claim the exemption five working days prior to exercising the exemption and

(2) They submit their Washington real estate license number to the Division.

If for any reason the person claiming this exemption should have his Washington real estate license cancelled, suspended or revoked then this exemption will not apply to any further transactions. [Order 304, § 460-20A-235, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-400 Dual representation and affiliation. (1) A person may be registered simultaneously in Washington as a security salesman with more than one broker-dealer, issuer, or owner of securities if an undertaking in a form acceptable to the administrator is entered into in writing between all employers.

(2) A person may be registered simultaneously in Washington as an investment adviser salesman with more than one investment adviser if an undertaking in a form acceptable to the administrator is entered into in writing between all employers.

(3) The undertakings for (1) and (2) shall contain the following provisions:

(a) The effective date of the dual employment with the respective employers.

(b) Consent by each employer to the employment of the salesman by all other employers.

(c) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesman in violation of the Washington Securities Law during his period of employment and continuing until written notice is given to the Administrator of the termination of the employment relationship.

(d) An agreement that each employer will register the salesman with the Securities Division and pay the applicable registration fee.

(4) A separate application for registration or renewal shall be made by each employer desiring to employ the salesman. An executed copy of the undertaking required by subsection (1) (2) shall accompany the application.

The application shall be filed with the Administrator and shall contain such exhibits and information as may be required by the Administrator, together with the fees required by RCW 21.20.340. [Order 342, § 460-20A-400, filed 9/29/75; Order 304, § 460-20A-400, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-410 Part-time salesman or investment adviser salesman. An applicant for registration as securities salesman or investment adviser salesman who does not plan to devote full time to the position shall submit a letter from his present employer granting permission to engage as a part-time securities salesman or investment adviser salesman. [Order 342, § 460-20A-410, filed 9/29/75; Order 304, § 460-20A-410, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

WAC 460-20A-415 Broker-dealer financial statement. The financial statements required to be filed by a broker-dealer pursuant to RCW 21.20.090 must be filed within 90 days of the broker-dealer's fiscal year-end. The financial statement must be prepared in accordance with generally accepted accounting principles but need not be audited. [Order 304, § 460-20A-415, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

Chapter 460-24A WAC INVESTMENT ADVISERS

WAC

460-24A-010	Investment advisers—Where rules apply.
460-24A-030	Use of the term "investment counsel".
460-24A-050	Investment adviser examination.
460-24A-060	Financial statements required on investment advisers.
460-24A-100	Advertisements by investment advisers.
460-24A-105	Custody or possession of funds or securities of clients.
460-24A-140	Guarantees of success.
460-24A-160	Refunds.
460-24A-170	Capital requirements.
460-24A-200	Books and records to be maintained by investment advisers.
460-24A-205	Notice of changes by investment adviser.
460-24A-210	Notice of complaint.

WAC 460-24A-010 Investment advisers—Where rules apply. These rules apply only to that part of the investment advisers' business within the state of Washington. [Order 304, § 460-24A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-030 Use of the term "investment counsel". No investment adviser shall use the title "investment counsel" in the conduct of his or its business nor represent that he or it is an "investment counsel" nor use the term "investment counsel" as descriptive of his or its business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended. [Order 304, § 460-24A-030, filed

2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-050 Investment adviser examination. The time and place for examination will be available from the division upon request. Applications for examination must be received in the division at least two weeks prior to examination date in order to be scheduled for that examination. If the applicant fails to show up for a scheduled examination, he will automatically be rescheduled for the next examination. Unexcused failure to show up for two scheduled examinations will result in the application being denied. In order to reapply it will be necessary for the applicant to submit a new application along with the appropriate fees.

If an applicant is an individual then he must successfully pass the Washington investment adviser examination.

If the applicant is a corporation an officer must successfully pass the Washington investment adviser examination. If the individual who takes the examination on behalf of a corporate applicant ceases to be an officer of that corporation then a substitute officer must successfully pass the Washington investment adviser examination within two months in order to maintain the investment adviser license.

If the applicant is a partnership then one of the general partners must successfully pass the Washington investment adviser examination. If the general partner who takes the examination ceases to be a general partner of the partnership then a substitute general partner must successfully pass the Washington investment adviser examination within two months in order to maintain the investment adviser license. [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-060 Financial statements required on investment advisers. Every investment adviser shall file with the director a statement of financial condition in such detail as will disclose generally the nature and amount of assets and liabilities and the net worth of such investment adviser as of a date within ninety days prior to the date on which it is filed. Such reports shall be filed 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). [Order 304, § 460-24A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-100 Advertisements by investment advisers. (1) It shall constitute and [an] "act, practice, or course of business[]" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser; or

(b) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person: *Provided, however,* That this clause (b) does not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately:

(i) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and

(ii) Contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."; or

(c) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or

(c) Any other investment advisory service with regard to security. [Order 304, § 460-24A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

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 administrator promptly after each such examination. [Order 304, § 460-24A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-140 Guarantees of success. No representation or statement, whether direct or by implication, should be made guaranteeing the success of investments made pursuant to recommendations of the advisory service concerned. [Order 304, § 460-24A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-160 Refunds. Advisory services should not advertise or represent to subscribers or customers that subscriptions, fees or other payments will be refunded if they are not satisfied unless (1) such undertaking to refund is clear and unequivocal and is concerned not with the merit or success of the service, but

with the customer's satisfaction therewith and (2) the investment adviser's financial responsibility is adequate to insure its ability to meet all such refund demands. [Order 304, § 460-24A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

WAC 460-24A-170 Capital requirements. (1) Any investment adviser who takes any power of attorney from any investment advisory client to execute transactions or has custody of any or [of] his investment advisory clients' securities or funds is subject to the minimum capital requirement and the requirement regarding the ratio of net capital to aggregate indebtedness, in accordance with WAC 460-20A-100 of these rules.

(2) The administrator may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any investment adviser who satisfies the administrator that, because of the special nature of his business, his financial position, and the safeguards he has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular investment advisor to the provisions of this section. [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 licensed investment adviser shall make and keep true, accurate and current the following books and records relating to his investment advisory business:

(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. Such 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 such 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, cancelled 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 as such.

(f) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(g) Originals of all written communications received and copies of all written communications sent by such 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 power of attorney with respect to the funds, securities or transactions of any client.

(i) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(j) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(k) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributed, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(2) A record of every transaction in a security in which the investment adviser or any investment adviser salesman (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser salesman of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such 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. Such 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 investment adviser salesman 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.

For the purposes of this clause (2), the term "investment adviser salesman" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation 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 duties obtains any information concerning which securities are being recommended; and any person in a control relationship to the investment adviser who obtains information concerning securities recommendations being made by such investment adviser other than a regular client of such investment adviser.

An investment adviser does not violate the provisions of this clause (2) because of his failure to record securities transactions of any investment adviser salesman if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(3) If a licensed investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) above shall include:

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

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

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

(4) Every licensed investment adviser 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 such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(b) For each security in which any such client has a current position, information from which the investment

adviser can promptly furnish the name of each such client, and the current amount of the interest of such client.

(5) 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.

(6)(a) All books and records required to be made under the provisions of subsections (1) to (4)(a), inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(b) 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.

(7) A licensed investment adviser, 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 Administrator in writing of the exact address where such books and records will be maintained during such period.

(8) After a record or other document has been preserved for two years, a photograph on film may be substituted for the balance of the required time.

(9) As used in this section, the terms "power of attorney" and "discretionary authority" do 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. [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 adviser. (1) Each licensed investment adviser shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information (and in any event within 30 days after the change occurs).

(2) With respect to any investment adviser registered under the Investment Advisers Act of 1940, it shall be a sufficient compliance with subsection (1) of this section if a copy of an amendment to Form ADV, of the Securities and Exchange Commission containing the required information, or transmitted for filing to, the administrator not later than the date on which such amendment is required to be filed with the Securities and Exchange

Commission. [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 administrator, within 10 days following its filing with such other agency or bonding company. [Order 304, § 460-24A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

Chapter 460-28A WAC ADVERTISEMENTS

WAC

- 460-28A-010 Advertisements—Scope of rules.
- 460-28A-015 All advertisements to be filed.
- 460-28A-020 Specific prohibitions.
- 460-28A-025 Exceptions from filing requirements.

WAC 460-28A-010 Advertisements—Scope of rules. Any advertisement, display, pamphlet, brochure, letter, articles, or communication published in any newspaper, magazine, or periodical, or script or any recording, radio or television announcement, broadcast, or commercial to be used or circulated in connection with the sale and promotion of a registered offering of securities will be subject to the requirements and restrictions set out in WAC 460-28A-015 and WAC 460-28A-020. [Order 342, § 460-28A-010, filed 9/29/75; Order 304, § 460-28A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

WAC 460-28A-015 All advertisements to be filed. All sales and advertising literature and promotional material, other than that exempted by these rules, shall be governed by the following:

(1) The registration applicant or registrant shall file with the Division, at least five days before its intended dissemination, one copy of each item of literature or material.

(2) If not disallowed by the Administrator by written notice or otherwise within three business days from the date filed, the literature or material may be disseminated

(3) No formal approval of the literature or material shall be issued by the Administrator.

(4) The disseminator of the literature or material shall be responsible for the accuracy and reliability of the literature and material, and its conformance with the code and these rules. [Order 342, § 460-28A-015, filed 9/29/75; Order 304, § 460-28A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

WAC 460-28A-020 Specific prohibitions. The following devices or sales presentation, and the use thereof, will be deemed deceptive or misleading practices:

(1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;

(2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;

(3) Statements or representations, which by themselves predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities which are positive or imperative in form;

(4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair and truthful representation;

(5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar benefit to the prospective purchaser;

(6) Distribution of any nonfactual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism;

(7) Memoranda, reports, letters and similar distributions which tend, alone or by compilation, to substitute, repeat or detract from disclosure in the registered offering circular. [Order SD-131-77, § 460-28A-020, filed 11/23/77; Order 304, § 460-28A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

WAC 460-28A-025 Exceptions from filing requirements. The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the Administrator, unless specifically prohibited.

(1) So-called "tombstone" advertising, containing no more than the following information:

- (a) Name and address of issuer.
- (b) Identity or title of security.
- (c) Per unit offering price, number of shares and amount of offering.
- (d) Brief, general description of business.
- (e) Name and address of underwriter, or address where offering circular or prospectus can be obtained.
- (f) Date of issuance.

(2) Dividend notices, proxy statements and reports to shareholders, including investment company quarterly and semi-annual reports.

(3) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, the NASD, or an approved securities exchange.

(4) Factual or informative letters, bulletins or releases, similar to "news letters", relating to issuer's progress or activities, status of the offering or current financial conditions. [Order 304, § 460-28A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

Chapter 460-32A WAC REAL ESTATE PROGRAMS

WAC

- 460-32A-010 Application.
- 460-32A-015 Net worth requirement of sponsor.
- 460-32A-020 Fees, compensation and expenses to be reasonable.
- 460-32A-025 Compensation for acquisition services.
- 460-32A-030 Program management fee (defined in WAC 460-10A-145).
- 460-32A-031 Expenses paid to third parties.
- 460-32A-035 Subordinated promotional interests.
- 460-32A-045 Sales, leases and loans.
- 460-32A-050 Exchange of limited partnership interest.
- 460-32A-055 Exclusive agreement.
- 460-32A-057 Commissions on resale of property.
- 460-32A-060 Commissions on reinvestment.
- 460-32A-065 Services rendered to the program by the sponsor.
- 460-32A-070 Rebates, kickbacks and reciprocal arrangements.
- 460-32A-075 Commingling of funds.
- 460-32A-080 Expenses of program.
- 460-32A-085 Investments in other programs.
- 460-32A-090 Lending practices
- 460-32A-095 Development or construction contracts.
- 460-32A-100 Performance bond requirement.
- 460-32A-105 Requirement for real property appraisal.
- 460-32A-145 Rights and obligations of participants meetings.
- 460-32A-150 Voting rights of limited partners.
- 460-32A-155 Outsider replacement of general partner.
- 460-32A-160 Reports to holders of limited partnership interests.
- 460-32A-165 Access to records.
- 460-32A-170 Redemption of program interests.
- 460-32A-175 Assessability.
- 460-32A-180 Defaults.
- 460-32A-185 Sales promotional efforts.
- 460-32A-195 Contents of prospectus.
- 460-32A-196 Track records.
- 460-32A-200 Projections.
- 460-32A-205 Fiduciary duty.
- 460-32A-210 Deferred payments.
- 460-32A-215 Reserves.
- 460-32A-220 Reinvestment of Cash Flow and proceeds on disposition of property.
- 460-32A-225 Nonspecified property programs.
- 460-32A-235 Statement of investment objectives.
- 460-32A-240 Period of offering and expenditure of proceeds.
- 460-32A-245 Special reports.
- 460-32A-250 Assessments.
- 460-32A-255 Multiple programs.
- 460-32A-300 Oil and gas programs.
- 460-32A-315 Title.
- 460-32A-320 Regulation B filings.
- 460-32A-325 Funds to be held in trust.
- 460-32A-400 Sales in condominiums or units in real estate development.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 460-32A-305 Records and payment of proceeds. [Order 304, § 460-32A-305, filed 2/28/75, effective 4/1/75. Formerly

chapter 460-32 WAC.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.

460-32A-310 Oil and gas interests other than working interests. [Order 304, § 460-32A-310, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.

WAC 460-32A-010 Application. (1) These rules contained in these regulations apply to registrations of real estate programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships") and will be applied by analogy to real estate programs in other forms. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain regulations may be modified or waived by the administrator.

(2) Where the individual characteristics of specific programs warrant modification from these standards, they will be accommodated, insofar as possible while still being consistent with the spirit of these rules. [Order 304, § 460-32A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-015 Net worth requirement of sponsor. The financial condition of the sponsor (defined in WAC 460-10A-155) must be commensurate with any financial obligations assumed in the offering in the operation of the program. At a minimum, the sponsor shall have a financial net worth (defined in WAC 460-10A-110) of an amount at least equal to 5 percent of the gross amount of all offerings sold within the prior 12 months plus 5 percent of the gross amount of the current offering, to a maximum net worth of the sponsor of one million dollars. In determining net worth for this purpose, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in computation of net worth.

The above standards are presumptively reasonable. The inability of a sponsor to meet the above requirements will not preclude a person from acting as a sponsor if he can demonstrate that there are sufficient safeguards in the program so that the net worth requirements are not necessary to the viability of the program. [Order 304, § 460-32A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-020 Fees, compensation and expenses to be reasonable. (1) The total amount of consideration of all kinds which may be paid directly or indirectly to the sponsor or its affiliates (defined in WAC 460-10A-060) shall be reasonable, considering all aspects of the syndication program. Such consideration may include, but is not limited to:

(a) Organization and offering expenses (see WAC 460-10A-120 of these rules).

(b) Compensation for acquisition services.

(c) Compensation for development and/or construction services.

(d) Compensation for program management.

(e) Additional compensation to the sponsor/subordinated interest and promotional interests.

(2) Except to the extent that a subordinated interest is permitted for promotional activities pursuant to WAC 460-32A-035 (Profits and Other Comp.) hereof, consideration may only be paid for reasonable and necessary goods, property or services.

(3) The application for registration and the prospectus must fully disclose and itemize all consideration which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form. [Order 304, § 460-32A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-025 Compensation for acquisition services. Payment of an acquisition fee (defined in WAC 460-10A-055) shall be payable only for services actually rendered and to be rendered directly or indirectly and subject to the following conditions:

(1) Sponsors shall not receive a real estate commission, however, such fee may not exceed the normal and competitive rate for similar services in the locality where provided.

(2) The total of all such compensation paid to everyone involved in the transaction by the program (defined in WAC 460-10A-135) and/or any other person shall be deemed to be presumptively reasonable if it does not exceed 18 percent of the gross proceeds of the offering. The acquisition fee to be paid to the sponsor shall be reduced to the extent that other real estate commissions, acquisition fees, finder's fees, or other similar fees or commissions are paid by any person in connection with the transaction.

(3) If the seller pays the real estate commission and that amount exceeds the 18% provision of subsection (2) and the security sales commission is less than the presumptively reasonable 15%, the following alternative acquisition fee may be paid:

(a) A normal real estate commission paid by the seller, and

(b) An acquisition or organizational fee not to exceed the difference between the amount of the actual securities sales commission and the presumptively reasonable securities sales commission.

(4) The sponsor shall set forth in a separate section in the forepart of the prospectus the amount of all acquisition fees which may be received or paid. This amount shall be expressed in both absolute dollars and as a percentage of the gross proceeds of the offering and may in addition be expressed as a percentage of the Cost of Property.

(5) The sum of the purchase price of the program's properties plus the acquisition fees paid shall not exceed the appraised value (defined in WAC 460-10A-065) of the properties.

(6) All compensation paid for acquisition services must be paid ratably as the investors pay for their security with the exception of the real estate commission. [Order 304, § 460-32A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-030 Program management fee (defined in WAC 460-10A-145). A general partner shall be entitled to a program management fee consisting of annual compensation not exceeding 1 percent of the cost of the real property.

The above fee is presumptively reasonable, provided that, the general partner shall at a minimum perform the following services to the limited partners:

- (a) Provide quarterly reports
- (b) Maintain an office that shall be open and accessible for investor contacts at a minimum of 20 hours per week
- (c) Provide semi-annual reports of receipts and disbursements, and
- (d) Retain a qualified accountant to prepare financial reports that are required. [Order 304, § 460-32A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-031 Expenses paid to third parties. Expenses of the program paid for by the program will not be scrutinized as to reasonableness, if paid to a non-affiliated third party as the result of an arm-length transaction. [Order 304, § 460-32A-031, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-035 Subordinated promotional interests. An adequately subordinated interest in the limited partnership will be allowed as a promotional interest and partnership management fee, provided the amount or percentage of such interest is reasonable. Such an interest will be considered adequately subordinated and presumptively reasonable if it is within the limitations expressed in either subparagraph below:

- (1) An interest equal to 25 percent in the undistributed amounts remaining after payment to investors of an amount equal to 100 percent of capital contribution; or
- (2) An interest to:
 - (a) 10 percent of distributions from cash available for distribution (defined in WAC 460-10A-090); and
 - (b) 10 percent of distributions to investors from the proceeds from the sale or refinancing of properties after payment to investors of an amount equal to 100 percent of capital contributions, plus an amount equal to 6 percent of capital contributions per annum cumulative, less the sum of prior distributions to investors. [Order 304, § 460-32A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-045 Sales, leases and loans. (1) Sales and Leases to Program: a program shall not purchase or lease property in which a sponsor has an interest unless:

- (a) The transaction occurs at the formation of the program, and is fully disclosed in its prospectus or offering circular, and
- (b) The property is sold upon terms fair to the program and at a price not in excess of its appraised value, and

(c) The cost of the property and any improvements thereon to the sponsor is clearly established. If the sponsor's cost was less than the price to be paid by the program, the price to be paid by the program will not be deemed fair, regardless of the appraised value, unless some material change has occurred to the property which would increase the value since the sponsor acquired the property. Material factors may include the passage of a significant amount of time (but in no event less than 2 years) the assumption by the promoter of the risk of obtaining a re-zoning of the property and its subsequent re-zoning, or some other extraordinary event which in fact increases the value of the property.

(d) The provisions of this subsection notwithstanding, the sponsor may purchase property in its own name (and assume loans in connection therewith) and temporary hold title thereto for the purpose of facilitating the acquisition of such property or the borrowing of money or obtaining of financing for the program, or completion of construction of the property, or any other purpose related to the business of the program, provided that such property is purchased by the program for a price no greater than the cost of such property to the sponsor, and provided there is no difference in interest rates of the loans secured by the property at the time acquired by the sponsor and the time acquired by the program, nor any other benefit arising out of such transaction to the sponsor apart from compensation otherwise permitted by these Rules.

(2) Sales and Leases to Sponsor. The program will not ordinarily be permitted to sell or lease property to the sponsor except that the program may lease property to the sponsor under a lease-back arrangement made at the outset and on terms no more favorable to the sponsor than those offered other persons and fully described in the prospectus.

(3) Loans. No loans may be made by the program to the sponsor or affiliate.

(4) Dealings with Related Programs. A program shall not acquire property from a program in which the sponsor has an interest. [Order 304, § 460-32A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-050 Exchange of limited partnership interest. The program may not acquire property in exchange for limited partnership interests, except for property which is described in the prospectus which will be exchanged immediately upon effectiveness. In addition, such exchange shall meet the following conditions:

(1) A provision for such exchange must be set forth in the partnership agreement, and appropriate disclosures as to tax effects of such exchange are set forth in the prospectus.

(2) The property to be acquired must come within the objectives of the program.

(3) The purchase price assigned to the property shall be no higher than the value supported by an independent, qualified appraisal.

(4) Each limited partnership interest must be valued at no less than:

(a) Market value if there is a market or if there is no market,

(b) Fair market value of the program's assets as determined by an independent appraisal within the last 90 days, less its liabilities, divided by the number of interests outstanding.

(5) No more than one-half of the interests issued by the program shall have been issued in exchange for property, and

(6) No securities sales or underwriting commissions shall be paid in connection with such exchange.

(7) Such exchange, however, is prohibited between the program and the sponsor. [Order 304, § 460-32A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-055 Exclusive agreement. A program shall not give a sponsor an exclusive right to sell or exclusive employment to sell property for the program. [Order 304, § 460-32A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-057 Commissions on resale of property. Payment of all real estate brokerage commissions or similar fees to the sponsor on the resale of property by a program shall not be in excess of 50 percent of the acquisition fee permissible under WAC 460-32A-025, but if no such fee was received on the acquisition of the property, then a commission equal to a standard commission may be payable to the sponsor. All real estate brokerage commissions payable on resale to the sponsor shall be subordinated as in WAC 460-32A-035(2).

If the sponsor participates with an independent broker on resale, then these limitations shall apply to commissions paid by the program to all persons involved in the transaction. [Order SD-131-77, § 460-32A-057, filed 11/23/77.]

WAC 460-32A-060 Commissions on reinvestment. A program shall not pay, directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of the proceeds of the resale, exchange, or refinancing of program property. [Order 304, § 460-32A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-065 Services rendered to the program by the sponsor. (1) Insurance Services Prohibited. No affiliate of the sponsor may receive an insurance brokerage fee to write any insurance policy covering the sponsor or any of its property.

(2) Property Management Services. The sponsor or his affiliates may perform property management services for the program provided that the compensation to the sponsor therefore is competitive in price and terms with other nonaffiliated persons rendering comparable services, property management fees for unimproved land must be justified by the sponsor. All such self-dealing and the compensation paid therefore shall be fully disclosed in the prospectus or offering circular.

(3) Other Services. Any other services performed by the sponsor for the program will be allowed only in extraordinary circumstances fully justified to the administrator. As a minimum, self-dealing arrangements must meet the following criteria:

(a) The compensation, price or fee therefore must be comparable and competitive with the compensation, price or fee of any other person who is rendering comparable services of selling or leasing comparable goods which could reasonably be made available to the program and shall be on competitive terms, and

(b) The fees and other terms of the contract shall be fully disclosed in the prospectus, and

(c) The sponsor must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the program and as an ordinary and ongoing business, and

(d) All services or goods for which the syndicator is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid. [Order 304, § 460-32A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-070 Rebates, kickbacks and reciprocal arrangements. (1) No rebates or give-ups may be received by the sponsor nor may the sponsor participate in any reciprocal business arrangements which would circumvent these Rules. Furthermore the prospectus and program charter documents shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or promoters.

(2) No sponsor shall directly or indirectly pay or award any commissions or other compensation to any person engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular program; provided, however, that this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed person for selling program interests. [Order 304, § 460-32A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-075 Commingling of funds. The funds of a Program shall not be commingled with the funds of any other person (defined in WAC 460-10A-130). [Order 304, § 460-32A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-080 Expenses of program. All expenses of the programs shall be billed directly to the programs. Reimbursements (other than for organization and offering expenses) to any affiliate or promoter shall not be allowed. [Order 304, § 460-32A-080, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-085 Investments in other programs. Investments in limited partnership interests of another program shall be prohibited; however, nothing herein

shall preclude the investment in partnerships or ventures which own and operate a particular property. In such event, duplicate property management or other fees shall not be permitted, and such partnership or venture shall provide for its limited partners all of the rights and obligations required to be provided by the original program in these Rules. Further, such prohibitions shall not apply to Programs under Sections 236 or 221(d)(3) of the National Housing Act or any similar programs that may be enacted. [Order 304, § 460-32A-085, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-090 Lending practices (1) On financing made available to the program by the sponsor, the sponsor may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated banks on comparable loans for the same purpose in the locality of the property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by a junior or all-inclusive encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance.

(2) An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the program only if it appears that it would provide significant tangible benefits not available from conventional financing methods. In such cases the all-inclusive note shall provide that:

(a) The sponsor under the all-inclusive note shall not receive interest on the underlying encumbrance in excess of that payable to the lender of that underlying encumbrance.

(b) The program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (a) above, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the syndicate. [Order 304, § 460-32A-090, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-095 Development or construction contracts. As to the property which the sponsor is developing or as to which he has agreed to develop or construct substantial improvements such development or construction must be at a firm contract price. In addition, such development or construction shall be fully disclosed in the prospectus or offering circular and such development or construction shall be upon terms fair to the program and at a price not in excess of comparable development or construction. [Order 304, § 460-32A-095, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-100 Performance bond requirement. The completion of property acquired which is under

construction should be guaranteed at the price contracted by an adequate performance bond or other satisfactory arrangements. [Order 304, § 460-32A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-105 Requirement for real property appraisal. All real property acquisitions may be required to be supported by an appraisal prepared according to the standards of the American Institute of Real Estate Appraisers by a competent, independent appraiser who is a member of the American Institute of Real Estate Appraisers, a designated member of the Society of Real Estate Appraisers, or approved for such an appraisal problem by the Washington State Department of Highways. The appraisal shall be maintained in the sponsor's records for at least five years, and shall be available for inspection and duplication by any participant. The prospectus may contain notice of this right. [Order 304, § 460-32A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-145 Rights and obligations of participants meetings. Meetings of the limited partnership may be called by the general partner(s) or the limited partner(s) holding more than 10 percent of the then outstanding limited partnership interests for any matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be made available on request to any limited partner or his representative at his cost. Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after receipt of said request, at a time and place convenient to participants. [Order 304, § 460-32A-145, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-150 Voting rights of limited partners. The limited partnership agreement must provide that the limited partners can remove the general partner(s) for cause and dissolve the program by a vote representing at least sixty-six percent of the then outstanding partnership interests. [Order 304, § 460-32A-150, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-155 Outsider replacement of general partner. If the general partner is a corporation the limited partnership agreement shall provide that if an outsider is to acquire controlling stock of the corporate general partner all limited partners shall be informed of such proposed acquisition in writing at least thirty (30) days prior to consummation of such acquisition. This notice shall include adequate disclosure of the details of

the pending acquisition so as to allow the limited partners to make an informed decision as to its effect upon their investment. The general partner shall call a meeting within twenty (20) days immediately following the written notice. At said meeting, rejection of the pending acquisition by sixty-six (66) percent, or more, of the then outstanding limited partnership interest shall disallow the acquisition. A vote by proxy shall be afforded. [Order 304, § 460-32A-155, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-160 Reports to holders of limited partnership interests. The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

(1) Within sixty days after the end of each program's quarters, a report containing:

(a) A current statement of financial condition, which may be unaudited,

(b) An operating statement for the quarter then ended, which may be unaudited,

(c) A cash flow statement for the quarter then ended, which may be unaudited, and

(d) Other pertinent information regarding the program and its activities during the quarter covered by the report.

(2) Within 105 days after the end of each program's fiscal year, all information necessary for the preparation of the limited partners' federal income tax returns.

(3) Within 120 days after the end of each program's fiscal year, an annual report containing: (a) a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of changes in financial position and a cash flow statement, (b) a report of the activities of the program during the period covered by the report, and (c) where projections have been provided to the holders of limited partnership interests, a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from cash flow from operations during the period, cash flow from operations during a prior period which had been held as reserves, proceeds from disposition of property and investments, lease payments on net leases with builders and sellers, and the reserves from the gross proceeds of the offering originally obtained from the limited partners.

(4) Where assessments have been made during any period covered by any report required by paragraphs (1), (2) and (3) hereof, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments. [Order 304, § 460-32A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-165 Access to records. The limited partners and their designated representatives shall be permitted access to all records of the program at all

reasonable times. This requirement may not be circumvented by lump sum payments to management companies or other entities who then disburse the funds. [Order 304, § 460-32A-165, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-170 Redemption of program interests. Ordinarily, the program and the sponsor may not be mandatorily obligated to redeem or repurchase any of its program interests, although the program and the sponsor may not be precluded from purchasing such outstanding interest if such purchase does not impair the capital or the operation of the program. [Order 304, § 460-32A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-175 Assessability. Except as provided in WAC 460-32A-250 herein in the case of nonspecified property programs, if the anticipated income cash flow from property (after payment of debt service and all operating expenses) is not sufficient to pay taxes and/or special assessments imposed by governmental or quasi-governmental units, the program agreement may include a provision for assessability to meet such deficiencies, including those obligations of a defaulting participant. Assessability must be limited to the foregoing obligations, and all amounts derived from such assessments must be applied only to satisfaction of said obligations. [Order 304, § 460-32A-175, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-180 Defaults. In the event of a default in the payment of assessments by a limited partner, his interests shall not be subject to forfeiture, but may be subject to a reasonable penalty for failure to meet his commitment. Provided that the arrangements are fair, this may take the form of reducing his proportionate interest in the program, subordinating his interest to that of nondefaulting partners, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet his commitment by the other participants or a fixing of the value of his interest by independent appraisal or other suitable formula with provisions for a delayed payment to him for his interest not beyond a reasonable period, but a debt security issued for such interest should not have a claim prior to that of the other investors in the event of liquidation. [Order 304, § 460-32A-180, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-185 Sales promotional efforts. (1) Sales Literature. Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings) and advertising used in the offer or sale of partnership interests shall conform in all applicable respects to requirements of filing, disclosure and adequacy currently imposed on sales literature, sales presentations and advertising used in the sale of corporate securities.

(2) Group Meetings. All advertisements of and oral or written invitations to "seminars" or other group meetings at which program interests are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale, the minimum purchase price thereof, and the name of the sponsor, underwriter or selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective participant to attend any such meeting. In connection with the offer or sale of program interests, no general offer shall be made of "free" or "bargain price" trips to visit property in which the program or proposed program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the Administrator not less than three business days prior to the first use thereof. The foregoing paragraphs (b) and (2) shall not apply to meetings consisting only of representatives of securities broker-dealers. [Order 304, § 460-32A-185, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-195 Contents of prospectus. The following information shall be included in the prospectus of the program:

(1) Information on Cover Page. There should be set forth briefly on the cover page of the prospectus a summary which should include the following: the title and general nature of the securities (interests in the proposed program) being offered; the maximum aggregate amount of the offering; the minimum amount of net proceeds; the minimum subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, if such commissions are paid by the sponsor), the maximum acquisition fee, or development and/ or construction fee; the estimated amount of organization and offering expenses.

(2) Definitions. Technical terms used in the prospectus should be defined either in a glossary or as they appear in the prospectus.

(3) Risk Factors. The investor should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in the program. These paragraphs should include a cross-reference to further information in the prospectus. Possible disadvantageous tax consequences such as potential inability to deduct prepaid interest in the year paid, tax liability for potential depreciation recapture, depreciation recapture greater than cash distributions and tax liability in the event of foreclosure shall be disclosed.

(4) Business Experience. The business experience of the sponsor(s), general partner(s), principal officers of a corporate general partner (Chairman of the Board, President, Vice President, Treasurer, Secretary or any person having similar authority or performing like functions) and other managers of the program, shall be prominently disclosed in the prospectus, such disclosure

indicating their business experience for the past ten years. The lack of experience or limited experience of the sponsor, general partner, principal officer of a corporate general partner, or other manager of a real estate program shall be prominently disclosed in the prospectus.

(5) Compensation. All indirect and direct compensation which may be paid by the program to the sponsor of every type and from every source shall be summarized in tabular form in one location in the forefront of the prospectus.

(6) Use of Proceeds. State the purpose for which the net proceeds to the program are intended to be used and the approximate amount intended to be used for each such purpose. Also state the minimum aggregate amount necessary to initiate the program and the disposition of the funds raised if they are not sufficient for that purpose.

(7) Deferred Payments Schedule. If deferred payments are called for or allowed, the schedule for same shall be set forth.

(8) Assessments. If provisions for assessment of the limited partners are allowed, the method of assessment and the penalty for default shall be prominently set forth.

(9) Investment Objectives and Policies. Describe the investment objectives and policies of the program (indicating whether they may be changed by the general partner without a vote of the limited partners) and, if and to the extent that the sponsor is able to do so, the approximate percentage of assets which the program may invest in any one type of investment.

(10) Description of Real Estate and Proposed Method of Financing. State the location and describe the general character of all materially important real properties now held or presently intended to be acquired by or leased to the program. Include information as to the present or proposed use of such properties and their suitability and adequacy for such use. Describe the terms of any material lease affecting the property. Describe the proposed method of financing, including estimated down payment, leverage ratio, prepaid interest, balloon payment(s), prepayment penalties, due-on-sale or encumbrance clauses and possible adverse effects thereof and similar details of the proposed financing plan. A statement that title insurance and any required construction, permanent or other financing, and performance bond or other assurances with respect to builders have been or will be obtained on all properties acquired shall be set forth.

(11) Track Records. A brief synopsis of the previous syndication experience of the sponsor and other relevant parties shall be disclosed in the prospectus for all programs during the past five years which:

(i) Involved a public offering registered under state or federal securities laws.

(ii) Involved a private or limited offering, the results of which are material to an informed investment decision by the investor.

(12) Operating Data. Furnish appropriate operating data with respect to each improved property which is separately described in answer to paragraph (10) above.

- (13) The Partnership.
 - (a) Date of Formation.
 - (b) Place of Formation.
 - (c) General Partners.
 - (d) Initial Partners.
 - (e) Address and Telephone Number of Partnership and General Partner.
 - (f) Duration.
 - (g) Information called for in items (a) through (f) hereof shall be given for any other programs, such as local programs operating property, in which the public program invests.
- (14) Summary of Terms of the Partnership.
 - (a) Powers of the Sponsor.
 - (b) Rights and Liabilities of the Participants.
 - (c) Allocation of Distributions.
 - (d) Provisions for Replacement and Maintenance Reserves.
 - (e) Termination and Dissolution.
 - (f) Meetings and Reports.
 - (g) Amendment of Agreement.
 - (h) Provision for Additional Assessments.
 - (i) Other pertinent Matter.
- (15) Federal Tax Consequences.
 - (a) A summary of an Opinion of tax counsel acceptable to the Administrator and/or a ruling from the Internal Revenue Service covering major tax questions relative to the program, which may be based on reasonable assumptions such as those described in WAC 460-32A-200. To the extent the opinion of counsel of Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or sponsor(s), the prospectus shall to the extent practicable, contain representations that such requirements or conditions have been met and that the sponsors shall use their best efforts to continue to meet such requirements or conditions.
 - (b) Tax treatment of the program.
 - (c) Tax treatment of the participants.
 - (d) Allocation of depreciation, investment, credit, construction interest, points, etc.
 - (e) Method of depreciation, useful life, applicable recapture provisions and consequences thereof.
 - (f) Any other pertinent information applicable to the tax shelter aspects of the investment.
 - (g) Possibility of requirement for filing tax returns with states in which properties are held.
- (16) Limited Partnership Interests.
 - (a) Amount
 - (b) Minimum purchase
 - (c) Assessability
 - (d) Transferability
 - (e) Voting rights
- (17) Plan of Distribution.
 - (a) Discounts and commissions.
 - (b) Estimated fee and expenses paid or reimbursed by program.
 - (c) Indemnification provisions.
 - (d) Terms of payment.
 - (e) Identity of underwriter, managing dealer or selling agent.

- (f) Type of underwriting—best efforts or firm commitment.
- (g) Minimum and maximum sales.
- (h) Escrow provisions.
- (i) Material relationship of underwriter to program, if any.

(18) Pending Legal Proceedings. Briefly describe any pending legal proceedings to which the program or the sponsor is a party which is material to the program and any material legal proceedings between sponsor and participants in any prior program of the sponsor and describe any material legal proceedings to which any of the program's property is subject.

(19) Transactions with Affiliates. Describe fully any transactions which have been in the past five years of which may be entered into between the program and any affiliate of the sponsor. Include a description of the material terms of any agreement between the program and any such affiliate. Compensation to be paid in this regard shall be on terms not less favorable than and competitive with what such services and goods could be acquired for from third parties and all such compensation shall be fully disclosed by amount paid and service performed in all subsequent annual or periodic reports to investors. Where the sponsor sponsors other programs, describe the equitable principles which will apply in resolving any conflict between the programs.

(20) Interest of Affiliates in Program Property. If within the last five years any affiliate had a material interest in any transaction with the sponsor or was previously in the chain of title or had a beneficial interest in any property to be acquired, this fact must be disclosed.

(21) Interest of Counsel and Experts in the Sponsor or Program. Where counsel for the selling representatives or the sponsor are named in the prospectus as having passed upon the legality of the securities being registered or upon other legal matter in connection with the registration or offering of such securities, there should be disclosed in the prospectus the nature and amount of any direct or indirect interest of any such counsel, other than legal fees to be received by such counsel, in the sponsor. Any such interest received or to be received in connection with the registration or offering of the securities being registered, including the ownership or receipt by counsel, or by members of the firm participating in the matter, of securities of the sponsor of the program for services shall be disclosed. Employment by the sponsor, other than retainer as legal counsel, should be disclosed in the prospectus.

(22) Opinions of Counsel. It shall include reference to an opinion of counsel to the effect that the securities being offered are duly authorized or created and validly issued interests in the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer. It shall include reference to an opinion of counsel to the effect that the issuer will be taxed as a "partnership" and not as an "association" for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the Administrator and shall be unqualified except to the extent permitted by the Administrator.

However, an opinion of counsel may be based on reasonable assumptions, such as: (1) facts or proposed operations as set forth in the offering circular or prospectus and organizational documents; (2) the absence of future changes in applicable laws; (3) the securities offered are paid for; (4) compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and (5) the continued maintenance of or compliance with certain financial, ownership or other requirements by the issuer or general partner(s). The Administrator may request from counsel as supplemental information such supporting legal memoranda and as analysis as it shall deem appropriate under the circumstances. To the extent the opinion of counsel or Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or general partner(s), the offering circular or prospectus shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance.

(23) Financial Statements and Projections. As provided elsewhere in these regulations and RCW 21.20.210(14).

(24) Summary of Agreement of Limited Partnership.

(25) Investment Company Act of 1940. Where beneficial interests of a limited partnership are to be sold, treatment under the Investment Company Act of 1940 must be disclosed.

(26) Additional information. Any additional information which may be material should be included; further, in furnishing the information requested in the paragraphs listed above, the instruction for completing Form S-11 for filing under the Securities Act of 1933 should be referred to as a guide for the information to be furnished. [Order 304, § 460-32A-195, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-196 Track records. A document to be filed with the division shall accompany the prospectus. This document shall explain:

(a) The previous syndication experience of the sponsor and other relevant parties shall be disclosed in the prospectus for all programs during the past five years which:

(i) Involved a public offering registered under state or federal securities laws.

(ii) Involved a private or limited offering, the results of which are material to an informed investment decision by the investor.

(b) Information on previous programs shall include, but not be limited to, the following:

(i) Identification of the program, including the name and location.

(ii) The effective date of the offering, the date it commences operations and the date of dissolution or termination or, if it is continuing, that fact.

(iii) The total amount of interests offered, the gross amount of capital raised by the program, and the number of participants.

(iv) The types of property acquired, by general classification, and cost separately stating the aggregate cash payment for noncapital items, such as prepaid interest, points, prepaid management fees, etc., whether new or used and depreciation method used; date of purchase by program; the initial encumbrances, amount of reduction thereof, and whether fully amortized by equal payments over term or whether balloon payments or maturity will occur during contemplated holding period; the ratio of the sponsor's projected net operating income before debt service to the total purchase price for the property; and, if the properties have been sold, the date and results of sale in terms of whether the property was sold at a gain or loss taking into account recapture of depreciation and in terms of type of consideration received and the terms thereof.

(v) Total dollar amounts of federal tax deductible items passed on to investors.

(vi) Cash distributions to participants segregated as to payments to participants from cash available for distribution, proceeds from sale and refinancing, reserves from the gross amount of investment in the program, lease payments on net leasebacks and other sources.

(vii) Compensation to the sponsor, segregated as to type, to be received on disposition of the property.

(viii) Disclosure of any foreclosure or sale or conveyance in lieu of foreclosure of any prior program.

(ix) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the Administrator.

(x) The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that investors in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by investors in prior programs."

(c) Information required to be set forth in subparagraphs (v), (vi) and (vii) or subsection (b) above shall be supported in the application for qualification by an affidavit of the sponsor that the performance summary is a fair representation of the information contained in the audited financial statements or the federal income tax returns of the program. [Order 304, § 460-32A-196, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-200 Projections. (1) Use of Projections. The presentation of predicted future results of operations ("projections") to real estate programs shall be permitted but not required. Such projections shall be included in the prospectus, offering circular or sales material of the partnership only if they comply with the following requirements:

(a) General. Projections shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Projections should be prepared by a qualified person or firm and that person or firm should be identified in the prospectus or offering circular as being responsible for the preparation or [of] the projections. No projections shall be permitted in any sales literature which does not

appear in the prospectus or offering circular. If any projections are included in the sales literature, all projections must be presented.

(b) Material information. Projections shall include all the following information:

(i) Annual predicted revenue source; including the occupancy rate used in predicting rental revenue;

(ii) Annual predicted expenses;

(iii) Mortgage obligation. Annual payments for principal and interest, points and financing fees; shown as dollars, not percentages;

(iv) The required occupancy rate in order to meet debt service and all expenses; rental revenue shall also be predicted based on occupancy rates 10 percent below the break-even occupancy rate;

(v) Predicted annual cash flow; stating assumed occupancy rate;

(vi) Predicted annual depreciation and amortization with full description of methods to be used;

(vii) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may be used;

(viii) Predicted construction costs—including disclosure regarding contracts;

(ix) Accounting policies—e.g., with respect to points, financing costs and depreciation.

(c) Presentation.

(i) Caveat. Projections shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not be relied upon to indicate the actual results which will be obtained.

(ii) Format. The presentation of projections proposed in accordance with these standards shall be coupled with a summary of predicted results in the event of a material adverse change in one or more significant economic factors, e.g., the effect on partnership cash flow and rate of return of revenues of rental projects at rates 10 percent to 15 percent less than expected and in addition the effect of a level of operating expenses 10 percent to 15 percent greater than anticipated in the primary projections. A break-even point insofar as occupancy and expenses should be disclosed as should other relevant financial ratios.

(iii) Projections shall disclose all possible undesirable tax consequences of an early sale of the program property, such as, depreciation, recapture or the failure to sell the property at a price which would return sufficient cash to meet resulting tax liabilities of the participants.

(iv) In computing the return to investors, no appreciation, "equity buildup", or any other benefits from unrealized gains or value shall be shown or included.

(2) Projections shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs, i.e., interest, taxes, and insurance shall be inserted. However, where the program intends to develop and sell the land as its primary business, a detailed cash flow statement showing the timing of expenditures and anticipated revenues may be required. Additionally, the consequences of a delayed selling program shall be shown. [Order 304, § 460-32A-

200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-205 Fiduciary duty. The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program. [Order 304, § 460-32A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-210 Deferred payments. Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

(1) The period of deferred payments shall coincide with the anticipated cash needs of the program.

(2) Selling commissions paid upon deferred payments are collectible when payment is made.

(3) The program shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the program. [Order 304, § 460-32A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-215 Reserves. Provisions should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than 5 percent of the offering proceeds will be considered adequate. [Order 304, § 460-32A-215, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-220 Reinvestment of Cash Flow and proceeds on disposition of property. Reinvestment of Cash Flow (defined in WAC 460-10A-080) (excluding proceeds resulting from a disposition or refinancing of property) shall not be allowed. The partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus. [Order 304, § 460-32A-220, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-225 Nonspecified property programs. The following special provisions shall apply to nonspecified property programs (defined in WAC 460-10A-115): [Order 304, § 460-32A-225, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-235 Statement of investment objectives. A nonspecified property program shall state types of properties in which it proposes to invest, such as first-

user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program. As a minimum the following restrictions on investment objectives shall be observed:

(1) Unimproved or nonincome producing property shall not be acquired except in amounts and upon terms which can be financed by the program's proceeds or from cash flow. Normally, investments in such property shall not exceed 10 percent of the gross proceeds of the offering.

(2) Investments in junior trust deeds and other similar obligations shall be limited. Normally such investments shall not exceed 10 percent of the gross proceeds of the program.

(3) The maximum amount of aggregate indebtedness which may be incurred by the program shall be limited. Normally this should not exceed 80 percent of the purchase price of all properties on a combined basis.

(4) The manner in which acquisitions will be financed, including the use of an all-inclusive note or wraparound, and the leveraging to be employed shall all be fully set forth in the statement of investment objectives.

(5) The statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-32A-235, filed 3/19/80; Order 304, § 460-32A-235, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-240 Period of offering and expenditure of proceeds. No offering of securities in a nonspecified property program may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. Treasury Bonds or Bills. Any proceeds of the offering of the securities not invested within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the partners as a return of capital. [Order 304, § 460-32A-240, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-245 Special reports. At least quarterly, a "Special Report" or real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the partners. Such notice shall describe the real properties, and include a description of the geographical locale and of the market upon which the sponsor is relying in projecting successful operation of the properties. All facts which reasonably appear to the sponsor to materially influence the value of the property should be disclosed. The "Special Report" shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement

of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the program to acquire each property, and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program. [Order 304, § 460-32A-245, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-250 Assessments. Nonspecified property programs calling for assessments shall not be allowed. [Order 304, § 460-32A-250, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-255 Multiple programs. Sponsors shall be discouraged from offering for sale more than one unspecified property program at any point in time unless the programs have different investment objectives. Similarly, the continuance of new offerings by the same sponsor shall not be looked upon with favor if that sponsor has not substantially committed or placed the funds raised from pre-existing unspecified property programs. [Order 304, § 460-32A-255, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-300 Oil and gas programs. The offer or sale of interests in a limited partnership or other venture which will engage in an oil or gas program shall comply with the provisions of the North American Securities Administrators Association guidelines for the registration of oil and gas programs, adopted September 22, 1976, as amended October 12, 1977. [Statutory Authority: RCW 21.20.450. 79-09-028 (Order SD-57-79), § 460-32A-300, filed 8/14/79; Order 304, § 460-32A-300, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-315 Title. If the Administrator deems it necessary or advisable in the public interest he may require an issuer engaged in gas and oil exploration or extraction to submit a statement of the nature of the title held to the property (noting any defects and/or liens), and the principal terms of any lease or options with respect to the property. If continued possession of the property by the issuer depends upon the satisfaction of certain working conditions, describe these conditions and state the extent in which they have been met. [Order 304, § 460-32A-315, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-320 Regulation B filings. All Federal Regulation B filings must register their Washington offerings pursuant to RCW 21.20.210 (Qualification). [Order 304, § 460-32A-320, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-325 Funds to be held in trust. Funds raised under various oil and gas programs may be required to be held in trust and paid out by the trustee as expended on the program with the sponsor receiving his

compensation upon the completion of the programs objectives. [Order 304, § 460-32A-325, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

WAC 460-32A-400 Sales in condominiums or units in real estate development. The Washington Securities Act provides that its interpretation and administration be coordinated with related Federal regulations. In light of such policy and due to the relevance and importance of the Securities and Exchange Commission Securities Act Release No. 5347, the Division of Securities hereby adopts Securities and Exchange Commission Securities Act Release No. 5347, which is hereinafter set forth in its entirety.

"The Securities and Exchange Commission called attention to the applicability of the federal securities laws to the offer and sale of condominium units, or other units in a real estate development, coupled with an offer or agreement to perform or arrange certain rental or other services for the purchaser. The Commission noted that such offerings may involve the offering of a security in the form of an investment contract or a participation in a profit sharing arrangement within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934. Where this is the case any offering of any such securities must comply with the registration and prospectus delivery requirements of the Securities Act, unless an exemption therefrom is available, and must comply with the anti-fraud provisions of the Securities Act and the Securities Exchange Act and the regulations thereunder. In addition, persons engaged in the business of buying or selling investment contracts or participations in profit sharing agreements of this type as agents for others, or as principal for their own account, may be brokers or dealers [for a special exemption from the Washington Securities Act, see WAC 460-20A-235] within the meaning of the Securities Exchange Act, and therefore may be required to be registered as such with the Commission under the provisions of Section 15 of that Act.

The Commission is aware that there is uncertainty about when offerings of condominiums and other types of similar units may be considered to be offerings of securities that should be registered pursuant to the Securities Act. The purpose of this release is to alert persons engaged in the business of building and selling condominiums and similar types of real estate developments to their responsibilities under the Securities Act and to provide guidelines for a determination of when an offering of condominiums or other units may be viewed as an offering of securities. Resort condominiums are one of the more common interests in real estate the offer of which may involve an offering of securities. However, other types of units that are part of a development or project present analogous questions under the federal securities laws. Although this release speaks in terms of condominiums, it applies to offerings of all types of units in real estate developments which have characteristics similar to those described herein.

"The offer of real estate as such, without any collateral arrangements with the seller or others, does not involve the offer of a security [for certain land located outside the state of Washington this is not true, see RCW 21.20.005(12)]. When the real estate is offered in conjunction with certain services, a security, in the form of an investment contract, may be present. The Supreme Court in Securities and Exchange Commission v. W.J. Howey Co., 328 U.S. 293 (1946) set forth what has become a generally accepted definition of an investment contract.

"A contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial, whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." (298)

"The Howey case involved the sale and operation of orange groves. The reasoning, however, is applicable to condominiums.

"As the Court noted in Howey, substance should not be disregarded for form, and the fundamental statutory policy of affording broad protection to investors should be heeded. Recent interpretations have indicated that the expected return need not be solely from the efforts of others, as the holding in Howey appears to indicate. For this reason, an investment contract may be present in situations where an investor is not wholly inactive, but even participates to a limited degree in the operations of the business. The 'profits' that the purchaser is led to expect may consist of revenues received from rental of the unit; these revenues and any tax benefits resulting from rental of the unit are the economic inducements held out to the purchaser.

"The existence of various kinds of collateral arrangements may cause an offering of condominium units to involve an offering of investment contracts or interests in a profit sharing agreement. The presence of such arrangements indicates that the offeror is offering an opportunity through which the purchaser may earn a return on his investment through the managerial efforts of the promoters or a third party in their operation of the enterprise.

"For example, some public offerings of condominium units involve rental pool arrangements. Typically, the rental pool is a device whereby the promoter or a third party undertakes to rent the unit on behalf of the actual owner during that period of time when the unit is not in use by the owner. The rents received and the expenses attributable to rental of all the units in the project are combined and the individual owner receives a ratable share of the rental proceeds regardless of whether his individual unit was actually rented. The offer of the unit together with the offer of an opportunity to participate in such a rental pool involves the offer of investment contracts which must be registered unless an exemption is available.

"Also, the condominium units may be offered with a contract or agreement that places restrictions, such as required use of an exclusive rental agent or limitations

on the period of time the owner may occupy the unit, on the purchaser's occupancy or rental of the property purchased. Such restrictions suggest that the purchaser is in fact investing in a business enterprise, the return from which will be substantially dependent on the success of the managerial efforts of other persons. In such cases, registration of the resulting investment contract would be required.

"In any situation where collateral arrangements are coupled with the offering of condominiums, whether or not specifically of the types discussed above, the manner of offering and economic inducements held out to the prospective purchaser play an important role in determining whether the offerings involve securities. In this connection see Securities and Exchange Commission V.C.M. Joiner Leasing Corp., 320 U.S. 344 (1943). In Joiner, the Supreme Court also noted that:

"In enforcement of [the Securities Act], it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (353)

"In other words, condominiums, coupled with rental arrangements, will be deemed to be securities if they are offered and sold through advertising, sales literature, promotional schemes or oral representations which emphasize the economic benefits to purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, in renting units.

"In summary, the offering of condominium units in conjunction with any one of the following will cause the offering to be viewed as an offering of securities in the form of investment contracts:

"1. The condominiums, with any rental arrangement or other similar service, are offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of units."

"2. The offering of participation in a rental pool arrangement; and

"3. The offering of a rental or similar arrangement whereby the purchaser must hold his unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his occupancy or rental of his unit.

"In all of the above situations, investors protection requires the application of the federal securities laws.

"If the condominiums are not offered and sold with emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of others, and assuming that no plan to avoid the registration requirements of the Securities Act is involved, an owner of a condominium unit may, after purchasing his unit, enter into a nonpooled rental arrangement with an agent not designated or required to be used as a condition to the purchase, whether or not such agent is affiliated with the offeror, without causing a sale of a security to be involved in the sale of the unit. Further, a continuing affiliation between the developers or promoters of a project and the project by reason of maintenance arrangements does not make the unit a security.

"In situations where commercial facilities are a part of the common elements of a residential project, no registration would be required under the investment contract theory where (a) the income from such facilities is used only to offset common area expenses and (b) the operation of such facilities is incidental to the project as a whole and are not established as a primary income source for the individual owners of a condominium or cooperative unit.

"The Commission recognizes the need for a degree of certainty in the real estate offering area and believes that the above guidelines will be helpful in assisting persons to comply with the securities laws. It is difficult, however, to anticipate the variety of arrangements that may accompany the offering of condominium projects. The Commission, therefore, would like to remind those engaged in the offering of condominiums or other interests in real estate with similar features that there may be situations, not referred to in this release, in which the offering of the interests constitutes an offering of securities. Whether an offering of securities is involved necessarily depends on the facts and circumstances of each particular case. The staff of the Commission will be available to respond to written inquiries on such matters. [Request for interpretative opinions from the Washington Securities Division should follow the procedure set out in WAC 460-16A-020.]" [Order 304, § 460-32A-400, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

Chapter 460-36A WAC

REAL ESTATE INVESTMENT TRUSTS

WAC

460-36A-010	Amendment of declaration of trust.
460-36A-015	Investment policy.
460-36A-020	Minimum net capital.
460-36A-025	Annual expenses.
460-36A-030	Investment and activities.
460-36A-035	Period of investment advisory contract.
460-36A-040	Number and election of trustees.
460-36A-045	Removal of trustees.
460-36A-050	Terms and conditions of securities.
460-36A-055	Annual meetings.
460-36A-060	Annual reports.
460-36A-065	Inspection of records.
460-36A-070	Disclosure on distribution.
460-36A-075	Termination of trust.

WAC 460-36A-010 Amendment of declaration of trust. The declaration of trust of a real estate investment trust should provide that no amendment thereto may be made unless approved by the vote or written consent of the holders of a majority of the voting securities of the trust; and that no amendment which would change any rights with respect to any outstanding securities of the trust, by reducing the amount payable thereon upon liquidation of the trust, or by diminishing or eliminating any voting right pertaining thereto, may be made unless also approved by the vote or written consent of the holders of two-thirds of the outstanding securities so affected. [Order 304, § 460-36A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-015 Investment policy. The investment policy intended to be followed by the trustees of a real estate investment trust should be stated in its declaration of trust in reasonable detail. [Order 304, § 460-36A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-020 Minimum net capital. A real estate investment trust should have a minimum net capital of not less than \$100,000, represented by the outstanding securities of the trust. [Order 304, § 460-36A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-025 Annual expenses. The annual expenses, including any investment adviser's fees, provided for in the declaration of trust should not exceed:

(1) Five thousand dollars (\$5,000) or two percent (2%) of its base assets, whichever is larger, with respect to base assets not in excess of \$10,000,000; and

(2) One percent (1%) of its base assets with respect to base assets in excess of \$10,000,000.

"Base assets" for the purpose of this section means total assets under management, less cash, cash items and, except in the case of a first mortgage trust, unsecured indebtedness. Base assets of the trust should be determined semi-annually or at more frequent intervals.

"Annual expenses" for the purpose of this section do not include selling expenses referred to in WAC 460-16A-075 of these rules, depreciation, insurance, interest, taxes, maintenance and upkeep of trust assets, payments to property managers, reasonable sales commissions in connection with the disposal of trust assets, and reasonable appraisal fees in connection with the acquisition or proposed acquisition of trust assets.

In lieu of the foregoing limitation, the declaration of trust may provide for a reasonable limitation based upon the annual net income of the trust. [Order 304, § 460-36A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-030 Investment and activities. The declaration of trust of a real estate investment trust should provide that it will not engage in any of the following investment practices or activities:

(1) Invest in commodities.

(2) Invest in any indebtedness secured by a deed of trust or a mortgage on non-income producing property.

(3) Invest in any indebtedness secured by a deed of trust or a mortgage which is other than a first encumbrance.

(4) Invest in contracts for the sale of real estate.

(5) Engage in any short sale, or borrow, on an unsecured basis, if such borrowing will result in an asset coverage of less than three hundred percent, except that such borrowing limitation shall not apply to a first mortgage trust. "First mortgage trust", as that term is used in this section, means a real estate investment trust having over eighty percent of its assets invested in indebtedness secured by trust deeds or mortgages which are a first lien upon the encumbered property. "Asset

coverage", for the purpose of this section, means the ratio which the value of the total assets of an issuer, less all liabilities and indebtedness except indebtedness for unsecured borrowings, bears to the aggregate amount of all unsecured borrowings of such issuer.

(6) Engage in trading, as compared with investment activities.

(7) Acquire securities in any company holding investments or engaging in activities prohibited by this section.

(8) Engage in underwriting or the agency distribution of securities issued by others. [Order 304, § 460-36A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-035 Period of investment advisory contract. An investment advisory contract for services to a real estate investment trust should not be entered into for an initial period of more than three years. Any investment advisory contract should be terminable without penalty by either party on 60 days' written notice. [Order 304, § 460-36A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-040 Number and election of trustees. A real estate investment trust should have a minimum of three trustees, all of whom are elected annually by the security holders of the trust. [Order 304, § 460-36A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-045 Removal of trustees. A trustee of a real estate investment trust should be subject to removal by the vote or written consent of the holders of a majority of the outstanding securities of the trust. [Order 304, § 460-36A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-050 Terms and conditions of securities. The declaration of trust of a real estate investment trust should not permit the issuance by the trust of:

(1) Securities which are assessable.

(2) Redeemable securities.

(3) Warrants, options or similar evidences of a right to buy its securities, unless issued to all of its security holders ratably or as part of a financing arrangement. [Order 304, § 460-36A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-055 Annual meetings. The declaration of trust of a real estate investment trust should provide that at least once a year, after reasonable notice has been given, the trust will hold a meeting of security holders at a location convenient to the security holders; and that this annual meeting will be held on a date which is a reasonable period of time following the distribution of the annual report referred to in WAC 460-36A-060 of these rules. [Order 304, § 460-36A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-060 Annual reports. The declaration of trust of a real estate investment trust should provide

that at least once a year, within 120 days after the close of its fiscal year, the trustees of the trust will distribute to each security holder an annual report relating to the prior fiscal year. [Order 304, § 460-36A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-065 Inspection of records. Security holders of a real estate investment trust should be given the right by the declaration of trust to inspect the books and records of the real estate investment trust. [Order 304, § 460-36A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-070 Disclosure on distribution. The declaration of trust of a real estate investment trust should provide that any distribution to security holders of a real estate investment trust of income or capital assets of the trust will be accompanied by a written statement disclosing the source of the funds distributed. If, at the time of distribution, this information is not available, it should be provided that a written explanation of the relevant circumstances will accompany the distribution and the written statement disclosing the source of the funds distributed will be sent to the security holders not later than 60 days after the close of the fiscal year in which the distribution was made. [Order 304, § 460-36A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

WAC 460-36A-075 Termination of trust. A real estate investment trust should be subject to termination at any time by the vote or written consent of the holders of a majority of the securities of the trust. [Order 304, § 460-36A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.]

Chapter 460-40A WAC INVESTMENT COMPANIES

WAC

- 460-40A-015 Prohibition on promotional shares.
- 460-40A-020 Prohibition on options.
- 460-40A-025 Selling expenses.
- 460-40A-040 Insurance plan.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 460-40A-030 Management fee. [Order 304, § 460-40A-030, filed 2/28/75, effective 4/1/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.

WAC 460-40A-015 Prohibition on promotional shares. No promotional shares, as defined in WAC 460-10A-050 of these rules, shall be issued in connection with the sale of securities of an investment company. [Order 304, § 460-40A-015, filed 2/28/75, effective 4/1/75.]

WAC 460-40A-020 Prohibition on options. No option shall be issued by an open-end investment company;

however, that this prohibition does not apply to short-term options issued to permit the reinvestment of dividends or distributions of capital gains. [Order 304, § 460-40A-020, filed 2/28/75, effective 4/1/75.]

WAC 460-40A-025 Selling expenses. The sales charges or load, including all compensation to distributors, brokers, dealers and agents, in connection with the sale of securities of an open-end investment company shall not exceed 9 percent of the offering price prior to the deduction of such charges. No sales charges may be imposed upon the sale of securities of an open-end investment company resulting from the reinvestment of distributions of capital gains. [Order 304, § 460-40A-025, filed 2/28/75, effective 4/1/75.]

WAC 460-40A-040 Insurance plan. The sale of securities of an investment company in conjunction with the sale of life insurance shall conform with the following conditions:

(1) Any person selling such securities and insurance shall be the holder of:

(a) A valid Washington Security license authorizing him to act as a broker-dealer or agent, and

(b) Such authorization from the Washington Insurance Commissioner as may be required under the Insurance Code to act as an insurance broker or agent.

(2) The material features of the plan shall be fully and fairly disclosed to the prospective purchaser in a manner which will afford him an opportunity to make an informed judgment.

(3) The purchaser shall be billed on a form which shall clearly distinguish between the cost of the securities and the cost of the insurance.

(4) The purchaser shall have the right to cancel the insurance coverage at any time without forfeiting any securities already purchased or losing the right to continue purchasing securities.

(5) The purchaser shall have the right to discontinue the further purchase of securities without forfeiting any securities already purchased or cancelling the insurance coverage; provided, however, that when the insurance coverage is declining balance term insurance, a requirement may be cancelled whenever the purchase of securities is discontinued.

(6) One or more policies of insurance shall be issued in the purchaser's name and delivered to him.

(7) The securities shall be issued to the purchaser and the security certificates shall be delivered to him or such securities shall be issued and credited to his account or shares record with the investment company and a memorandum of such entry shall be delivered to him. [Order 304, § 460-40A-040, filed 2/28/75, effective 4/1/75.]

Chapter 460-42A WAC EXEMPT SECURITIES

WAC

- 460-42A-010 Employee plans.
- 460-42A-080 Blue chip exemption.
- 460-42A-085 International banks.

WAC 460-42A-010 Employee plans. The exemption contained in RCW 21.20.310(10) is available only for any investment contract evidencing an interest in any employee plan; the exemption is not available for the issuance or distribution of other securities, such as stock. The issuance or distribution of such other securities to the employee must be made pursuant to a registration or other available exemption. [Order SD-131-77, § 460-42A-010, filed 11/23/77.]

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;

(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 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 his 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) For the purposes of nonissuer transactions only, any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, the Spokane 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). [Statutory Authority: RCW 21.20.310(8) and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-42A-080, filed 3/19/80. Statutory Authority: 1979 ex.s. c 68 § 20(8). 79-09-028 (Order SD-57-79), § 460-42A-080, filed 8/14/79.]

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. 80-04-037 (Order SDO-37-80), § 460-42A-085, filed 3/19/80.]

Chapter 460-44A WAC EXEMPT TRANSACTIONS

WAC

460-44A-010	Nonpublic offering exemption pursuant to RCW 21.20.320(1).
460-44A-020	Text of rule.
460-44A-030	Selling expense limitations and suitability standards for nonpublic offerings.
460-44A-041	Form of notification of claim of exemption pursuant to WAC 460-44A-010 through 460-44A-041.
460-44A-045	Report of sales for offering under WAC 460-44A-020.
460-44A-050	Isolated nonissuer transaction.
460-44A-060	Limited offering exemption pursuant to RCW 21.20.320(9).
460-44A-065	Notification of claim of exemption pursuant to WAC 460-44A-060.
460-44A-070	Report of sales for offering under WAC 460-44A-060.
460-44A-075	Definition of real estate mortgages when "offered and sold as a unit".

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-44A-040	Form of notification of claim of exemption and report of sales. [Order SD-130-77, § 460-44A-040, filed 11/23/77.] Repealed by 80-04-037 (Order SDO-37-80), filed 3/19/80. Statutory Authority: RCW 21.20.450.
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WAC 460-44A-010 Nonpublic offering exemption pursuant to RCW 21.20.320(1). Exemption is provided for sales not involving a public offering pursuant to RCW 21.20.320(1) where there is compliance with WAC 460-44A-010 through 460-44A-045. In order to obtain the protection of the exemption, all its conditions must be satisfied. The exemption is not available to any issuer with respect to any transactions which, although in technical compliance with the rules, are a part of a plan or scheme to evade the registration provisions of the Securities Act of Washington (hereinafter the "act"). In such cases registration pursuant to the act is required. Compliance with the exemption shall not constitute, however, the exclusive means whereby an offering of securities may qualify as a nonpublic offering. Attempted compliance with this exemption does not act as an election; the issuer can also claim the availability of RCW 21.20.320(1) outside this exemption. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-010, filed 3/19/80; Order SD-130-77, § 460-44A-010, filed 11/23/77; Order 342, § 460-44A-010, filed 9/29/75.]

WAC 460-44A-020 Text of rule. (a) *Definitions.* The following definitions shall apply for purposes of this rule.

(1) *Offeree representative.* The term "offeree representative" shall mean any person or persons, each of whom the issuer and any person acting on its behalf, after making reasonable inquiry, have reasonable grounds to believe and believe satisfies all of the following conditions:

(i) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent

or more of the equity interest in the issuer, except where the offeree is:

(a) Related to such person by blood, marriage or adoption, no more remotely than as first cousin;

(b) Any trust or estate in which such person or any persons related to him as specified in paragraph (a)(1)(i)(a) or (c) of this section collectively have one hundred percent of the beneficial interest (excluding contingent interests) or of which any such person serves as trustee, executor, or in any similar capacity; or

(c) Any corporation or other organization in which such person or any persons related to him as specified in paragraph (a)(1)(i)(a) or (b) of this section collectively are the beneficial owners of 100 percent of the equity securities (excluding directors' qualifying shares) or equity interest;

(ii) Has such knowledge and experience in financial and business matters that he, either alone, or together with other offeree representatives or the offeree, is capable of evaluating the merits and risks of the prospective investment;

(iii) Is acknowledged by the offeree, in writing, during the course of the transaction, to be his offeree representative in connection with evaluating the merits and risks of the prospective investment;

(iv) Is not compensated directly or indirectly by the issuer or its affiliates and has no material relationships with the issuer or its affiliates; and

(v) Is not engaged by a brokerdealer or salesman acting for the issuer: *Provided, however,* That provisions (iv) and (v) shall apply only to offeree representatives of offerees residing in or to whom offers are made in this state.

(2) *Issuer.* The definition of the term "issuer" in RCW 21.20.005 and in section 2(4) of the Securities Act of 1933 shall apply, provided that notwithstanding these definitions, in the case of a proceeding under the Bankruptcy Act, the trustee, receiver, or debtor in possession is deemed to be the issuer in an offering for the purposes of a plan of reorganization or arrangement, if the securities offered are to be issued pursuant to the plan, whether or not other like securities are offered under the plan in exchange for securities of, or claims against, the debtor.

(3) *Affiliate.* The term "affiliate" of a person means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such person.

(4) *Material.* The term "material" when used to modify "relationship" means any relationship that a reasonable investor might consider important in the making of the decision whether to acknowledge a person as his offeree representative.

(b) *Conditions to be met.* Transactions by an issuer involving the offer, offer to sell, offer for sale or sale of securities of the issuer that are part of an offering that is made in accordance with all the conditions of this rule shall be deemed to be transactions not involving a public offering within the meaning of RCW 21.20.320(1).

(1) For the purposes of this rule only, an offering shall be deemed not to include offers, offers to sell, offers for

sale or sales of securities of the issuer pursuant to exemptions provided by RCW 21.20.310 or 21.20.320 or pursuant to a registration statement filed under the Securities Act of Washington, that take place prior to the six-month period immediately preceding or after the six-month period immediately following any offers, offers for sale or sales pursuant to this rule: *Provided*, That there are during neither of said six-month periods any offers, offers for sale or sales of securities by or for the issuer of the same or similar class as those offered, offered for sale or sold pursuant to the rule.

(c) *Limitation on manner of offering.* Neither the issuer nor any person acting on its behalf shall offer, offer to sell, offer for sale, or sell the securities by means of any form of general solicitation or general advertising, including but not limited to the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio;

(2) Any seminar or meeting except that if paragraph (d)(1) of this section is satisfied as to each person invited to or attending such seminar or meeting, and, as to persons qualifying only under paragraph (d)(1)(ii) of this section, such persons are accompanied by their offeree representative(s), then such seminar or meeting shall be deemed not to be a form of general solicitation or general advertising; and

(3) Any letter, circular, notice or other written communication except that if paragraph (d)(1) of this section is satisfied as to each person to whom the communication is directed, such communication shall be deemed not to be a form of general solicitation or general advertising.

(d) *Nature of offerees.* The issuer and any person acting on its behalf who offer, offer to sell, offer for sale or sell the securities shall have reasonable grounds to believe and shall believe:

(1) Immediately prior to making any offer, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree is a person who is able to bear the economic risk of the investment; and

(2) Immediately prior to making any sale after making reasonable inquiry, either:

(i) That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

(ii) That the offeree and his offeree representative(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment and that the offeree is able to bear the economic risk of the investment.

(e) *Access to or furnishing of information.*

(1) Prior to purchasing the securities, each offeree or his offeree representative shall have been furnished or granted access to the same kind of information required by the registration requirements of RCW 21.20.210 to

the extent the issuer possesses such information or can acquire it without unreasonable effort or expense. (Note: Access can only exist by reason of the offeree's position with respect to the issuer. Position means an employment or family relationship or economic bargaining power that enables the offeree to obtain information from the issuer in order to evaluate the merits and risks of the prospective investment.) The issuer shall provide audited financial statements unless such requirement would cause unreasonable effort and expense to the issuer. If the issuer does not have the audited financial statements required by the registration requirements of the act and cannot obtain them without unreasonable effort or expense, such financial statements may be furnished on an unaudited basis. The issuer may omit details or employ condensation of information if, under the circumstances, the omitted information is not material or the condensation of information does not render the statements made misleading. In all instances in which financial statements are given, they shall comply with generally accepted accounting principles.

(2) The issuer shall make available, during the course of the transaction and prior to sale, to each offeree or his offeree representative, the opportunity to ask questions of, and receive answers from, the issuer or any person acting on its behalf concerning the terms and conditions of the offering and to obtain any additional information, to the extent the issuer possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information obtained pursuant to subparagraph (e)(1) above.

(3) The issuer or any person acting on its behalf shall disclose to each offeree in writing, prior to sale:

(i) Any material relationship between his offeree representative(s) or its affiliates and the issuer or its affiliates, which then exists or mutually is understood to be contemplated or which has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship;

(ii) That a purchaser of the securities must bear the economic risk of the investment for an indefinite period of time because the securities have not been registered under the act, and therefore, cannot be sold unless they are subsequently registered under the act or an exemption from such registration is available; and

(iii) The limitations on disposition of the securities set forth in paragraph (h)(2), (3) and (4) of this section.

(f) *Business combinations.*

(1) The term "business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange solely for all or a part of its own or its parent's voting stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(2) All the conditions of this rule except paragraphs (a)(1)(c)(iv), (d) and paragraph (h)(4) of this section shall apply to business combinations.

(3) For [the] purposes of paragraph (f) only, the issuer and any person acting on its behalf, after making reasonable inquiry, shall have reasonable grounds to believe, and shall believe, at the time that any plan for a business combination is submitted to security holders for their approval, or in the case of an exchange, immediately prior to the sale, that each offeree either alone or with his offeree representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(4) In addition to information required by paragraphs (e) and (f)(2), the issuer shall provide, in writing, to each offeree at the time the plan is submitted to security holders, or in the case of an exchange, during the course of the transaction and prior to the sale, information about any terms or arrangements of the proposed transaction relating to any security holder that are not identical to those relating to all other security holders.

(g) *Number of purchasers.*

(1) The issuer shall have reasonable grounds to believe, and after making reasonable inquiry, shall believe, that there are no more than thirty-five purchasers of the securities of the issuer from the issuer in any offering pursuant to this rule.

(2) For purposes of computing the number of purchasers for paragraph (g)(1) of this section only:

(i) The following purchasers shall be excluded:

(a) Any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(b) Any trust or estate in which a purchaser or any of the persons related to him as specified in paragraph (g)(2)(i)(a) or (c) of this section collectively have one hundred percent of the beneficial interest (excluding contingent interests);

(c) Any corporation or other organization of which a purchaser or any of the persons related to him as specified in paragraph (g)(2)(i)(a) or (b) of this section collectively are the beneficial owners of all of the equity securities (excluding directors' qualifying shares) or equity interests; and

(d) Any person who purchases or agrees in writing to purchase for cash in a single payment or installments, securities of the issuer in the aggregate amount of one hundred fifty thousand dollars or more.

(ii) There shall be counted as one purchaser any corporation, partnership, association, joint stock company, trust or unincorporated organization, except that if such entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser.

(h) *Limitations on disposition.* The issuer and any person acting on its behalf shall exercise reasonable care to assure that the purchasers of the securities in the offering are not underwriters. Such reasonable care shall include, but not necessarily be limited to, the following:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his own account or on behalf of other persons;

(2) Placing a legend on the certificate or other document evidencing the securities stating that the administrator of securities has not reviewed the offering or offering circular and the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities;

(3) Issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or if the issuer transfers its own securities, making a notation in the appropriate records of the issuer; and

(4) Obtaining from the purchaser a signed written agreement that the securities will not be sold without registration under the Act or exemption therefrom.

(i) *Notification of claim of exemption and report of sales.* Pursuant to WAC 460-44A-041 and 460-44A-045, the issuer shall file notification of claim of exemption which will become effective ten full business days from date of filing notification if the same is not disallowed by the administrator within such time or at such earlier date as the administrator determines, and report of sales within thirty days after termination of any offering effected in reliance on this rule and, for any offering which continues for a period greater than one year, within thirty days after each anniversary date of the first sale of securities in any such offering for so long as such offering continues. So long as the offering continues no report of sales need be filed for any offering in reliance upon the rule the proceeds of which total, cumulatively, less than fifty thousand dollars during any twelve month period. The administrator may, upon application of the issuer, in the event of late filing of a report of sales, for good cause excuse such late filing if he finds it in the public interest to grant such relief. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-020, filed 3/19/80; Order SD-130-77, § 460-44A-020, filed 11/23/77; Order 342, § 460-44A-020, filed 9/29/75.]

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 460-44A-030 Selling expense limitations and suitability standards for nonpublic offerings. In addition to compliance with WAC 460-44A-020, the following requirements must be met in order to qualify for the nonpublic offering exemption provided by these rules:

(1) The selling expenses for the securities offering shall not exceed fifteen percent of the aggregate offering price ("selling expenses" is defined in WAC 460-16A-075).

(2) Options granted by the issuer to underwriters or other persons as compensation, in whole or in part, for the sale of securities shall not exceed ten percent of the number of shares or units of the offering.

(3) In the determination by the issuer and any person acting in its behalf that an offeree is a person who is able to bear the economic risk of the investment pursuant to WAC 460-44A-020[(3)][(d)], the following minimum financial suitability standards shall be presumptively reasonable:

(a) An offeree must make a minimum initial cash investment of \$5,000 and must have a minimum annual gross income of \$35,000 and a net worth of at least \$35,000 (exclusive of home, furnishings, and automobiles); or

(b) An offeree must make a minimum initial cash investment of \$5,000 and must have a net worth of \$75,000 (exclusive of home, furnishings, and automobiles); or

(c) An offeree must have a minimum net worth of \$75,000 (exclusive of home, furnishings, and automobiles) and a 46 percent marginal federal income tax rate;

(d) These are minimum suitability standards; higher standards may be required depending upon the risk of the investment, the tax features, and the sales price of the security. [Statutory Authority: RCW 21.20.320(1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-030, filed 3/19/80; Order SD-130-77, § 460-44A-030, filed 11/23/77; Order 342, § 460-44A-030, filed 9/29/75.]

Reviser's Note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 460-44A-041 Form of notification of claim of exemption pursuant to WAC 460-44A-010 through 460-44A-041.

- (1) Name of Issuer _____
Address of Issuer _____
Phone Number of Issuer (____) _____
- (2) Form of Organization (check one)
____ Corporation ____ Limited Partnership
____ Unincorporated Association
____ Other (specify) _____
- (3) Type of Business (check one)
____ Oil/Gas ____ Real Estate
____ Gold/Silver or Mineral Extraction
____ Other (specify) _____
- (4) Name (in full), address and telephone of chief executive officer (if corporation); general partner (if partnership); promoter or controlling person (if unincorporated association); or controlling person (if other):
Name _____
Address _____
Phone Number (____) _____

NOTE: If the general partner, promoter or controlling person is not a natural person, provide similar information for a natural person having primary responsibility for the affairs of the issuer.

- (5) Issuer's state of incorporation or jurisdiction of organization and the date of such incorporation or organization.
State _____ Date _____

- (6) Title of class of securities to be sold in this offering. _____
- (7) Total number of shares or units of securities to be sold in this offering. _____
- (8) Aggregate dollar amount of the offering. \$ _____
- (9) Price per share or unit of securities to be sold. \$ _____
- (10) Total number of purchasers to whom securities are to be sold. _____
- (11) Purchasers who are not included in the 35 maximum provisions of WAC 460-44A-020(g)(2)(i) (i.e., relatives, trust, purchaser over \$150,000).
Type of exclusion relied on _____
Number of purchasers _____
Minimum financial suitability standards for purchasers excluded _____

- (12) Minimum financial suitability standards for purchasers (excluding those contained in paragraph (11)).
Initial cash contribution _____
Minimum annual gross income _____
Minimum net worth _____
Tax bracket _____

- (13) Selling expenses of offering. State maximum selling in dollar amount \$ _____; and as a percentage of the offering _____%.
- (14) Options to underwriters or other persons for sale of securities: _____% of offering.

- (15) Past securities sales. Give the dates and amount of sales of securities by the issuer within the 12 months preceding the filing of this form.

Date _____ Amount _____

State basis on which securities were sold: _____

Exemption _____ Registration under Act _____

(16) Filing fee of three hundred dollars to accompany notification of claim of exemption pursuant to RCW 21.20.340.

The undersigned officer or person acting in a similar capacity has duly caused this notification to be filed on behalf of the issuer and has read this notification and knows the contents thereof and the statements therein to be true.

DO NOT SEND OFFERING MATERIALS OR PROSPECTUS UNLESS SPECIFICALLY REQUESTED BY THE SECURITIES DIVISION.

DATE _____ (Issuer) _____

(Signature should normally be person named in paragraph (4))

TYPE NAME AND TITLE UNDER SIGNATURE.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public in and for the
state of _____ residing
at _____

ATTENTION: Intentional
misstatements or omissions of facts
constitute criminal violations
(see, RCW 21.20.400).

[Statutory Authority: RCW 21.20.320(1) and (9). 80-04-037 (Order SDO-37-80), § 460-44A-041, filed 3/19/80.]

WAC 460-44A-045 Report of sales for offering under WAC 460-44A-020.

- (1) Name of Issuer _____
Address of Issuer _____
- (2) Title of Class of Securities Sold in This Offering _____
- (3) Total number of shares or units sold to date in this offering _____
- (4) Sales Price Per Unit or Share \$ _____
- (5) Aggregate dollar amount of sales in Washington \$ _____
- (6) Total Number of Shares or Units to be Offered in Future _____
- (7) Total Aggregate Dollar Amount of Shares or Units to be Offered in Future \$ _____
- (8) The Names, Addresses and Total Number of Purchasers to Whom Securities Were Sold in Washington _____

The undersigned officer or person acting in a similar capacity has duly caused this report of sales to be filed on behalf of the issuer and has read this report and knows the contents thereof and the statements therein to be true.

DO NOT SEND OFFERING MATERIALS OR PROSPECTUS UNLESS SPECIFICALLY REQUESTED BY THE SECURITIES DIVISION.

DATE _____ (Issuer) _____

Signature _____

TYPE NAME AND TITLE UNDER SIGNATURE

Notary Public in and for the
State of _____ residing
at _____

[Statutory Authority: RCW 21.20.320(1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-045, filed 3/19/80.]

WAC 460-44A-050 Isolated nonissuer transaction.
A nonissuer "isolated transaction" within the meaning of RCW 21.20.320(1) includes:

(1) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution. A transaction is presumed to be "isolated" if it is one of not more than three such transactions during the prior twelve months;

(2) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers' transactions in accordance with section 4(4) of the securities act of 1933 and rule 144 thereunder. [Order SD-130-77, § 460-44A-050, filed 11/23/77.]

WAC 460-44A-060 Limited offering exemption pursuant to RCW 21.20.320(9). (a) *Definitions.* For purposes of the rule only, the following definitions shall apply.

(1) **Securities of the issuer.** The term "securities of the issuer" shall include all securities issued by the issuer and by any affiliate of the issuer. Securities issued by partnerships with the same or affiliated general partners and fractional undivided interests in oil or gas rights created by the same or affiliated persons shall be deemed to be included as "securities of the issuer."

(2) **Affiliate.** The term "affiliate" or "affiliated" with a person means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such person.

(3) **Executive officer.** The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy-making functions for the issuer.

(4) **Promoter.** The term "promoter" includes: (i) Any person who, acting alone or in conjunction with one or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or (ii) any person who, in connection with the founding or organizing of the business or enterprise of the issuer, directly or indirectly receives in consideration of services or property, ten percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(b) *Conditions to be met.* Transactions by an issuer involving the offer and sale of its securities in accordance with all the terms and conditions of this rule shall be exempt pursuant to RCW 21.20.320(9). In order to obtain the protection of the exemption, all its conditions must be satisfied. The exemption is not available to any issuer with respect to any transactions which, although in technical compliance with the rule, are a part of a plan or scheme to evade the registration provisions of the Securities Act of Washington (hereinafter the "act"). In such cases registration pursuant to the act is required.

(c) *Limitation on manner of offering.* The securities shall not be offered, offered for sale or sold in reliance on this rule by any means of general advertising or general solicitation.

(d) *Prohibition of remuneration paid for solicitation or for sales.* No commission or similar remuneration shall be paid or given directly or indirectly for soliciting any prospective buyer or in connection with sales of the securities in reliance on this rule.

(e) *Limitation on aggregate sales price.* The aggregate sales price of all sales of securities of the issuer as defined in subparagraph (a)(1) in reliance on this rule or otherwise without registration within the twelve months preceding the point in time immediately after the last

such sale shall not exceed one hundred thousand dollars. For purposes of computing the dollar amount of securities sold, the following shall be excluded:

(1) The following securities if sold in reliance on an exemption from registration other than this rule:

(i) Nonconvertible notes or similar evidences of indebtedness

(1) representing a purchase money mortgage or

(2) issued to a bank, savings institution, trust company, insurance company, investment company registered under the Investment Company Act of 1940, small business investment company or minority enterprise small business investment company licensed by the United States small business administration, or pension or profit sharing trust; or

(ii) Securities sold to any promoter, director or executive officer.

(f) *Limitation on number of beneficial owners.* Both immediately before and immediately after any transaction in reliance on this rule, the issuer shall, after reasonable inquiry, have reasonable grounds to believe, and shall believe, that the securities of the issuer as defined in subparagraph (a)(1) are beneficially owned by one hundred or fewer persons. For purposes of these provisions and subparagraph (g):

(1) The following shall be deemed the same and not a separate beneficial owner or purchaser:

(i) Any relative or spouse of a beneficial owner and any relative of such spouse, who has the same home as such beneficial owner;

(ii) Any trust or estate in which a beneficial owner or any of the persons related to him as specified in subparagraphs (f)(1)(i) or (iii) collectively have one hundred percent of the beneficial interest (excluding contingent interests); and

(iii) Any corporation or other organization of which a beneficial owner or any of the persons related to him as specified in subparagraphs (f)(1)(i) or (ii) collectively are the beneficial owners of all of the equity securities (excluding directors' qualifying shares) or equity interests;

(2) There shall be counted as one beneficial owner any corporation or other organization, except that if such entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interest or equity securities in such entity shall count as a separate beneficial owner; and

(3) There shall be excluded from the computation any owner of only a purchase money mortgage and any bank, savings institution, trust company, insurance company, investment company registered under the Investment Company Act of 1940, small business investment company or minority enterprise small business investment company licensed by the United States small business administration, or pension or profit sharing trust which purchases or holds only nonconvertible notes or similar evidences of indebtedness of the issuer.

(g) *Limitation on number of purchasers.* In all sales of securities of the issuer in reliance on this rule, the number of purchasers in this state in any consecutive twelve month period may not exceed ten. For the purposes of

computing the number of purchasers, purchasers of securities are excluded in accordance with subparagraph (e) and (f) above.

(h) *Limitation on resale.* In determining the availability of an exemption from registration for resale of securities acquired in a transaction effected in reliance on this rule, such securities cannot be resold without registration or exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters, which reasonable care shall include, but not necessarily be limited to:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his own account or on behalf of other persons;

(2) Informing the purchaser of the restrictions on resale; and

(3) Placing a legend on the certificate or other document evidencing the securities stating that the administrator of securities has not reviewed the offering or offering circular and the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

(i) *Filing of notification of claim of exemption and report of sales.* The issuer shall file notification of claim of exemption which will become effective ten full business days from the date of filing notification if the same is not disallowed by the administrator within such time or at such earlier date as the administrator determines, and report of sales within thirty days after termination of any offering effected in reliance on this rule and, for any offering which continues for a period greater than one year, within thirty days after each anniversary date of the first sale of securities in any such offering for so long as such offering continues, in the form set forth in WAC 460-44A-065 and 460-44A-070. In the event of late filing of a report of sales, the administrator may, upon application of the issuer, for good cause excuse such late filing if he finds it in the public interest to grant such relief. [Statutory Authority: RCW 21.20.320(1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-060, filed 3/19/80; Order SD-130-77, § 460-44A-060, filed 11/23/77.]

WAC 460-44A-065 Notification of claim of exemption pursuant to WAC 460-44A-060.

- (1) Name of Issuer _____
Address of Issuer _____
Phone Number of Issuer (____) _____
- (2) Form of Organization (check)
____ Corporation _____ Limited Partnership
____ Unincorporated Association
____ Other (specify) _____
- (3) Type of Business (check)
____ Oil/Gas _____ Real Estate
____ Gold/Silver or Mineral Extraction
____ Other (specify) _____
- (4) Name (in full), address and telephone of chief executive officer (if corporation); general partner (if partnership); promoter or controlling person (if unincorporated association); or controlling person (if other):
Name _____ Position _____
Address _____
Phone Number (____) _____

NOTE: If the general partner, promoter or controlling person is not a natural person, provide similar information for a natural person having primary responsibility for the affairs of the issuer.

(5) Issuer's state of incorporation or jurisdiction of organization and the date of such incorporation or organization.
State: _____ Date: _____

- (6) Title of class of securities to be sold in this offering. _____
- (7) Total number of shares or units of securities to be sold in this offering. _____
- (8) Aggregate dollar amount of the offering. \$ _____
- (9) Price per share or unit of securities to be sold. \$ _____
- (10) Total number of purchasers to whom securities are to be sold. _____
- (11) Past securities sales. Give the dates and amount of sales of securities by the issuer within the 12 months preceding the filing of this form.
Date: _____ Amounts _____

State basis on which securities were sold:

Exemption _____ Registration under Act _____

(12) Filing fee of fifty dollars to accompany notification of claim of exemption pursuant to RCW 21.20.340(11).

The undersigned officer or person acting in a similar capacity has duly caused this notification to be filed on behalf of the issuer and has read this notification and knows the contents thereof and the statements therein to be true.

DO NOT SEND OFFERING MATERIALS OR PROSPECTUS UNLESS SPECIFICALLY REQUESTED BY THE SECURITIES DIVISION.

DATE: _____ Issuer _____

Signature (should normally be person named in paragraph 4)
TYPE NAME AND TITLE UNDER SIGNATURE _____

Notary Public in and for the
State of _____ residing
at _____

[Statutory Authority: RCW 21.20.320(1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-065, filed 3/19/80.]

WAC 460-44A-070 Report of sales for offering under WAC 460-44A-060.

- (1) Name of Issuer _____
Address of Issuer _____
- (2) Title of class of securities sold in this offering. _____
- (3) Total number of shares or units sold to date in this offering. _____
- (4) Sales price per unit or share. \$ _____
- (5) Aggregate dollar amount of sales in Washington. \$ _____
- (6) Total number of shares or units to be offered in future. _____
- (7) Total aggregate dollar amount of shares or units to be offered in future. \$ _____
- (8) The names, addresses and total number of purchasers to whom securities were sold in Washington. _____

The undersigned officer or person acting in a similar capacity has duly caused this report of sales to be filed on behalf of the issuer and has read this report and knows the contents thereof and the statements therein to be true.

DO NOT SEND OFFERING MATERIALS OR PROSPECTUS UNLESS SPECIFICALLY REQUESTED BY THE SECURITIES DIVISION.

DATE _____ Issuer _____

Signature
TYPE NAME AND TITLE UNDER SIGNATURE _____

Notary Public in and for the
State of _____ residing
at _____

[Statutory Authority: RCW 21.20.320(1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-070, filed 3/19/80.]

WAC 460-44A-075 Definition of real estate mortgages when "offered and sold as a unit". A bond or other evidence of indebtedness secured by a mortgage, deed of trust or agreement of sale, is not "offered and sold as a unit" within the meaning of section RCW 21.20.320(5), if it is part of an offering including other bonds or evidences of indebtedness secured by interests in real or personal property owned or developed by the same person or by persons affiliated by reason of direct or indirect control; or if it is offered or sold with any right of

recourse or substitution against or any guaranty by the offeror or any person other than the debtor. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-075, filed 3/19/80.]

Chapter 460-52A WAC NONPROFIT ORGANIZATIONS

WAC

460-52A-010	Definitions.
460-52A-020	Definitions—Transactions not involving a security.
460-52A-030	Exemption for securities of nonprofit organizations.
460-52A-040	Exemption notice.
460-52A-050	Filing fee.
460-52A-060	Duration of offering.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-52A-035	Contents of special registration for nonprofit organizations. [Order 344, § 460-52A-035, filed 10/24/75.] Repealed by Order SD-131-77, filed 11/23/77.
460-52A-036	Contents of offering circular/prospectus. [Order 344, § 460-52A-036, filed 10/24/75.] Repealed by Order SD-131-77, filed 11/23/77.
460-52A-045	Nonprofit security salesman exemptions. [Order 344, § 460-52A-045, filed 10/24/75.] Repealed by Order SD-131-77, filed 11/23/77.

WAC 460-52A-010 Definitions. Nonprofit organization means any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States. [Order SD-131-77, § 460-52A-010, filed 11/23/77; Order 344, § 460-52A-010, filed 10/24/75.]

WAC 460-52A-020 Definitions—Transactions not involving a security. The following transactions of nonprofit organizations will not involve the issuance of a security for registration purposes.

(1) Outright gifts with no expectation of return on investment by the donor.

(2) Outright gifts as above, but subject to reserved life estates.

(3) Testamentary dispositions.

(4) Voluntary inter vivos trusts.

(a) The following are considered to be voluntary inter vivos trusts:

(i) Charitable remainder trusts, as defined in Section 664 of the Internal Revenue Code.

(ii) Charitable remainder annuity trusts, as defined in Section 664 of the Internal Revenue Code.

(iii) Charitable remainder unitrusts as defined in Section 664 of the Internal Revenue Code.

(iv) Pooled income funds as described in Section 466(c)(5) of the Internal Revenue Code.

(b) Trust arrangements are presumed to be voluntary inter vivos trust, if each of the following conditions are met:

(i) It is an express trust created during the life of the trustor, which trust may be revocable or irrevocable;

(ii) The obligations of the trustee are in accord with the Trustee's Accounting Act, chapter 30.30 RCW;

(iii) The trustee is not authorized or directed, expressly or by implication, to commingle by loan or otherwise the corpus or any part thereof with the personal assets of the trustee, or with the assets of any person entitled to a remainder interest.

(c) This section does not create any presumption that a trust arrangement not conforming to this section is not an inter vivos trust. [Order 344, § 460-52A-020, filed 10/24/75.]

WAC 460-52A-030 Exemption for securities of nonprofit organizations. Any offering or sale of securities by a nonprofit organization as defined in WAC 460-52A-010 is exempt if the security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files notice as set forth in WAC 460-52A-040 and the director does not by order disallow the exemption within the next ten full business days: *Provided*, That no offerings shall be made until expiration of the ten full business days. [Order SD-131-77, § 460-52A-030, filed 11/23/77; Order 344, § 460-52A-030, filed 10/24/75.]

WAC 460-52A-040 Exemption notice. The notice shall consist of a statement of the following:

(1) Name and address of the issuer;

(2) Names, addresses and telephone numbers of the current officers and directors of the issuer;

(3) Description of the security, price per security, and the number of securities to be offered;

(4) Nature and purposes of the organization as a basis for claiming the exemption, including proof of current tax exempt status under the Internal Revenue Code; indicate whether the issuer is a religious, educational or charitable organization;

(5) Proposed use of the proceeds of the sale of the security;

(6) Issuer shall provide a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall conspicuously disclose the following statements;

(a) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."

(b) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."

(c) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION." [Order SD-131-77, § 460-52A-040, filed 11/23/77; Order 344, § 460-52A-040, filed 10/24/75.]

WAC 460-52A-050 Filing fee. Every nonprofit organization which files notice of exemption of securities shall pay a filing fee of fifty dollars. [Order SD-131-77, § 460-52A-050, filed 11/23/77; Order 344, § 460-52A-050, filed 10/24/75.]

WAC 460-52A-060 Duration of offering. No offering shall extend for more than two years after the date of filing notification of claim of exemption pursuant to RCW 21.20.310(11) without the express authorization of the administrator. [Order SD-131-77, § 460-52A-060, filed 11/23/77.]

Chapter 460-60A WAC

FINANCIAL STATEMENTS AND REPORTS-- CONTENTS AND FILING REQUIREMENTS

WAC

460-60A-010	Financial statements.
460-60A-015	Federal interstate offerings by coordination.
460-60A-020	Intrastate filings and federal filings not meeting the requirements of coordination.
460-60A-025	Quarterly reports required of certain issuers.
460-60A-035	Quarterly reports--When to file.
460-60A-040	Reports after termination of public offerings.
460-60A-045	Annual reporting requirements of RCW 21.20.740.
460-60A-050	Contents of reports under RCW 21.20.740.
460-60A-055	Reports maintained--Time period required.

WAC 460-60A-010 Financial statements. (1) All financial statements required to be filed under these regulations shall be prepared in form and content in accordance with generally accepted accounting principles.

(2) The administrator may require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any issuer or person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors. [Statutory Authority: RCW 21.20.210(14), 79-09-028 (Order SD-57-79), § 460-60A-010, filed 8/14/79; Order 304, § 460-60A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-015 Federal interstate offerings by coordination. Financial statements meeting the requirements of the United States Securities and Exchange Commission and filed with the Washington Securities Division pursuant to the provisions of RCW 21.20.180 will be deemed to have met the financial disclosure requirements of the division: *Provided*, That if the aggregate sales price of the offering exceeds \$500,000.00, annual financial statements shall be audited and certified by an independent certified public accountant.

[Statutory Authority: RCW 21.20.210(14)(d) and 21.20.450, 80-04-037 (Order SDO-37-80), § 460-60A-015, filed 3/19/80. Statutory Authority: RCW 21.20.210(14), 79-09-028 (Order SD-57-79), § 460-60A-015, filed 8/14/79; Order 304, § 460-60A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-020 Intrastate filings and federal filings not meeting the requirements of coordination. (1) For offerings \$500,000.00 or under and filed pursuant to RCW 21.20.210 the requirements of WAC 460-60A-010 shall apply.

(2) For offerings over \$500,000.00 and filed pursuant to RCW 21.20.210 the annual financial statements must be audited. For specific requirements not contained in these rules refer to RCW 21.20.210(14). [Statutory Authority: RCW 21.20.210(14), 79-09-028 (Order SD-57-79), § 460-60A-020, filed 8/14/79; Order 304, § 460-60A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-025 Quarterly reports required of certain issuers. Quarterly reports will be submitted by all issuers who register by qualification and by those issuers who are filing pursuant to the Regulation A Exemption of the Federal Security Act. Copies of quarterly report forms are available upon request. Such reports are required only during the term of the offering. [Order 304, § 460-60A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-035 Quarterly reports--When to file. Quarterly reports will be filed on a quarterly basis, said quarters to be based upon the issuer's fiscal year. The quarterly reports shall be filed with the division within thirty calendar days from the end of each quarterly period. [Order SD-131-77, § 460-60A-035, filed 11/23/77; Order 304, § 460-60A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-040 Reports after termination of public offerings. All issuers must file annual reports with the division even after termination of the public securities offering if they are within the criteria set out in RCW 21.20.740. [Order 304, § 460-60A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-045 Annual reporting requirements of RCW 21.20.740. Every issuer who has been registered under Washington Securities Laws must file annual reports as required in WAC 460-60A-050 EXCEPT THAT ISSUER DOES NOT INCLUDE:

(a) Those whose securities were registered pursuant to section 12 of the Securities and Exchange Act of 1934.

(b) Those who were exempted from the Securities and Exchange Act of 1934 on some basis *other than* number of *shareholders* and total assets.

(c) Those whose securities are held of record by less than 200 persons at the close of the issuer's fiscal year.

(d) Those whose total assets are less than \$500,000 at the close of their fiscal year. [Order 304, § 460-60A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-050 Contents of reports under RCW 21.20.740. The issuer shall file with the director not more than 120 days after the end of its fiscal year the following statements:

(1) A certified financial statement prepared in accordance with generally accepted accounting principles (S-X is not required).

(2)(a) A list of all officers, directors and those who control directly or indirectly more than 10% of the outstanding voting securities of said issuer.

(b) In addition to the names required in (a), there shall be shown the number and type of securities held by each said officer, director and controlling shareholder.

(3) Should the director find that the financial statements required in subsection (1) do not adequately provide the necessary business and financial information by the said issuer he may by order direct the issuer to file such additional information as is deemed necessary. Said additional information does not have to be filed within the 120 day period after the issuer's fiscal year end but must be filed within a reasonable time after the director issues his order. [Order 304, § 460-60A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

WAC 460-60A-055 Reports maintained—Time period required. The reports required by WAC 460-60A-050 will be maintained by the director for public inspection for a period of five years after the receipt of said reports. [Order 304, § 460-60A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

Chapter 460-64A WAC

CAPITAL REQUIREMENTS—DEFINITIONS

WAC

460-64A-010 Definitions.

460-64A-020 Capital requirements.

WAC 460-64A-010 Definitions. (1) The phrase "cash or comparable liquid assets" means: Legal tender of the United States of America, U.S. Treasury notes or bills, or other negotiable government securities with an ascertainable public market. [Order 304, § 460-64A-010, filed 2/28/75, effective 4/1/75.]

WAC 460-64A-020 Capital requirements. The paid-in capital requirements enumerated in RCW 21.20.710 must be maintained at all times, although it does not need to be maintained in such liquid form as set forth in WAC 460-64A-010(1). [Order 304, § 460-64A-020, filed 2/28/75, effective 4/1/75.]

Chapter 460-80 WAC FRANCHISE REGISTRATION

WAC

460-80-100	Notice of claim for exemption.
460-80-110	Franchise registration application.
460-80-125	Franchise registration application instructions.
460-80-140	Financial statements.
460-80-160	Cross reference sheets.
460-80-190	Time of registration effectiveness.
460-80-195	Approval is not an endorsement.
460-80-300	Receipt of offering circular.
460-80-310	Offering circular.
460-80-315	Content and form of offering circular.
460-80-400	Impounds.
460-80-410	Imposition of impound.
460-80-420	Operation of impound condition.
460-80-430	Purchase receipts.
460-80-440	Depository.
460-80-450	Release of impounds.
460-80-500	Advertising.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-80-120	Subfranchisor registration application. [Order 11, § 460-80-120, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250..
460-80-130	Franchise registration exhibits. [Order 11, § 460-80-130, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.040 (4), (7), and (20), 19.100.070(2), and 19.100.250.
460-80-150	Number of franchises. [Order 11, § 460-80-150, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.040(20) and 19.100.250.
460-80-170	Signing of application. [Order 11, § 460-80-170, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.
460-80-180	Consent to service of process. [Order 11, § 460-80-180, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.160 and 19.100.250.
460-80-200	Renewal of franchise registration. [Order 11, § 460-80-200, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2).
460-80-210	Underscoring of changes. [Order 11, § 460-80-210, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2) and 19.100.250.
460-80-220	Application to amend registration. [Order 11, § 460-80-220, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.
460-80-320	Required information in offering circular. [Order 11, § 460-80-320, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.040 (4), (7), and (20), 19.100.070(2), and 19.100.250.
460-80-330	Sequence of presentation in offering circular. [Order 11, § 460-80-330, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.
460-80-900	Registration renewal application. [Order 11, § 460-80-900, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2) and 19.100.250.
460-80-910	Sale of franchises—Power of attorney for consent to service. [Order 11, § 460-80-910, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.160 and 19.100.250.

WAC 460-80-100 Notice of claim for exemption. Any franchisor or subfranchisor who claims an exemption under RCW 19.100.030(4)(a) and (4)(b)(i) shall file with the administrator of the state securities division a statement giving notice of such claim for exemption, the name and address of the franchisor or subfranchisor, the name under which the franchisor or subfranchisor is doing business, and a statement setting forth the information upon which the exemption under RCW 19.100.030(4)(b)(i) is claimed, including the most recent audited financial statement showing compliance with the requirements of RCW 19.100.030(4)(b)(i)(A). [Order 11, § 460-80-100, filed 3/3/72.]

WAC 460-80-110 Franchise registration application. All applications for registration, renewal or amendment of a franchise shall have as the first page thereof a facing page in the form as provided by the Department of Licensing and containing the information specified therein. The application for registration, renewal or amendment must be accompanied by the fee prescribed in RCW 19.100.240 made payable by check to the treasurer of the state of Washington. [Statutory Authority: RCW 19.100.040(12), 19.100.070(2) and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-110, filed 3/19/80; Order 11, § 460-80-110, filed 3/3/72.]

WAC 460-80-125 Franchise registration application instructions. The following must be adhered to with respect to all applications for registration, registration renewal or registration amendment:

(1) Completion of Application. An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page:

- (a) Facing page;
- (b) Supplemental information page(s);
- (c) Salesperson registration application in the form prescribed by WAC 460-82-100;
- (d) A copy of the proposed offering circular.

(2) The following shall be attached to the application:

- (a) A second copy of the proposed offering circular;
- (b) A cross-reference sheet showing the location in the franchise agreement of the information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross-reference sheet;

(c) A consent to service of process in the form prescribed by the Department of Licensing.

(3) Definitions:

(a) "Predecessor," for the purposes of the disclosure required by item 1 in the body of the offering circular, is defined as follows: A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets;

(b) "Franchise broker," for the purposes of the disclosure required by the cover page and item 2 in the

body of the offering circular, is defined as follows: A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience is otherwise required to be disclosed at item 2 in the body of the offering circular.

(4) Disclosure: Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.

(5) Subfranchisors: When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor; the franchisor, as well as the subfranchisor, shall execute a signature page.

(6) Signing of Application: The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

(7) Manually Signed Consent of Accountant: All applications shall be accompanied by a manually signed consent of the independent public accountants for the use of their audited financial statements as such statements appear in the offering circular.

(8) Application to Amend the Registration: An amendment to an application filed either before or after the effective date of registration shall contain only the information being amended identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate the filing is an amendment and the number of the amendment, if more than one.

(9) Underscoring of Changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner. [Statutory Authority: RCW 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-125, filed 3/19/80.]

WAC 460-80-140 Financial statements. (a) Financial statements required to be filed in connection with an application for registration or renewal of an offer or sale of a franchise shall be prepared in accordance with generally accepted accounting principles as set forth in rules as adopted pursuant to chapter 460-60A WAC etc. Such financial statements should be audited by a Certified Public Accountant having the same qualifications and restrictions as those set forth in WAC 460-60A-100, except where the particular form or this section

permits the use of unaudited statements for interim periods.

(b) In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the franchisor to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the franchisor has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose an impound condition and such other conditions and restrictions as in his discretion may be appropriate.

(c) The use of unaudited financial statements as provided in these rules does not relieve the applicant or any person from any liability for false and misleading statements contained in such financial statements. [Statutory Authority: RCW 19.100.040(7) and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-140, filed 3/19/80; Order 11, § 460-80-140, filed 3/3/72.]

WAC 460-80-160 Cross reference sheets. Each application for registration of an offer or sale of a franchise and each registration renewal statement shall include a cross reference sheet showing the location in the franchise agreement of the information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

SPECIMEN CROSS REFERENCE SHEET

Item Number of Application	Page in Offering Circular	Page in Franchise Agreement

[Order 11, § 460-80-160, filed 3/3/72.]

WAC 460-80-190 Time of registration effectiveness. A registration statement for the selling of a franchise under RCW 19.100.060 becomes effective if no stop order is in effect and no proceeding pending under RCW 19.100.120 at 3:00 p.m., P.S.T. on the afternoon of the 15th business day after the filing of the registration or the last amendment or at such earlier time as the director determines. [Order 11, § 460-80-190, filed 3/3/72.]

WAC 460-80-195 Approval is not an endorsement. The filing of the application for registration or the effectiveness of the registration does not constitute a finding by the director that any document filed under this

act is true, complete and not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any person, franchise or transaction. [Order 11, § 460-80-195, filed 3/3/72.]

WAC 460-80-300 Receipt of offering circular. Each prospective purchaser of a franchise shall sign a receipt in substantially the following form that they have received the offering circular and that they received the same before signing the receipt and completing the sale. **ACKNOWLEDGEMENT OF RECEIPT OF OFFERING CIRCULAR BY PROSPECTIVE FRANCHISEE FROM (NAME OF FRANCHISOR)**

The undersigned, personally and/or as an officer or partner of the proposed franchisee, does hereby acknowledge receipt of "The Franchise Offering Circular For Prospective Franchisees Required By The State Of Washington" including all exhibits attached thereto, to-wit: (List exhibits to be attached, including, but not limited to, financial statements, franchise agreement, lease agreements, etc.). I acknowledge that I received the offering circular at least 48 hours prior to signing this receipt and completing the sale.

Dated: _____

_____ individually and/or as an officer
or partner of _____
a (_____ corporation)
(_____ partnership)

[Statutory Authority: RCW 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-300, filed 3/19/80; Order 11, § 460-80-300, filed 3/3/72.]

WAC 460-80-310 Offering circular. The purpose of the offering circular is to inform prospective franchisees and subfranchisors. Accordingly, the information set forth in the circular should be presented in a clear, concise fashion that will be readily understandable.

(a) All information contained in the offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, information set forth in the offering circular should be divided into reasonable short paragraphs or sections.

(b) Each offering circular should contain a reasonable detailed table of contents showing the subject matter of the various sections or subdivisions of the offering circular and the page number on which each section or subdivision begins. [Order 11, § 460-80-310, filed 3/3/72.]

WAC 460-80-315 Content and form of offering circular. The information required to be set forth in the offering circular shall be presented in the following sequence:

COVER PAGE. The outside front cover of the offering circular shall contain the following information:

The title in boldface type: **FRANCHISE OFFERING CIRCULAR FOR PROSPECTIVE FRANCHISEES REQUIRED BY THE STATE OF WASHINGTON.**

The name, type of business organization, principal business address and telephone number of the franchisor.

If different than above, the name, principal business address and telephone number of the subfranchisor or franchise broker offering in this state the herein described franchise.

A sample of the primary business trademark, logo-type, trade name or commercial label or symbol used by the franchisor for marketing its products or services and under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)

A brief description of the franchise to be offered.

A summary of items (5) and (7) of the offering circular, to-wit: Franchisee's initial franchise fee or other payment and franchisee's initial investment, respectively.

Effective date: (Leave blank until notified of effectiveness by Securities Division.)

The following statement in boldface type:

THIS OFFERING CIRCULAR IS PROVIDED FOR YOUR OWN PROTECTION AND CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THIS OFFERING CIRCULAR AND ALL CONTRACTS AND AGREEMENTS SHOULD BE READ CAREFULLY IN THEIR ENTIRETY FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

A FEDERAL TRADE COMMISSION RULE MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE WITHOUT FIRST PROVIDING THIS OFFERING CIRCULAR TO THE PROSPECTIVE FRANCHISEE AT THE EARLIER OF (1) THE FIRST PERSONAL MEETING, OR (2) TEN BUSINESS DAYS BEFORE THE SIGNING OF ANY FRANCHISE OR RELATED AGREEMENT, OR (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT. THE PROSPECTIVE FRANCHISEE MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS PRIOR TO THE SIGNING OF THE FRANCHISE AGREEMENT.

IF THIS OFFERING CIRCULAR IS NOT DELIVERED ON TIME, OR IF IT CONTAINS A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND WASHINGTON STATE DEPARTMENT OF LICENSING, SECURITIES DIVISION, P.O. BOX 648, OLYMPIA, WASHINGTON 98504.

The name and address of the franchisor's registered agent in this state authorized to receive service of process.

The name and address of the subfranchisor's or franchise broker's registered agent in this state authorized to receive service of process.

TABLE OF CONTENTS: Include a table of contents based on the requirements of this offering circular.

BODY OF OFFERING CIRCULAR: The offering circular shall contain the following information clearly and concisely stated in narrative form:

(1) The franchisor and any predecessors: Set forth in summary form: (The disclosure regarding predecessors need only cover the 15 year period immediately preceding the close of franchisor's most recent fiscal year.)

(a) The name of the franchisor and any predecessors thereto.

(b) The name under which the franchisor is currently doing or intends to do business.

(c) The franchisor's principal business address and the business address or addresses of any predecessors thereto.

(d) The business form of the franchisor whether corporate, partnership or otherwise.

(e) A description of the franchisor's business and the franchises to be offered in this state.

(f) The prior business experience of the franchisor and any predecessors thereto including:

(i) The length of time the franchisor has conducted a business of the type to be operated by the franchisee;

(ii) The length of time each predecessor conducted a business of the type to be operated by the franchisee;

(iii) The length of time the franchisor has offered franchises for such business;

(iv) The length of time each predecessor offered franchises for such business;

(v) Whether the franchisor has offered franchises in other lines of business, including:

(A) a description of such other lines of business;

(B) the number of franchises sold in each other line of business;

(C) the length of time the franchisor has offered each such franchise; and

(vi) Whether each predecessor offered franchises in other lines of business, including:

(A) a description of such other lines of business;

(B) the number of franchises sold in each other line of business; and

(C) the length of time each predecessor offered each such franchise.

(2) Identity and business experience of persons affiliated with the franchisor; franchise brokers: List by name and position held the directors, trustees and/or general partners, as the case may be, the principal officers (including the chief executive and chief operating officer, financial, franchise marketing, training and service officers) and other executives or subfranchisors who will have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by this offering circular and all franchise brokers. With regard to each person listed, state his principal occupations and employers during the past five years.

(3) **Litigation:** State whether the franchisor, any person or franchise broker identified in (2) above:

(a) Has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person, the court or other forum, nature, and current status of any such pending action. Franchisor may include a summary opinion of counsel as to any such action, but only if a consent to use of such summary opinion is included as part of this offering circular.

(b) Has during the 10 year period immediately preceding the date of the offering circular been convicted of a felony or plead nolo contendere to a felony charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding if such felony, civil action, complaint or other legal proceeding involved violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person convicted, the court and date of conviction or person against whom judgment was entered, penalty or damages assessed in connection therewith and/or terms of settlement.

(c) Is subject to any currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency. If so, set forth the name of the person so subject, the public agency and court, a summary of the allegations or facts found by the agency or court and the date, nature, terms and conditions of the order or decree.

(4) **Bankruptcy:** State whether the franchisor or any predecessor, officer or general partner of the franchisor has during the 15 year period immediately preceding the date of the offering circular been adjudged bankrupt or reorganized due to insolvency or was a principal officer of any company or a general partner in any partnership that was adjudged bankrupt or reorganized due to insolvency during or within one year after the period that such officer or general partner of the franchisor held such position in such company or partnership, or whether any such bankruptcy or reorganization proceeding has been commenced. If so, set forth the name of the person or company adjudged bankrupt or reorganized or named in any such proceeding and the date thereof and any material facts or circumstances.

(5) **Franchisee's initial franchise fee or other initial payment:** Describe in detail the following:

(a) The initial franchise fee or other initial payment for the franchise, if any, charged upon the signing of the franchise agreement, and whether payable in lump sum

or installments. Set forth the manner in which the franchisor will use or apply such franchise fee or initial payment. State whether such fee or payment is refundable, and if so, under what conditions.

(b) If an identical initial franchise fee or other initial payment is not charged in connection with each franchise agreement, state the method or formula by which such fee or payment is determined.

(6) **Other fees:** Describe in detail other recurring or isolated fees or payments, including but not limited to royalties, service fees, training fees, lease payments and advertising fees and charges that the franchisee is required to pay to the franchisor or persons affiliated with the franchisor or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party. Include, if applicable, the formula used to compute such other fees and payments. State whether any such fee or payment is refundable, and if so, under what conditions.

(7) **Franchisee's initial investment:** Describe in detail the following expenditures (which may be estimated or described by a low-high range, if not known exactly), stating for each to whom the payments are to be made, when such payments are to be determined, whether any payment is refundable, and if so, under what conditions and, if any part of the franchisee's initial investment in the franchise will or may be financed, an estimate of the loan repayments, including interest:

(i) Real property, whether or not financed by contract, installment, purchase or lease. If neither estimate nor describable by a low-high range, describe the variable requirements, such as property, location and building size which make the real property expenditure neither estimable nor describable by a low-high range.

(ii) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements and decorating costs, whether or not financed by contract, installment purchases, lease or otherwise.

(iii) Inventory required to commence operations.

(iv) Security deposits, other prepaid expenses and working capital required to commence operation.

(v) Any other payments which the franchisee will be required to make in order to commence operations.

NOTE: The following statement shall be inserted in the offering circular at this point:

THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE.

(8) **Obligations of franchisee to purchase or lease from designated sources:** State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease from the franchisor or his designees, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

(a) The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased from the franchisor or its designees.

(b) Whether, and if so, the precise basis by which, the franchisor, its parent or persons affiliated with the franchisor will or may derive income based on or as a result of any such required purchases or leases.

(c) To the extent known or estimable by the franchisor, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make or enter into (1) in the establishment and (2) in the operation of the franchise business.

(9) Obligations of franchisee to purchase or lease in accordance with specifications or from approved suppliers: State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease in accordance with specifications issued by the franchisor, or from suppliers approved by the franchisor, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

(a) The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased in accordance with specifications or from suppliers approved by the franchisor.

(b) The manner in which the franchisor issues and modifies specifications or grants and revokes approval to suppliers.

(c) Whether, and for what categories of goods and services, the franchisor or persons affiliated with the franchisor are approved suppliers or the only approved suppliers.

(d) Whether, and if so, the precise basis by which, the franchisor, its parent or persons affiliated with the franchisor may derive income from it or from other approved suppliers, if this is the case.

(10) Financing arrangements: State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor, its agent or affiliated company, including:

(a) A description of any waiver of defenses or similar provisions in any note, contract or other instrument to be executed by the franchisee or subfranchisor.

(b) A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party, in whole or in part, any note, contract or other instrument executed by the franchisee or subfranchisor.

(c) A description of any payments received by the franchisor from any person for the placement of financing with such person.

(11) Obligations of the franchisor; other supervision, assistance or services: Where applicable, describe the following:

(a) The obligations to be met by the franchisor prior to the opening of the franchise business, citing by section and page the provisions of the franchise or related agreement requiring performance.

(b) Other supervision, assistance or services to be provided by the franchisor prior to the opening of the franchise business although franchisor is not bound by the

franchise or any related agreement to provide the same. As part of this disclosure franchisor must disclose that he is not so bound.

(c) The obligations to be met by the franchisor during the operation of the franchise business, including, without limitation, the assistance to the franchisee in the operation of his business. Cite by section and page the provisions of the franchise or related agreement requiring performance.

(d) Other supervision, assistance or services to be provided by the franchisor during the operation of the franchise business although franchisor is not bound by the franchise or any related agreement to provide the same. As part of this disclosure franchisor must disclose that it is not so bound.

(e) The methods used by the franchisor to select the location for the franchisee's business.

(f) The typical length of time between the signing of the franchise agreement or the first payment of any consideration for the franchise and the opening of the franchisee's business.

(g) The training program of the franchisor, including:

(i) The location, duration and content of the training program;

(ii) When the training program is to be conducted;

(iii) The experience that the instructors have had with the franchisor;

(iv) Any charges to be made to the franchisee and the extent to which the franchisee will be responsible for travel and living expenses of the person(s) who enroll in the training program;

(v) If the training program is not mandatory, the percentage of new franchisees that enrolled in the training program during the 12 months immediately preceding the date of the offering circular; and

(vi) Whether any additional training programs and/or refresher courses are available to the franchisee and whether the franchisee will be required to attend the same.

(12) Exclusive area or territory: Describe any exclusive area or territory granted the franchisee and with respect to such area or territory state whether:

(a) The franchisor has established or may establish another franchisee who will also be permitted to use the franchisor's trade name or trademark.

(b) The franchisor has established or may establish a company-owned outlet using the franchisor's trade name or trademark.

(c) The franchisor or its parent or affiliate has established or may establish other franchises or company-owned outlets selling or leasing similar products or services under a different trade name or trademark.

(d) Continuation of the franchisee's area or territorial exclusivity is dependent upon achievement of a certain sales volume, market penetration or other contingency and under what circumstances the franchisee's area or territory may be altered.

(13) Trademarks, service marks, trade names, logotypes, and commercial symbols: Describe any trademarks, service marks, trade names, logotypes or other

commercial symbols to be licensed to the franchisee including the following:

(a) Whether the trademark, service mark, trade name, logotype or other commercial symbol is registered with the United States Patent Office and, if so, for each such registration state the registration date and number and whether or not the registration is on the principal or supplemental register.

(b) Whether the trademark, service mark, trade name, logotype and other commercial symbol are registered in this state or the state in which the franchise business is to be located and the dates of such registrations.

(c) A description of any presently effective determinations of the Patent Office, the trademark administrator of this state or any court, any pending interference, opposition or cancellation proceeding and any pending material litigation involving such trademarks, service marks, trade names, logotypes or other commercial symbols and which is relevant to their use in this state or the state in which the franchise business is to be located.

(d) A description of any agreements currently in effect which significantly limit the rights of the franchisor to use or license the use of such trademarks, service marks, trade names, logotypes or other commercial symbols in any manner material to the franchise.

(e) Whether the franchisor is obligated by the franchise agreement or otherwise to protect any or all rights which the franchisee has to use such trademarks, service marks, trade names, logotypes or other commercial symbols and to protect the franchisee against claims of infringement or unfair competition with respect to the same.

(f) Whether there are any infringing uses actually known to the franchisor which could materially affect the franchisee's use of such trademarks, service marks, trade names, logotypes or other commercial symbols in this state or state in which the franchise business is to be located.

(14) Patents and copyrights: If the franchisor owns any rights in or to any patents or copyrights which are material to the franchise, describe such patents and copyrights, their relationship to the franchise and the terms and conditions under which the franchisee may use them, including their duration, whether the franchisor can and intends to renew any copyrights, and, to the extent relevant, the information required by Section 15 above with respect to such patents and copyrights.

(15) Obligation of the franchisee to participate in the actual operation of the franchise business: State fully the obligation of the franchisee or the subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to participate personally in the direct operation of the franchise business or whether the franchisor recommends participation in the same.

(16) Restrictions on goods and services offered by franchisee: State any restriction or condition imposed by the franchisor, whether by terms of the franchise agreement or by other device or practice of the franchisor, whereby the franchisee is restricted as to the goods or

services they may offer for sale, or limited in the customers to whom they may sell such goods or services.

(17) Renewal, termination, repurchase, modification and assignment of the franchise agreement and related information: With respect to the franchise and any related agreements state the following:

(a) The term and whether such term is affected by any agreement (including leases or subleases) other than the one from which such term arises.

(b) The conditions under which the franchisee may renew or extend.

(c) The conditions under which the franchisee may refuse to renew or extend.

(d) The conditions under which the franchisee may terminate.

(e) The conditions under which the franchisor may terminate.

(f) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee or the expiration of the franchise.

(g) The franchisee's interest upon termination or refusal to renew or extend the franchise by the franchisor or by the franchisee.

(h) The conditions under which the franchisor may repurchase, whether by right of first refusal or at the opinion of the franchisor. If the franchisor has the option to repurchase the franchise, state whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee.

(i) The conditions under which the franchisee or its owners may sell or assign all or an interest in the ownership of the franchise or of the franchisee or in the assets of the franchise business.

(j) The conditions under which the franchisor may sell or assign in whole or in part.

(k) The conditions under which the franchisee may modify.

(l) The conditions under which the franchisor may modify.

(m) The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee.

(n) The provisions of any covenant not to compete.

(18) Arrangements with public figures: State the following:

(a) Any compensation or other benefit given or promised to a public figure arising, in whole or in part, from:

(i) The use of the public figure in the name or symbol of the franchise, or

(ii) The endorsement or recommendation of the franchise by the public figure in advertisements.

(b) Any right the franchisee may have to use the name of a public figure in his promotional efforts or advertising and any charges to be made to the franchisee in connection with such usage.

(c) The extent to which such public figure is involved in the actual management or control of the franchisor.

(d) The total involvement of the public figure in the franchise operation.

(19) (Alternative 1) Actual, average, projected or forecasted franchisee sales, profits or earnings:

(a) If the franchisor discloses to prospective franchisees the actual or average sales, profits or earnings of franchisees, an exact copy of the same shall be included in or as an exhibit to the offering circular. Such actual or average sales, profits or earnings shall contain the following legend in not less than 10-point boldface type: **THESE SALES, PROFITS OR EARNINGS ARE (AVERAGES) OF (A) SPECIFIC FRANCHISE(S) AND SHOULD NOT BE CONSIDERED AS THE ACTUAL OR POTENTIAL SALES, PROFITS OR EARNINGS THAT WILL BE REALIZED BY ANY OTHER FRANCHISE. THE FRANCHISOR DOES NOT REPRESENT THAT ANY FRANCHISEE CAN EXPECT TO ATTAIN THESE SALES, PROFITS OR EARNINGS.**

(b) Where projected or forecasted franchisee sales, profits or earnings are proposed to be used, an exact copy of the same shall be included in or as an exhibit to the offering circular. Such projected or forecasted sales, profits or earnings shall contain the following legend in not less than 10-point boldface type: **THESE PROJECTIONS (FORECASTS) OF SALES, PROFITS OR EARNINGS ARE MERELY ESTIMATES AND SHOULD NOT BE CONSIDERED AS THE ACTUAL OR POTENTIAL SALES, PROFITS OR EARNINGS THAT WILL BE REALIZED BY ANY SPECIFIC FRANCHISEE. THE FRANCHISOR DOES NOT REPRESENT THAT ANY FRANCHISEE CAN EXPECT TO ATTAIN THESE SALES, PROFITS OR EARNINGS.**

(c) With regard to Items (a) and (b) above:

(i) The basis and assumptions for such actual, average, projected or forecasted sales, profits or earnings must be disclosed in detail;

(ii) All actual, average, projected or forecasted sales, profits or earnings must be for or based upon a substantial number of franchises in a concurrent equal period of time: *Provided, However,* That any such representation is accompanied by a clear and conspicuous disclosure of the percentage of the total number of franchisees who have achieved such results: *And Further Provided,* That if the sales, profits or earnings represented, projected or forecasted from were not made in the franchisor's fiscal year immediately preceding the date of the representation, the time period in which they were made must be clearly disclosed in immediate conjunction with such representation and with the same conspicuousness;

(iii) All actual, average, projected or forecasted sales, profits or earnings must be prepared in accordance with generally accepted accounting principles and the amounts represented may not be in excess of sales, profits or earnings actually achieved by existing franchises;

(iv) If franchises have not been in operation long enough to indicate what sales, profits or earnings may

result, then the use of actual average, projected or forecasted sales, profits or earnings is prohibited;

(v) Franchise locations upon which actual, average, projected or forecasted sales, profits or earnings are based must be identified by address, number of years of operation, whether substantially similar to the franchises offered, whether owner managed, whether such franchises received any services not generally available to other franchises and whether such sales, profits or earnings have been audited;

(vi) All projections or forecasts of sales, profits or earnings shall include a statement of the extent to which such projections or forecasts relate to:

(A) Franchises of a type substantially similar to the franchises being offered by this offering circular operating in the state where the franchise is to be located;

(B) Franchises of a substantially similar type throughout the United States;

(vii) All projections and forecasts of sales, profits or earnings must include a break-even point insofar as sales and expenses and also must disclose other relevant financial ratios; and

(viii) Franchisor shall include a statement that substantiation of all actual, average, projected or forecasted sales, profits or earnings will be made available to prospective franchisees upon reasonable demand; or

(19) (Alternative 2) Actual, average, projected or forecasted franchisee sales, profits or earnings:

(a) The franchisor shall in narrative form identify the type of statement (e.g., "Statement of Actual Sales and Earnings" or "Statement of Projected Earnings") and disclose, in detail, the basis and assumptions upon which such statement is based, which generally shall include, but not be limited to, an analysis of the following factors:

(i) Identification of the source(s) of the data, such as franchise outlets, company owned or operated outlets or a combination thereof and the period of time covered by the data.

(ii) The number, geographic location, type of location and time in operation of the outlets included in the data.

(iii) Whether substantially the same services were offered by the franchisor to outlets upon which the data is based.

(iv) Whether the outlets offered substantially the same products or services to the public.

(v) The percentage of franchised outlets that were in operation for an identified twelve month period which have, to the franchisor's knowledge, actually attained or surpassed sales, earnings or profit levels indicated in the statement.

(vi) An estimate of break-even sales volume and the percentage of franchised outlets that were in operation for an identified twelve month period which have, to the franchisor's knowledge, actually attained or surpassed such sales level. In the alternative, a high, medium or low range of sales and the percentage of franchised outlets that were in operation for an identified twelve month period which have, to the franchisor's knowledge, actually attained or surpassed such sales levels.

(vii) Whether the data was received from outlets using a uniform accounting method or system.

(viii) Whether the statement was prepared on a basis consistent with generally accepted accounting principals.

(b) The franchisor shall include a narrative explaining the relevancy of the statement to the franchise to be offered in order that the statement is neither misleading nor confusing to the prospective franchise.

(c) The franchisor shall affix either legend (i) or (ii) to the statement in not less than 10-point boldface type:

(i) "Such actual sales, income, gross or net profits are of (specific franchise(s)) (company-owned or operated units) and should not be considered as the actual or probable sales, income, gross or net profits that will be realized by any franchisee. The franchisor does not represent that any franchisee can expect to attain such sales, income, gross or net profits."

(ii) "These (projections) (forecasts) of sales, income, gross or net profits are merely estimates and should not be considered as the actual or probable sales, income, gross or net profits that will be realized by any franchisee. The franchisor does not represent that any franchisee can expect to attain such sales, income, gross or net profits."

(d) The franchisor shall indicate in the statement that substantiation of the data used in preparing the statement will be made available to the prospective franchisee, upon reasonable demand: *Provided, however*, That this shall not be construed to require disclosure of the identity of a specific franchisee or to require the release of data without the consent of the specific franchisee, except to the agency with which the filing is made.

(20) Information regarding franchises of the franchisor: State the following as of the close of franchisor's most recent fiscal year:

(a) The total number of franchises, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

(b) The number of franchises in this state, exclusive of a company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

(c) The total number of franchises substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

(d) The number of franchises in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

(e) The names, addresses and telephone numbers of all franchises under franchise agreements with the franchisor or its subfranchisor which are located in the state where the proposed franchise is to be located. To the extent that there are fewer than 10 such franchises located in said state, the list shall include at least the 10 such franchises which are most proximate to the location

of the proposed franchise; and if fewer than 10 such franchises exist, the list shall identify all such franchises and include a statement to that effect.

In lieu of the above disclosure, the franchisor may attach to the offering circular a list of the names, addresses and telephone numbers of all its franchises under franchise agreements with the franchisor or its subfranchisors.

(f) An estimate of the total number of franchises to be sold or granted during the one year period following the date of the offering circular.

(g) An estimate of the number of franchises to be sold or granted in this state during the one year period following the date of the offering circular.

(h) State the number of franchises in each of the following categories which within the three-year period immediately preceding the close of franchisor's most recent fiscal year have:

(i) been cancelled or terminated by the franchisor for:

(A) failure to comply with quality control standards; and

(B) other reasons;

(ii) not been renewed by the franchisor;

(iii) been reacquired through purchase by the franchisor; and

(iv) been otherwise required by the franchisor.

(i) A statement of business failures of franchises, re-sales to the franchisor, sales of the franchise to others, and transfers in the state of Washington during the two year period preceding the date of the statement.

(21) Financial statements: Financial statements shall be prepared in accordance with generally accepted accounting principles. Such financial statements shall be audited by an independent certified public accountant. Unaudited statements may be used for interim periods.

(a) The financial statements required to be filed by a franchisor shall include a balance sheet as of a date within 90 days prior to the date of the application and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of such fiscal years and the date of the balance sheet. The balance sheet as of a date within 90 days prior to the date of the application need not be audited. However, if this balance sheet is not audited, there shall be filed in addition an audited balance sheet as of the end of the franchisor's last fiscal year unless such last fiscal year ended within 90 days of the date of the application in which case there shall be filed an audited balance sheet as of the end of the franchisor's next preceding fiscal year. The profit and loss statements shall be audited up to the date of the last audited balance sheet filed, if any.

(b) Controlling company statements: In lieu of the disclosure required by Item (21)(a), complete financial statements of a company controlling the franchisor may be filed, but only if the unaudited financial statements of the franchisor are filed and the controlling company absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement should the franchisor become unable to perform its duties and obligations.

(c) Consolidated and separate statements:

(i) Where a franchisor owns, directly or beneficially, a controlling financial interest in any other corporation, the financial statements required to be filed should normally reflect on a consolidated basis the financial condition of the franchisor and each of its subsidiaries.

(ii) A separate financial statement will normally be required for each substantial franchisor or subfranchisor related entity.

(iii) A company controlling 80% or more of a franchisor shall normally be required to file its financial statements.

(iv) Consolidated and separate financial statements shall be prepared in accordance with generally accepted accounting principles.

(22) Contracts: Attach a copy of all franchise and other contracts or agreements proposed for use in this state, including, without limitation, all lease agreements, option agreements, and purchase agreements.

(23) Acknowledgment of receipt by prospective franchisee: The last page of each offering circular shall contain a detachable document acknowledging receipt of the offering circular by the prospective franchisee. [Statutory Authority: RCW 19.100.040 (4), (7), and (20), and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-315, filed 3/19/80.]

WAC 460-80-400 Impounds. The director may, by rule or order, require as a condition to the effectiveness of the registration the impound of franchise fees if he finds that such requirement is appropriate to protect the prospective franchisee. [Order 11, § 460-80-400, filed 3/3/72.]

WAC 460-80-410 Imposition of impound. In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the director or administrator may impose as a condition to the registration of a franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business. [Order 11, § 460-80-410, filed 3/3/72.]

WAC 460-80-420 Operation of impound condition. When an impound condition is imposed in connection with the registration of a franchise offering, one hundred percent of franchisee fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of such funds, be placed with the depository until the director takes further action pursuant to WAC 460-80-450.

All checks shall be made payable to the depository. [Order 11, § 460-80-420, filed 3/3/72.]

WAC 460-80-430 Purchase receipts. When an impound condition is imposed, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt,

in a form approved by the director. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor. [Order 11, § 460-80-430, filed 3/3/72.]

WAC 460-80-440 Depository. Funds subject to an impound condition shall be placed in a separate trust account with a national bank located in Washington or a Washington bank or trust company. A written consent of the depository to act in such capacity shall be filed with the director. [Order 11, § 460-80-440, filed 3/3/72.]

WAC 460-80-450 Release of impounds. The director will authorize the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement, or that for other reasons the impound is no longer required for protection of franchisees.

An application for an order of the director authorizing the release of impounds to the franchisor shall be verified and shall contain the following:

(a) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound condition.

(b) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depository.

(c) The names of each franchisee (or subfranchisor) and the amount held in the impound for the account of each franchisee (or subfranchisor).

(d) A statement by the franchisee that the franchisor has performed his obligations under the franchise contract.

(e) Such other information as the director may require in a particular case. [Order 11, § 460-80-450, filed 3/3/72.]

WAC 460-80-500 Advertising. All advertising to be used to offer a franchise, subject to the registration requirement, for sale must be filed in the office of the director at least 7 days prior to the publication and all advertising shall be subject to the following statement of policy:

(a) An advertisement should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely, or that earnings or profits are assured.

(b) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is (i) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered (ii) for a reasonable period only and (iii) is substantiated by data which clearly supports such projections.

(c) An advertisement should normally contain the name and address of the person using the advertisement.

(d) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection (d) shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.

(e) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement. [Order 11, § 460-80-500, filed 3/3/72.]

Chapter 460-82 WAC BROKER/SELLING AGENT

WAC

460-82-100 Application.
460-82-200 Record requirements.

WAC 460-82-100 Application.

STATE OF WASHINGTON
DIVISION OF SECURITIES
DEPARTMENT OF MOTOR VEHICLES
HIGHWAY-LICENSE BUILDING
OLYMPIA, WASHINGTON 98504

APPLICATION FOR A FRANCHISE BROKER OR SELLING AGENT CERTIFICATE (LICENSE)

APPLICATION FEE \$50.00
(Make remittance payable to State Treasurer)

Name (Applicant) Last First M.I.

Applicant Address Street City State Zip

Company Name (Principal)

Company Address (where applicant will work)

IMPORTANT NOTE

No Person Shall Act as a Franchise Broker or Selling Agent Until They Have Received a Certificate (License) from the Licensing Authority

APPOINTMENT OF FRANCHISE BROKER OR SELLING AGENT BY FRANCHISOR OR SUBFRANCHISOR (To be executed by the principal)

The undersigned Principal, being first duly sworn, deposes and certifies:

1. That he (it) hereby appoints _____ as a Franchise Broker or Selling Agent to represent and act for and in behalf of the undersigned;

2. (where required by statute, rule or regulation) That he (it) hereby applies for the registration and certification (licensing) of the above named;

3. That he (it) has diligently investigated the above named and believes the application form submitted herewith to be truthful in its entirety;

4. That he (it) assumes full responsibility for all acts of the above named within the scope of the agency relationship.

Signature of Principal

By _____ Title _____

Subscribed and Sworn to before me, a notary public, at
(city) (state) This ____ day of
_____, A.D. 19__.

(NOTARIAL SEAL)

II

(To be executed by the applicant)

I, the undersigned, having been appointed as a Franchise Broker or Selling Agent and for the purpose of procuring a Franchise Broker or Selling Agent Certificate (license) do hereby make the statement of facts as hereinafter set forth in the questionnaire as follows:

Residence Address

Social Security No. Age Sex

Birthplace Marital Status

Present Occupation — how long

Residence in this state immediately preceding application date ____ years.

Business Address (Street, City, State, Zip)

Registered as a representative with NASD?
Yes___ No___

Will you be a part-time or full-time Franchise Broker or Selling Agent? _____

If the answer to any of questions 1 through 14 is "yes", give all pertinent details, including names and dates, and explain fully on an attached separate page.

1. In your position with the principal firm, do you perform supervisory

- duties? Yes--- No---
2. Have you ever previously engaged in selling securities as a dealer or salesman (agent) or engaged in selling real estate as a salesman or broker? Yes--- No---
3. Have you ever been denied or been given qualified authority to sell securities or real estate in any state or province? Yes--- No---
4. Are you subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment advisor or is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities and Exchange Act of 1934) suspending or expelling such person from membership in such association or exchange? Yes--- No---
5. Are you subject to any currently effective order or ruling of the Federal Trade Commission: Yes--- No---
6. Are you subject to any currently effective injunctive or restrictive order relating to business activity as a result of action brought by the attorney general's office or by any public agency or department: Yes--- No---
7. Have you ever used or been known by any other name or names? Yes--- No---
8. Have you ever been charged with fraud in a civil action? Yes--- No---
9. Have you, within the last ten years, been found guilty of the commission of any crime or crimes other than traffic violations? Yes--- No---
10. Have you ever been suspended or barred from the practice of any profession? Yes--- No---
11. Have you ever been permanently or temporarily enjoined by any court from engaging in or continuing any conduct or practice involving any aspect of the securities business? Yes--- No---
12. Have you ever been refused a surety or fidelity bond? Yes--- No---
Has any surety company paid out any funds on your coverage? Yes--- No---
13. Have you or any organization owned or controlled by you or in which you were or are an officer, director, or partner, ever been the subject of an insolvency or bankruptcy proceeding? Yes--- No---
14. Have you ever been associated with a broker or dealer or franchisor that has been subject to a proceeding before a regulatory agency or any injunctive action involving the sale of securities, real estate or franchise? Yes--- No---
15. (Employment History) Use attached form.
16. A statement of the applicant's proposed method of doing business.
- III
- Attached hereto are the following exhibits:
- a. A photograph of applicant taken within one year.
- b. A (Money Order) (Bank Draft)
 (Certified Check) in the amount of
\$----- payable to the State Treasurer.
- c. An irrevocable consent to service of process pursuant to RCW 19.100.160, in the form set forth in WAC 460-80-910.
- d. The most recent financial statement of the applicant.
- (Applicant's Name) , being first duly sworn, deposes and says:
That he has read and carefully examined all statements made in this application and the exhibits attached hereto, and that each and all of such statements and representations are true.
- Franchise Broker or Selling Agent
Sign Here
- Subscribed and sworn to before me, a notary public,
at (City) (State) this ----- day of
-----, A.D., 19--.
- (NOTARIAL SEAL) -----
- 1.(a)
- An unmounted photograph of yourself taken within one year must accompany your application. Across the face of the photographic paper write your name in full and make acknowledgment before a Notary Public whose certificate of identification must be partly upon the photographic paper. In the preparation of your photograph, be careful not to mar the features as reproduced.

ATTACH
PHOTOGRAPH
HERE

15. Give previous residence, employment, or occupation for ten years immediately preceding the date of this application and account with particulars for any lapse in employment as required by the following schedule, listing your most recent employment first:

FROM MO YR	TO MO YR	Applicant's Addresses During Previous Periods	Employer's Name and Address
		No. City State	Name No. City State

Employer's Line of Business	Employment or Position Held	If Not Employed by Others Give Occupation	Describe Type of Securities, Real Estate of Franchise sold, if any

NOTICE If the above schedule is not sufficient to show all changes in employment during the ten years, complete the information in a separate schedule and attach.

[Order 11, § 460-82-100, filed 3/3/72.]

[Title 460 WAC—p 60]

WAC 460-82-200 Record requirements. Every Franchise Broker or Selling Agent shall make and keep current the following books and records relating to his business:

1. Records of original entry containing the sale of franchise, to whom sold, the aggregate price, the amount paid down, the installment payments, if any, the commission paid to the Broker or Selling Agent, the amount dispersed for advertising and other amounts to be funded to the franchisor.

2. An individual registration card for each franchisee, his name and address, aggregate amount to be paid, terms of the payment, a copy of the receipt signed by the purchaser that he had received a copy of the offering circular and that it had been received 48 hours before the sale.

3. Every Franchise Broker or Selling Agent shall keep a copy of all advertising used in the sale of said franchise, including but not limited to the radio, newspaper, T.V. media, letters, brochures, etc.

4. Every Franchise Broker or Selling Agent shall preserve for a period of not less than six years from the closing of any franchise account, all records, books and memorandums that relate to the franchisee. [Order 11, § 460-82-200, filed 3/3/72.]

Chapter 460-90 WAC CAMPING CLUBS

WAC

460-90-100	Camping club registration applications.
460-90-110	Camping club registration exhibits.
460-90-120	Signing of application.
460-90-122	Consent to service process.
460-90-125	Availability of campsites.
460-90-130	Membership contract.
460-90-140	Financial statements.
460-90-150	Management fees.
460-90-160	Certificates of local authorities.
460-90-170	Change of development plans.
460-90-180	Amendments.
460-90-190	Approval not endorsement.
460-90-200	Notice of termination of sale.
460-90-300	Receipt of offering circular.
460-90-310	Offering circular.
460-90-320	Required information in offering circular.
460-90-330	Sequence of presentation.
460-90-400	Imposition of impound.
460-90-410	Special impound.
460-90-420	Presumption of impound.
460-90-430	Depositary.
460-90-440	Purchase receipts.
460-90-450	Operation of impound condition.
460-90-460	Release of a portion of the impound.
460-90-470	Cost of selling.
460-90-480	Release of impounds.
460-90-490	Fee for impound.
460-90-500	Advertising.
460-90-510	Renewals.
460-90-900	Application form.

WAC 460-90-100 Camping club registration applications. Applications for the registration to sell or offer for sale camping club memberships shall be submitted with a facing page in the form set forth in WAC 460-90-900 and containing the information specified therein.

The application for registration must be accompanied by the fee made payable by check to the treasurer of the state of Washington. [Order 12, § 460-90-100, filed 4/25/72.]

WAC 460-90-110 Camping club registration exhibits. An application for the registration to sell or offer to sell camping club memberships must include the following information which shall be filed as exhibits numbered and captioned as follows (any item which is inapplicable shall be listed by number and followed by the indication that it is inapplicable). The numbering sequence must be adhered to and is in conjunction with the application form in WAC 460-90-900.

8. Name of camping club and name of any other corporations or subsidiaries organized for the purpose of managing the camping club or for the purpose of holding in fee the real property on which the camping club is to be built; a copy of the articles of incorporation; joint venture; by-laws as currently in effect, including all minutes applied to the proposed sale of a public camping club.

9. (a) Officers and directors or any other persons occupying similar status, including their names, addresses, principal occupation during the past five years, amount of securities or membership certificates of the camping club association, management company and any other corporation or entity which has an interest, direct or indirect, in any proceeds used for the purchase of realty, remuneration paid to all such persons within the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the promoter.

(b) List of all stockholders owning of record or beneficially if known, 10% or more of the outstanding shares of the equity securities of the management company and any corporation which has an interest in the proceeds from the sale of said memberships.

10. Has any person identified in Item 9(a) or (b) of the application for registration:

(a) Been found guilty of a felony or held liable in a civil action by final judgment if such felony or civil action involved fraud, embezzlement, fraudulent conversion or misappropriation of property within 10 years of the date of this application:

☐ Yes ☐ No

(b) Subject to any currently effective order or ruling of the Federal Trade Commission:

☐ Yes ☐ No

(c) Subject to any currently effective injunctive or restrictive order as a result of action brought by the attorney general's office or by any public agency or department:

☐ Yes ☐ No

With respect to each affirmative answer, state the court, date of conviction or judgment, any penalty imposed or damages assessed or the date, nature and issuer of such order.

11. Attach financial statement of the promoter as prepared by an independent certified public accountant. The financial statement to be filed by the promoter refers to a balance sheet within 90 days prior to the date

of application and profit and loss statement for the 3 year period preceding the date of the balance sheet. The financial statement to be prepared according to the generally accepted accounting principles and rules as promulgated by the Securities Division pursuant to WAC rules.

In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public account and the director is otherwise satisfied as to the reliability of such statements and as to ability of the promoter to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the promoter has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose and impound condition and such other conditions and restrictions as in his discretion may be appropriate.

12. A copy of the contract which the purchaser of a membership will sign.

13. A legal description of the campground, the size of the campground, the minimum and maximum size of the sites, the type of camp vehicle that can use the space.

14. A statement setting forth a geographical location in proximity to known towns, cities, lakes or other recognized areas.

15. A statement of whether the promoter has legal or equitable title to the land on which the camping club is located.

16. A copy of the real estate contract and/or mortgage, or deed of trust involving the land to be used for the camping club.

17. A qualified appraisal of said property.

18. A copy of a preliminary current title report prepared by title insurance company.

19. A statement of what interest the promoter or his employees may have in the real estate pertaining to the camping club.

20. A copy of all certificates or permits issued by local governmental authorities indicating that the promoter has complied with all local health, planning and environmental requirements.

21. A copy of the membership certificate.

22. A statement of the total amount of proceeds to be raised from the sale of memberships and statement of the distribution of said proceeds.

23. A statement as to whether a swimming pool is to be furnished or what other community facilities will be made available to the members; how the same will be financed and whether some of the proceeds of the sale will be used to finance the facilities.

24. A statement setting forth what sewage facilities will be available.

25. A statement of whether an annual membership fee will be charged and what the fee will be used for, what

the amount of the fee will be and whether the management company is affiliated with the promoter or any other party that may have an interest in said enterprise.

26. Attach a Consent of Service.

27. Attach a copy of the Offering Circular.

28. A statement that the promoter has contacted the Department of Housing and Urban Development for the purpose of registering its offering or obtaining an exemption from registration. (A copy of a letter of effectiveness or a letter of exemption from registration from the Department of Housing and Urban Development must be received by the Securities Division prior to the issuance of a promotional permit.) [Order 453-DOL, § 460-90-110, filed 10/5/77; Order 12, § 460-90-110, filed 4/25/72.]

WAC 460-90-120 Signing of application. An application for registration of a camping club should be signed by the promoter or an officer or general partner of the promoter. However, it may be signed by another person holding a power of attorney for such purposes from the applicant and, if signed on behalf of the applicant pursuant to such power of attorney, should include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the person signing to act on behalf of the applicant. [Order 12, § 460-90-120, filed 4/25/72.]

WAC 460-90-122 Consent to service process. A consent to service or process shall be filed with the department at the time the application for the sale of memberships is filed. [Order 12, § 460-90-122, filed 4/25/72.]

WAC 460-90-125 Availability of campsites. The promoter of the camping club shall set forth:

(a) The numerical number of club memberships available for sale within one year of the offering.

(b) The number not available for sale, during the first year of the offering.

(c) The total number of campsites within the promotion.

(d) The purchase price for the memberships and if the price varies, reason for the same. [Order 12, § 460-90-125, filed 4/25/72.]

WAC 460-90-130 Membership contract. The membership contract must be filed with the director 14 days prior to being used and must contain among other provisions the following:

(a) In capital letters, a statement that the purchaser may rescind said purchase within three full business days as set forth in RCW 19.105.080.

(b) The total amount of said purchase price and, if deferred payments, the payments per month, including interest payments set forth separately.

(c) A description of the property, its proximity to known geographical points.

(d) A statement whether the purchaser can lease or let another party use his membership. [Order 453-DOL,

§ 460-90-130, filed 10/5/77; Order 12, § 460-90-130, filed 4/25/72.]

WAC 460-90-140 Financial statements. (a) Financial statements required to be filed in connection with an application for registration of an offer or sale of a camping club membership shall be prepared in accordance with generally accepted accounting principles as set forth in rules as adopted pursuant to chapter 460.60A WAC, etc. Such financial statements should be audited by a Certified Public Accountant having the same qualifications and restrictions as those set forth in WAC 460-60A-100, except where the particular form or this section permits the use of unaudited statements for interim periods or generally.

(b) The financial statements required to be filed by a promoter refer to a balance sheet as of a date within 120 days prior to the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of such fiscal years and the date of the balance sheet. The balance sheet as of a date within 120 days prior to the date of the application need not be audited. However, if this balance sheet is not audited, there shall be filed in addition an audited balance sheet as of the end of the promoter's last fiscal year unless such last fiscal year ended within 120 days of the date of the application in which case there shall be filed an audited balance sheet as of the end of the promoter's next preceding fiscal year. The profit and loss statements shall be audited up to the date of the last audited balance sheet filed, if any.

(c) In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the promoter to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the promoter has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose an impound condition and such other conditions and restrictions as in his discretion may be appropriate. [Order 453-DOL, § 460-90-140, filed 10/5/77; Order 12, § 460-90-140, filed 4/25/72.]

WAC 460-90-150 Management fees. The director will not authorize a management service fee in the absence of a specific showing of what services will be rendered to the members for said fee.

The term management fee for the purpose of this act will be construed to mean any managers fee charged campsite resident or member by the association.

Notice of intent to impose and collect a fee for management services including a statement as to the purpose

and intended application of the fee must be filed with the director 60 days before such fees and charges are payable and approval will be deemed to have been given if the director does not, by written notice within 45 days, disapprove the same. [Order 12, § 460-90-150, filed 4/25/72.]

WAC 460-90-160 Certificates of local authorities. The promoter shall file with his application certificates or letters or other documents from the county commissioners, health department, planning commission or board that they have complied with all local health, planning and environmental requirements.

They shall also furnish a letter from the county engineer or the duly authorized agent of the county that they have conformed with any duly adopted platting or subdivision requirements adopted for camping clubs. [Order 12, § 460-90-160, filed 4/25/72.]

WAC 460-90-170 Change of development plans. If the promoter shall amend the development plan by adding to or deleting from the original registration and permit certain parcels of land that have been set aside for campsites, this will necessitate a new filing with an additional fee of \$100. The change of the development plan will also necessitate an amendment to the offering circular. [Order 12, § 460-90-170, filed 4/25/72.]

WAC 460-90-180 Amendments. The promoter shall file with the director all amendments to by-laws or articles of incorporation pertaining to the camping club. [Order 12, § 460-90-180, filed 4/25/72.]

WAC 460-90-190 Approval not endorsement. The filing of the application for registration or effectiveness of the registration does not constitute a finding by the director that any document filed under this act is true, complete and not misleading, nor does any such fact mean that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any promoter for such camping club. [Order 12, § 460-90-190, filed 4/25/72.]

WAC 460-90-200 Notice of termination of sale. The promoter shall file with the director a statement setting forth that he has terminated the public offering. [Order 12, § 460-90-200, filed 4/25/72.]

WAC 460-90-300 Receipt of offering circular. Each purchaser of a membership shall sign a statement that he has received the offering circular and that he has read the same and has made a physical on-site inspection of the camping club facility prior to signing the membership contract and completing the sale. [Order 453-DOL, § 460-90-300, filed 10/5/77; Order 12, § 460-90-300, filed 4/25/72.]

WAC 460-90-310 Offering circular. The promoter shall prepare an offering circular to inform prospective purchasers. Accordingly, the information set forth in the circular should be presented in a clear, concise fashion that will be readily understandable.

(a) All information contained in the offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, information set forth in the offering circular should be divided into reasonable short paragraphs or sections.

(b) Each offering circular should contain a reasonable detailed table of contents showing the subject matter of the various sections or subdivisions of the offering circular and the page number on which each section or subdivision begins.

(c) The offering circular shall be amended whenever there are material changes which would effect the offering or render the offering circular misleading and in no event shall it be revised less often than every 12 months. [Order 453-DOL, § 460-90-310, filed 10/5/77; Order 12, § 460-90-310, filed 4/25/72.]

WAC 460-90-320 Required information in offering circular. Each offering circular shall contain the information required by Items 8-10 and 13-25 of WAC 460-90-110 and such rules and such additional disclosures as the director or administrator may require. [Order 12, § 460-90-320, filed 4/25/72.]

WAC 460-90-330 Sequence of presentation. The information required to be set forth in the offering circular shall be presented in the following sequence:

1. **COVER PAGE:** The outside front cover page of every offering circular should contain the following disclosures under separate paragraphs and in bold type of not less than 10-point type:

THIS CAMPING CLUB MEMBERSHIP HAS BEEN REGISTERED UNDER THE LAW PERTAINING TO CAMPING CLUBS FOR THE STATE OF WASHINGTON. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR NOR A FINDING BY THE DIRECTOR THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE WASHINGTON CAMPING CLUB ACT MAKES IT UNLAWFUL TO SELL ANY CAMPING CLUB MEMBERSHIP IN THE STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING THE PROSPECTIVE PURCHASER AT LEAST 3 FULL BUSINESS DAYS AFTER EXECUTION OF THE PURCHASE CONTRACT THE RIGHT TO RESCIND BY SENDING NOTICE TO THE PROMOTER BY CERTIFIED MAIL. THIS OFFERING CIRCULAR CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE MEMBERSHIP CONTRACT AND THE BY-LAWS. THE CONTRACT AND THE BY-LAWS SHOULD BE REFERRED TO FOR AN UNDERSTANDING

OF ALL RIGHTS AND OBLIGATIONS OF THE PURCHASER.

2. **THE PROMOTER:** Set forth in summary form (a) the name of the promoter, the name under which the promoter is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with the promoter, (b) the promoter's principal business address and the name and address of its agent in the state of Washington authorized to receive process, (c) the business form of the promoter, whether corporate, partnership, or otherwise.

Describe succinctly the prior experience of the promoter including the length of time the promoter (1) has conducted a business of the type to be operated by the promoter, (2) has organized or operated other camping clubs.

3. IDENTITY AND BUSINESS EXPERIENCE OF PERSONS AFFILIATED WITH THE PROMOTER.

List by name and office held the officers, directors, trustees, and/or general partners as the case may be, and the general managers, principal executives and/or other persons who will be charged with the business activities and operations of the promoter. With respect to each person listed, set forth the principal occupations during the past five years.

4. **MANAGEMENT ASSOCIATION.** If there is a management association, it should set forth who the officers and directors and stockholders of the management association are, what relationship or affiliation they may have with the promoter, what management service fee the purchaser is required to pay, what the management association or promoter is undertaking to furnish to the purchaser for said fee.

5. **MEMBERSHIP CONTRACT.** There should be a succinct description and explanation of the terms of the membership contract, what the rights and obligations of the purchaser are and what the promoter is undertaking to furnish to the purchaser.

6. **MEMBERSHIP ASSOCIATION.** There should be a succinct explanation of the membership association, including its status as a nonprofit corporation or otherwise, that persons purchasing memberships in the camping club will become members of this association and that they are not purchasing real estate, but merely buying a membership interest. Further, explain how the club will be turned over to the association and under what circumstances.

7. **FEES AND CHARGES PAYABLE.** Describe in detail the purchase price for the individual membership, the proposed application of the proceeds of such fee by the promoter and the formula by which the amount of the fee is determined if the fee is not the same in all cases.

This section should also include a statement indicating whether the purchase price is to be paid at once or whether it is purchased on contract, what the terms of the contract may be, what the interest rate or other charges may be.

8. **USE OF PROCEEDS.** Estimated cash proceeds to be received by the promoter from the offering; the purpose for which the proceeds are to be used; the amount

to be used for each purpose; the order of priority for which said proceeds will be used for the purposes stated; the amount of funds to be raised from other sources to achieve the purposes stated and the source of said funds.

9. **TERMINATION OF MEMBERSHIP.** Describe fully the conditions under which the membership in the camping club may be terminated, modified or revoked.

10. **RESALES.** Please describe how resales of memberships will be handled during the period when the promotional permit is in effect. The explanation should include who has the authority to make resales, what right the members have to do their own reselling, what rights the members have if the camp promoter is to do the reselling and if their membership is not sold within a specific amount of time, and further, if payments for dues will be made if a lot is not resold within a specific period of time.

11. **ASSIGNMENT.** Describe the terms under which the club member may transfer his membership to another party and the terms under which another party may use the campsite of the member.

12. **ARRANGEMENTS WITH OTHER CAMPING CLUBS.** If the purchaser will have the opportunity to use the facilities of another campsite or an affiliated camping club, it should be succinctly set forth in the offering circular as to what these rights are, restrictions on use and what obligations, if any, he may have.

13. **REAL PROPERTY.** Describe the terms and conditions under which the realty is being purchased or leased, from whom it is being purchased or leased, what the purchase price is, what has been paid upon the same, what provisions the promoter has made with the proceeds to pay for said property, the total cost of said property to the camping club, the grantor of the property, what relationship the grantors bear to the promoter or any affiliate of the promoter, a statement of what the grantor paid for the property and what the price is to the camp club.

This should also include a statement as to what the title report on the property indicates as to clear title.

14. **GEOGRAPHICAL LOCATION.** It should also set forth in clear and succinct language the geographical location of the camping club with proximity to well known geographical points.

15. **TOPOGRAPHY.** The camping club should be thoroughly described setting forth the topography of the same, including the type of area it is located in, if it's wooded or bare, proximity of running water or lake, the average rainfall and temperature, the availability of the camping club during the 12 month period, improvements, if any improvements are offered.

If any facilities for the use of the purchaser or other members of the camping club are to be constructed or built, then a description of the same should be set forth describing the facilities, its location in the campsite, restrictions, if any, to the use of the facilities, how it is to be financed and when the construction of the same begin.

Further, explain whose responsibility it is to maintain the particular amenities during the period when the promotional permit is outstanding. And, further, what condition amenities will be left in when the club is turned over to the association.

16. **IMPOUND.** If an impound arrangement is required by the director, then the necessary details in reference to the impound must be set forth in the offering circular as to the amount to be impounded and purposes for which the impoundment is imposed.

It shall also include reference to any authorization given by the director to release a portion of the impounded funds for cost of selling.

17. **FINANCIAL STATEMENTS.** Include the financial statement required by WAC 460-90-110(11) of the application for registration. If financial statements are included in a HUD property report, reference to those financial statements may be made in lieu of their inclusion in the Washington State Offering Circular. [Order 453-DOL, § 460-90-330, filed 10/5/77; Order 12, § 460-90-330, filed 4/25/72.]

WAC 460-90-400 Imposition of impound. In case the applicant is not financially sound or the applicant does not have sufficient capital to carry out the real estate obligation or the improvements or other items included in the offering circular, the director or administrator may impose, as a condition of the registration of the camping club, an impoundment of the proceeds and other funds paid by the camping club members until the director or administrator is satisfied that the promoter can meet the obligations of his contract. [Order 12, § 460-90-400, filed 4/25/72.]

WAC 460-90-410 Special impound. The director may impose a special impound in which a percentage of the proceeds would be placed in a special account for the purpose of paying for any capital improvement that has been offered to the purchaser as an inducement to purchase the membership. This percentage shall be based upon cost of such improvement and what this cost bears to the total amount of proceeds to be raised. [Order 12, § 460-90-410, filed 4/25/72.]

WAC 460-90-420 Presumption of impound. A presumption will exist that an impound will be required for the purchase of the membership when the property is being purchased on the real estate contract in which monthly, quarterly or semi-annual or yearly payments have to be made and on which there is more than 50% of the purchase price remaining to be paid. This impound will be established in a separate reserve and will be based upon a percentage to be computed upon the basis of what the unpaid balance of the contract bears to the total amount to be raised by the public sale. [Order 12, § 460-90-420, filed 4/25/72.]

WAC 460-90-430 Depositary. Funds subject to an impound condition shall be placed in a separate trust account with a national bank located in Washington or a Washington bank or trust company. A written consent

of the depositary to act in such capacity shall be filed with the director. [Order 12, § 460-90-430, filed 4/25/72.]

WAC 460-90-440 Purchase receipts. When impound condition is imposed, the promoter shall deliver to each purchaser, a purchase receipt, in a form approved by the director. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the purchaser, the first copy to the depositary together with the payment received and the second copy to the promoter. [Order 12, § 460-90-440, filed 4/25/72.]

WAC 460-90-450 Operation of impound condition. When an impound condition is imposed in connection with the registration of a camping club offering, 100% of the proceeds and all other funds paid by the purchaser for any purpose shall, within 48 hours or the next banking day, whichever is later, of receipt of such funds be placed with a depositary until the Director takes further action pursuant to WAC 460-90-480. [Order 12, § 460-90-450, filed 4/25/72.]

WAC 460-90-460 Release of a portion of the impound. The director, upon proper showing may release a portion of the impounded funds for the purpose of paying the cost of selling. The items included in the cost of selling are set forth in WAC 460-90-470. [Order 12, § 460-90-460, filed 4/25/72.]

WAC 460-90-470 Cost of selling. When used in connection with the release of a certain part of the impound, the cost of selling shall include commissions, salaries, advertising and all other expenses, direct or indirect, incurred in connection with the sale of the membership. [Order 12, § 460-90-470, filed 4/25/72.]

WAC 460-90-480 Release of impounds. The director or administrator will authorize the depositary to release to the promoter such amounts of the impounded funds applicable to a specified purpose such as the purchase of realty or the construction of the improvement upon a showing that the promoter can satisfy his obligations under the membership contract to furnish said members the services tendered or that for other reasons the impound is no longer required for the protection of the purchasers or members. An application for an order of the director or administrator authorizing the release of the impound to the promoter shall be verified and shall contain the following:

(a) A statement of the promoter that all required proceeds from the sale of memberships have been placed with the depositary in accordance with the terms and conditions of the impound agreement.

(b) A statement of the depositary signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depositary.

(c) The names of each membership purchaser and the amount held in the impound for the account of each membership purchaser.

(d) Such other information as the director may require in a particular case. [Order 12, § 460-90-480, filed 4/25/72.]

WAC 460-90-490 Fee for impound. The director shall impose an additional fee of \$100.00 for each impound or reserve required to be set up pursuant to section 13, chapter 106, Laws of 1972. [Order 12, § 460-90-490, filed 4/25/72.]

WAC 460-90-500 Advertising. All advertising and sales literature to be used to offer a camping club membership for sale must be filed by certified mail in the office of the director or administrator at least 14 days prior to the publication and all advertising shall be subject to the following statement of policy:

(a) The statement of policy is designated to describe those areas of advertising practice which are susceptible to abuse and to specify the proper limits of advertising within those areas. Neither this statement of policy nor any matters contained herein is intended as an approval or authorization of any advertising material which is misleading, deceptive or unfair even though such advertising may appear to be in accordance with the statement of policy. Nor is this statement intended to prevent or hinder the use of factual statements or representations fairly and fully presented.

The two primary criteria for determining whether or not advertising material is deceptive, unfair, or fraudulent are:

(1) Are the statements, factual presentations, or representations contained therein true?

(2) Does the material omit to state any material information necessary to make any other statement, factual presentation, or representation contained therein, in the light of the circumstances under which it is made, not misleading?

This statement of policy does not attempt to outline or describe every specific type of proper or improper advertising material but rather to outline those principles of propriety which apply to advertising material.

(b) Matters of General Application

(1) Generalized conclusions, opinions, and representations based upon a particular set of facts and circumstances must indicate those facts and circumstances.

(2) Lay-out, format, size, kind and color of type should not be used in such manner as to attract attention to favorable or incomplete portions of advertising matter, or to minimize less favorable, modified, or modifying portions necessary to make the entire advertisement a fair and truthful representation.

(3) Generalizations and general statements should be modified or explained by such additional facts and circumstances as are necessary to make the generalization or generalized statement a fair and truthful representation.

(c) Descriptive Superlative – the use of superlatives in describing campsites should be avoided where such superlatives merely represent the opinions of management and not factual statements. [Order 12, § 460-90-500, filed 4/25/72.]

WAC 460-90-510 Renewals. 1. Pursuant to RCW 19.105.045, application for annual renewal shall be made no later than 20 days prior to the expiration date of the promotional permit, unless otherwise notified pursuant to the statute.

2. Renewals should be made on the application form set forth in WAC 460-90-900 and shall be accompanied by the following:

(a) A copy of an updated offering circular which should reflect any and all changes appropriate to make full disclosure to prospective purchasers. The offering circular shall be appropriately marked and underscored to reflect all changes, additions and deletions.

(b) A copy of the membership agreement appropriately marked and underscored to reflect all changes, conditions and deletions.

(c) Financial statements prepared in accordance with WAC 460-90-140.

(d) Update any and all exhibits required by the application for registration last filed with the director, pursuant to WAC 460-90-110. If no changes have occurred in any particular exhibit, include a signed statement that no change has occurred in that particular exhibit. (Enumerate the changes in each item separately by item number corresponding to the item number of the prior application for registration. If the application for registration was filed more than 4 years prior to the date of this registration renewal, all of the information required by the four items should be set forth in full.)

(e) Payment of a fee pursuant to RCW 19.105.045. [Order 453-DOL, § 460-90-510, filed 10/5/77.]

WAC 460-90-900 Application form.

FILE NO: _____
(Insert file number of previous filing before the division, if any.)

FEE: _____
To be completed by applicant

DATE OF APPLICATION: _____

DEPARTMENT OF MOTOR VEHICLES DIVISION OF SECURITIES STATE OF WASHINGTON

APPLICATION FOR CAMPING CLUB REGISTRATION

1. Name and Address of Promoter _____
2. Name and Address of Camping Club Registration _____
3. Short Description of Camping Club to be Registered _____
4. Minimum and Maximum Price per Camp Club Membership _____

5. Membership Fee to be Charged per Annum -----

6. Other Fees Charged the Camping Club Member-
ship -----

7. Name, Address and Telephone Number of Person
to Whom Communications Regarding this Applica-
tion Should be Directed -----

Signature

STATE OF WASHINGTON

County of -----

-----, being first duly sworn, deposes and
says:

I have been authorized by the registrant to execute and
file the foregoing statement. I have read the statement
and the exhibits filed with it, and the facts stated in the
statement and in the exhibits are true to the best of my
knowledge, information and belief.

Affiant

Subscribed and sworn to before me this
----- day of -----, 19--

Notary Public

[Order 12, § 460-90-900, filed 4/25/72.]