

apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party. [Statutory Authority: RCW 82.45.120 and 82.45.150. 83-02-022 (Order PT 82-10), § 458-61-690, filed 12/28/82.]

**Title 460 WAC  
SECURITIES DIVISION  
(DEPARTMENT OF LICENSING)**

**Chapters**

- 460-16A** General rules.
- 460-20A** Broker-dealers and salesmen.
- 460-24A** Investment advisers.
- 460-42A** Exempt securities.
- 460-44A** Exempt transactions.
- 460-46A** Washington state limited offering exemption.

**Chapter 460-16A WAC  
GENERAL RULES**

**WAC**

- 460-16A-108 Inapplicability of restrictions on amounts of cheap and promotional shares.

**WAC 460-16A-108 Inapplicability of restrictions on amounts of cheap and promotional shares.** The restrictions on the amounts of cheap and promotional shares contained in WAC 460-16A-107 shall not apply with respect to offerings as to which each of the following conditions is met:

- (1) The offering shall be firmly underwritten by a syndicate of not less than fifteen investment banking firms, each of which firmly agrees to purchase for resale in the offering at least \$100,000 of securities; and
- (2) The amount in the offering firmly underwritten by such syndicate of investment banking firms shall aggregate not less than \$4,000,000; and
- (3) The offering price per share in said offering shall not be less than five dollars per share. [Statutory Authority: RCW 21.20.450. 82-20-067 (Order SDO-115-82), § 460-16A-108, filed 10/5/82.]

**Chapter 460-20A WAC  
BROKER-DEALERS AND SALESMEN**

**WAC**

- 460-20A-220 Salesperson registration and examination.
- 460-20A-230 Broker-dealer registration and examination.

**WAC 460-20A-220 Salesperson registration and examination.** (1) Every applicant for registration as a securities salesperson, unless exempt as provided herein, shall pass the following examinations with a score of 70% or better and complete the NASD Form U-4.

(a) For a salesperson's license to effect or to attempt to effect sales of general securities, the individual shall

pass the NASD uniform securities agent state law examination and either the SECO/NASD nonmember general securities representative examination or the general securities representative examination, provided that any applicant taking the SECO/NASD nonmember general securities representative examination or the NASD general securities representative examination after August 19, 1981 but prior to February 19, 1982 shall not be required to complete the NASD uniform securities agent state laws exam.

(b) For a limited salesperson's license to effect or to attempt to effect sales of investment company securities, variable contracts or mutual funds, the individual shall pass the NASD investment company products/variable contracts representative examination and the uniform securities agent state law examination.

(c) For a limited salesperson's license to effect or to attempt to effect sales of limited partnership interests and interests in tax shelters, the individual shall pass the NASD direct participation program representative examination and the uniform securities agent state law examination.

(d) For a limited salesperson's license to effect or to attempt to effect sales of municipal bonds, the individual shall pass the NASD municipal securities representative examination and the uniform securities agent state law examination.

(2) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examinations in (a), (b), (c) or (d) above or the Washington state securities examination shall not be required to retake the examination(s) to be eligible to be relicensed upon application.

(3) Upon written application and approval, the director may exempt the following persons from the testing requirements in subsection (1) above:

(a) For a particular original offering of an issuer's securities, not more than two officers of an issuer or corporate general partner or two individual general partners. No such person may again register within five years as a salesperson without passing the written examinations.

(b) A salesperson engaged exclusively in the sale of condominium securities provided that written notice is given to the director five days prior to the exercise of the exemption and that such salesperson submit his/her current Washington real estate license to the director. If that license is cancelled, suspended or revoked, the exemption will not apply to any further transaction.

(4) The licenses in section (1) shall be effective until December 31 of the year of passage at which time it shall be renewed or delinquent. The renewal fee for 1981 shall be \$12.50. For all years thereafter, the renewal fee shall be \$15.00. For any renewal application postmarked after December 31 but before March 1, the fee shall be \$25.00. No renewal applications will be accepted after March 1. Such licensees must submit a new application and filing fee. The fee for transfers shall be \$25.00. For reinstatements prior to December 1, the fee shall be \$50.00 and shall be valid until December 31 of the year

of reinstatement. Thereafter effectiveness shall run through the next renewal period.

(5) Any applicant not completing the salesperson application in full shall be issued a deficiency letter. The deficiency must be corrected within the subsequent six-month period. If not so completed, one-half the filing fee shall be returned to the applicant. A new application and filing fee must then be filed in order to initiate application.

(6) Any salesperson registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and registered thereafter, shall be subject to the regulation in effect at the time of the original application. [Statutory Authority: RCW 21.20.450. 82-02-033 (Order SDO-149-81), § 460-20A-220, filed 12/31/81; 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-230 Broker-dealer registration and examination.** (1) In order to be licensed in this state as a broker-dealer the individual applicant, an officer if the applicant is a corporation, or a general partner if the applicant is a partnership shall pass the following examination with a score of 70% or better and complete the NASD form B/D including schedule F as it pertains to Washington state.

(a) For a broker-dealers license to effect transactions in general securities one individual, officer or general partner shall pass the NASD general securities principal examination, the uniform securities agent state law examination, and the financial and operations principal examination.

(b) For a limited broker-dealer license to effect transactions in investment company securities, variable contracts or mutual funds one individual, officer or general partner shall pass the NASD investment company products/variable contracts principal examination and the uniform securities agent state law examination.

(c) For a limited broker-dealers license to effect transactions in limited partnership interests and interests in tax shelters one individual, officer or general partner shall pass the NASD direct participation programs principal examination and the uniform securities agent state law examination.

(d) For a limited broker-dealer's license to effect transactions in municipal bonds, one individual, officer or general partner shall pass the NASD municipal securities principal examination and the uniform securities agent state law examination.

(2) The director may upon application waive the financial and operations examination required in (a) above for brokerage firms using another broker-dealer as a clearing agent, provided that the broker-dealer acting as the clearing agent has passed the examination.

(3) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner,

then a substitute officer or general partner must pass the same category of examination specified in (a), (b), (c) or (d) above within two months in order to maintain the broker-dealers license.

(4) The licenses in (a), (b) or (c) shall be effective until December 31 of the year of passage at which time it shall be renewed or be delinquent. The renewal fee for 1981 shall be \$62.50. For all years thereafter, the renewal fee shall be \$75.00. For any renewal application postmarked after December 31 but before March 1, the fee shall be \$100.00. No renewal applications will be accepted after March 1. Such licensee must submit a new application and filing fee.

(5) Any applicant not completing the broker-dealer application in full shall be issued a deficiency letter. The deficiency must be corrected within the subsequent six-month period. If not so completed, one-half the filing fee shall be returned to the applicant. A new application and filing fee must then be filed in order to initiate application.

(6) Any broker-dealer registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and remained registered thereafter shall be subject to regulations in effect at the time of the original application. [Statutory Authority: RCW 21.20.450. 82-02-033 (Order SDO-149-81), § 460-20A-230, filed 12/31/81; 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.]

## Chapter 460-24A WAC INVESTMENT ADVISERS

### WAC

460-24A-050 Investment advisor and investment advisor salesperson (representative) registration and examinations.

**WAC 460-24A-050 Investment advisor and investment advisor salesperson (representative) registration and examinations.** (1) In order to be licensed in this state as an investment advisor the individual applicant, the officer if the applicant is a corporation or a general partner if the applicant is a partnership shall pass either the NASD general securities principal examination and the NASD uniform securities agent state law exam with a score of 70% or better or the chartered investment counselor examination or the chartered financial analyst examination. The applicant must also complete a form ADV for the state of Washington.

(2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then a substitute officer or general partner must pass the examinations required in (1) above within two months in order to maintain the investment advisor license.

(3) In order to be licensed in this state as an investment advisor salesperson (representative) the individual applicant shall pass either the NASD general securities

representative examination and the NASD uniform securities agent state law examination with a score of seventy percent or better or the chartered investment counselor examination or the chartered financial analyst examination. The applicant must also complete the NASD form U-4 form for the state of Washington.

(4) Any individual who has been retained or employed by an investment advisor to solicit clients or offer the services of the investment advisor or manage the accounts of said clients any time during the two years prior to application and who has previously passed the required examination in section (1) or (3) above or the Washington state investment advisors examination shall not be required to retake the examination(s) to be eligible to be relicensed as an investment advisor salesperson (representative) upon application.

(5) Any investment advisor or investment advisor salesperson registered prior to August 15, 1981, and who was registered with the Washington state securities division as of the date of the adoption of these regulations and remained registered thereafter shall be subject to the regulations in effect at the time of the original application. [Statutory Authority: RCW 21.20.450, 82-02-033 (Order SDO-149-81), § 460-24A-050, filed 12/31/81; Order SD-131-77, § 460-24A-050, filed 11/23/77; Order 304, § 460-24A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

### Chapter 460-42A WAC EXEMPT SECURITIES

#### WAC

460-42A-020 Health care facilities authority bonds.  
460-42A-080 Blue chip exemption.  
460-42A-081 Exchange exemption.

**WAC 460-42A-020 Health care facilities authority bonds.** The term "industrial or commercial enterprise" as employed in RCW 21.20.310(1) includes nonprofit hospitals and other health care facilities, but shall not include a nonprofit hospital the issuance of securities of which is subject to supervision by the Washington health care facilities authority or a similar state health care facilities authority; and is subject to supervision and control, as to operating and capital budgets, by the Washington state hospital commission or a similar state hospital commission. [Statutory Authority: RCW 21.20.450, 81-04-048 (Order SDO-15-81), § 460-42A-020, filed 2/3/81.]

**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] [months] following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

(2) An issuer meets the conditions of WAC 460-42A-080(1)(b), (c) and (d) if either the issuer or the issuer and the issuer's predecessor, taken together, meet these conditions and if: (a) the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor, or (b) all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession. [Statutory Authority: RCW 21.20.310(8) and 21.20.450. 82-18-037 (Order SDO-100-82), § 460-42A-080, filed 8/27/82; 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.]

**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 460-42A-081 Exchange exemption.** Any security that meets all of the following conditions is exempt under RCW 21.20.310(8).

(1) Any security listed or approved for listing upon notice of issuance on an "approved national securities" exchange and any warrant or right to purchase or subscribe to any such security.

(2) An "approved national securities exchange" is one that requires all of the following be met:

(a) That the issuer of securities traded on the exchange be required to maintain a minimum of two outside directors on its board of directors.

(b) The exchange must have established reasonable procedures for trading oversight and surveillance over all exchange listed securities to ensure timely disclosure of material corporate developments to the interested public.

(c) The exchange must, in acting on applications for listing of common stock, have established procedures to ensure careful review of the issuer's financial integrity and risk and substantially apply each of the minimum qualifications set forth in (i) below, and in considering

suspension or removal from listing, substantially apply each of the criteria set forth in (ii) below.

(i) Listing qualifications:

(A) Net tangible assets of at least four million dollars and net income of at least four hundred thousand dollars after all charges including federal income taxes in the fiscal year immediately preceding the filing of a listing application; or, in the alternative, net tangible assets of at least ten million dollars provided the issuer has had a minimum of three years of operations and the aggregate market value of the issuer's publicly held shares is ten million dollars.

(B) Minimum public distribution of 400,000 shares excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings.

(C) Minimum price of stock or shares of three dollars per share for a reasonable period of time prior to the filing of a listing application, and/or an aggregate market value of publicly held shares of at least three million dollars.

(ii) Criteria for consideration of suspension or removal from listing:

(A) If a company which (A) has net tangible assets of less than two million dollars has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than four million dollars and has sustained net losses in three of its four most recent fiscal years.

(B) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 200,000.

(C) If the aggregate market value of shares publicly held in the aggregate remains less than one million dollars for a significant period of time.

(3) 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. 82-18-037 (Order SDO-100-82), § 460-42A-081, filed 8/27/82.]

## Chapter 460-44A WAC EXEMPT TRANSACTIONS

### WAC

460-44A-010	Repealed.
460-44A-020	Repealed.
460-44A-030	Repealed.
460-44A-041	Repealed.
460-44A-045	Repealed.
460-44A-500	Preliminary notes.
460-44A-501	Definitions and terms.
460-44A-502	General conditions to be met.

- 460-44A-503 Filing of notice and payment of fee prior to offering.  
 460-44A-506 Exemption for nonpublic offers and sales without regard to dollar amount of offering.

**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

- 460-44A-010 Nonpublic offering exemption pursuant to RCW 21.20.320(1). [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.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
- 460-44A-020 Text of rule. [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.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
- 460-44A-030 Selling expense limitations and suitability standards for nonpublic offerings. [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.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
- 460-44A-041 Form of notification of claim of exemption pursuant to WAC 460-44A-010 through 460-44A-041. [Statutory Authority: RCW 21.20.320(1) and (9). 80-04-037 (Order SDO-37-80), § 460-44A-041, filed 3/19/80.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.
- 460-44A-045 Report of sales for offering under WAC 460-44A-020. [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.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.

**WAC 460-44A-010 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 460-44A-020 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 460-44A-030 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 460-44A-041 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 460-44A-045 Repealed.** See Disposition Table at beginning of this chapter.

**WAC 460-44A-500 Preliminary notes.** (1) The rules of WAC 460-44A-501 through 460-44A-506 relate to transactions exempted from the registration requirements of the federal Securities Act of 1933 and RCW 21.20.140. Such transactions are not exempt from the anti-fraud, civil liability, or other provisions of the securities laws. Issuers are reminded of their obligation to provide such further material information, if any, as may be necessary to make the information required under these rules, in light of the circumstances under which it is furnished, not misleading.

(2) Attempted compliance with the rules in WAC 460-44A-501 through 460-44A-506 does not act as an exclusive election; the issuer can also claim the availability of any other applicable exemption.

(3) These rules are available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. The rules provide an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves.

(4) In any proceeding involving the rules in WAC 460-44A-501 through 460-44A-506, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(5) The effective date of rules WAC 460-44A-501 through 460-44A-506 is May 25, 1982. Existing rules WAC 460-44A-010 through 460-44A-045 will be repealed on the adoption and effectiveness of the permanent rules WAC 460-44A-501 through 460-44A-506; no filings for exemption under rules WAC 460-44A-010 through 460-44A-045 will be accepted after repeal. For those offerings made in compliance with WAC 460-44A-010 through 460-44A-045 which commence or commenced prior to the date of repeal and which continue past the date of repeal, no registration is required if the offering terminates before June 30, 1983. [Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-500, filed 10/15/82.]

**WAC 460-44A-501 Definitions and terms.** As used in rules WAC 460-44A-501 through 460-44A-506, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3(a)(2) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; insurance company as defined in section 2(13) of the Securities Act of 1933; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that act; small business investment company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act which is either a bank, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000;

(b) Any private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any person who purchases at least \$150,000 of the securities being offered, where the purchaser's total purchase price does not exceed 20 percent of the purchaser's net worth at the time of sale, or joint net worth with that person's spouse, for one or any combination of the following: (i) cash, (ii) securities for which market quotations are readily available, (iii) an unconditional obligation to pay cash or securities for which market quotations are readily available which obligation is to be discharged within five years of the sale of the securities to the purchaser, or (iv) the cancellation of any indebtedness owed by the issuer to the purchaser;

(f) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;

(g) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years and who reasonably expects an income in excess of \$200,000 in the current year; and

(h) Any entity in which all of the equity owners are accredited investors under paragraph (1)(a), (b), (c), (d), (f), or (g) of this WAC 460-44A-501;

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard;

(4) "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 for all or a part of its own or its parent's 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);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-506(2) the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in paragraph

(5)(a)(i) or (5)(a)(iii) of this WAC 460-44A-501 collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in paragraph (5)(a)(i) or (5)(a)(ii) of this WAC 460-44A-501 collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (1)(h) of this WAC 460-44A-501, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-506.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-506 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-506 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(7) "Issuer" as defined in section 2(4) of the Securities Act of 1933 or RCW 21.20.005(7) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in paragraph (8)(a)(i) or (8)(a)(iii) of this WAC 460-44A-501 collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of

which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in paragraph (8)(a)(i) or (8)(a)(ii) of this WAC 460-44A-501 collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

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

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

(d) Discloses to the purchaser in writing prior to the acknowledgment specified in subsection (8)(c) of this WAC 460-44A-501 any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and antifraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer of its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser. [Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-501, filed 10/15/82.]

**WAC 460-44A-502 General conditions to be met.** The following conditions shall be applicable to offers and sales made under WAC 460-44A-506:

(1) "Intergration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in paragraph (1) of this WAC 460-44A-502 is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e. are considered "integrated") depends on the particular facts and circumstances.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

(a) Whether the sales are part of a single plan of financing;

(b) Whether the sales involve issuance of the same class of securities;

(c) Whether the sales have been made at or about the same time;

(d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See securities and exchange commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

(i) If the issuer sells securities only to accredited investors, paragraph (2) of this WAC 460-44A-502 does not require that specific information be furnished to purchasers.

(ii) If the issuer sells securities under WAC 460-44A-506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (2)(b) of this WAC 460-44A-502 to all purchasers during the course of the offering and prior to sale.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the federal Securities Exchange Act of 1934, the issuer shall furnish the following information to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Offerings up to \$5,000,000. The same kind of information as would be required in Part I of Form S-18 under the Securities Act of 1933, except that only the financial statements for the issuer's most recent fiscal year must be certified by an independent public or certified accountant. If Form S-18 is not available to an issuer, then the issuer shall furnish the same kind of information as would be required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use, except that only the financial statements for the most recent two fiscal years prepared in accordance with generally accepted accounting principles shall be furnished and only the financial statements for the issuer's most recent fiscal year shall be certified by an independent public or certified accountant. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the

issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(B) Offerings over \$5,000,000. The same kind of information as would be required in Part I of a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, the issuer shall furnish the information required by securities and exchange commission Regulation D, Rule 502(b)(2)(ii).

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K report, need not be furnished to each purchaser if the contents of the exhibits are identified and the exhibits are made available to the purchaser, upon his written request, prior to his purchase.

(iv) At a reasonable time prior to the purchase of securities by any purchaser that is not an accredited investor in a transaction under WAC 460-44A-506, the issuer shall furnish the purchaser a brief description in writing of any written information concerning the offering that has been provided by the issuer to any accredited investor. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request, prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-506 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under paragraph (2)(b)(i) or (ii) of this WAC 460-44A-502.

(vi) For business combinations, in addition to information required by paragraph (2)(b) of this WAC 460-44A-502, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction

and prior to sale, written information about any terms or arrangements of the proposed transaction that are materially different from those for all other security holders.

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

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

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(4) Limitations on resale. Securities acquired in a transaction under these rules shall have the status of restricted securities acquired in a nonpublic offering transaction under RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Securities Act of 1933, which reasonable care shall include, but not be limited to, the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the administrator of securities has not reviewed the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502(4)(b) or (c) if it substantially states that the offering has not been reviewed or approved by state securities administrators and that the securities offering is not registered under applicable state securities laws. [Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-502, filed 10/15/82.]

**WAC 460-44A-503 Filing of notice and payment of fee prior to offering.** (1)(a) The issuer shall file with the administrator of securities of the department of licensing a notice prescribed by the administrator and pay a filing fee of \$300 ten business days (or such lesser period as the administrator may allow) prior to making any offer or sale of securities in the state of Washington.

(b) The issuer shall file a report of sales in the state of Washington no later than 30 days after the last sale of securities in the offering.



(c) The notice or report of sales shall be manually signed by a person duly authorized by the issuer.

(2) The issuer undertakes to furnish to the administrator, upon the written request of the staff, the information to be furnished or furnished by the issuer under WAC 460-44A-502(2)(b) to any purchaser that is not an accredited investor.

(3) The form of notice and report of sales may be obtained from the Securities Division, P.O. Box 648, Olympia, Washington 98504.

(4) Issuers filing with the securities and exchange commission under Regulation D, Rule 506, may file the notice required by WAC 460-44A-503(1)(a) on Form D if accompanied by a representation of the issuer that all conditions of rule WAC 460-44A-506 shall be met. [Statutory Authority: RCW 21.20.320(1), 21.20.340(11) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-503, filed 10/15/82.]

**WAC 460-44A-506 Exemption for nonpublic offers and sales without regard to dollar amount of offering. (1)**

Exemption. Offers and sales of securities by an issuer that satisfy the conditions in subsection (2) of this WAC 460-44A-506 shall be deemed to be exempt transactions within the meaning of RCW 21.20.320(1).

(2) Conditions to be met.

(a) General conditions. To qualify for exemption under this WAC 460-44A-506, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

(b) Specific conditions.

(i) Limitation on number of purchasers. The issuer shall reasonably believe that there are no more than 35 purchasers (including those located outside the state of Washington) of securities from the issuer in any offering under this WAC 460-44A-506.

Note: See WAC 460-44A-501(5) for the calculation of the number of purchasers and WAC 460-44A-502(1) for what may or may not constitute an offering under this section WAC 460-44A-506.

(ii) Nature of purchasers. The issuer shall reasonably believe immediately prior to making any sale that each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment ("financial sophistication"). The issuer shall prepare and retain for three years following termination of an offering in reliance of this WAC 460-44A-506, written documentation supporting the qualification of each nonaccredited investor, whether separately or together with his purchaser representative or representatives, as having financial sophistication. The following shall apply in determining whether or not a purchaser has the requisite degree of financial sophistication for purposes of this WAC 460-44A-506: (A) The degree of financial sophistication required shall depend upon the facts and circumstances of the particular offering; i.e., the nature and complexity of the business, the complexity of the issuer's organization and capital structure, and the nature and complexity of the offering.

(B) If the issuer has an operating history, the issuer shall obtain reasonable assurances that the purchaser, together with his representative(s), if any, is capable of reading and interpreting financial statements.

(iii) Limitation on selling expenses. (A) Selling expenses in any offering under this WAC 460-44A-506 shall not exceed fifteen percent of the aggregate offering price. For the purposes of this WAC 460-44A-506, "selling expenses" 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, depositories, 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.

(B) The number of shares or units called for by options issuable to underwriters or other persons as compensation, in whole or in part, for the offer or sale of securities in reliance on this WAC 460-44A-506 shall not exceed ten percent of the number of shares or units actually sold in the offering.

(3) Offers or sales which are exempted under this WAC 460-44A-506 may not be combined in the same offering with offers or sales exempted under any other rule or section of chapter 21.20 RCW; however, nothing in this limitation shall act as an election. Should for any reason an offering fail to comply with all of the conditions for this WAC 460-44A-506, the issuer may claim the availability of any other applicable exemption. [Statutory Authority: RCW 21.20.320(1) and 21.20.450. 82-21-031 (Order SDO-98-82), § 460-44A-506, filed 10/15/82.]

**Chapter 460-46A WAC**

**WASHINGTON STATE LIMITED OFFERING EXEMPTION**

WAC

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**WAC 460-46A-010 Limited offering exemption--Conditions to be met.** Transactions involving the offer and sale of securities made in accordance with all the conditions set forth in WAC 460-46A-020 through 460-46A-165 shall be exempted from registration under RCW 21.20.320(9). [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-010, filed 10/5/82.]

**WAC 460-46A-020 Availability of exemption.** Only corporations may use the limited offering exemption. The limited offering exemption may be used by an issuer more than once provided that the aggregate amount raised by all offerings by the issuer and its affiliates under the limited offering exemption shall not exceed \$500,000. (The foregoing notwithstanding, offerings by affiliates of the issuer under the limited offering exemption with respect to business ventures unrelated to that of the issuer occurring twenty-four months prior to or twenty-four months after the offering of the issuer under consideration shall not be included in calculating the \$500,000 limitation as to the issuer.) The limited offering exemption is available only if one class of stock is outstanding after the offering. The limited offering exemption may not be used for the offer and sale of debt securities. The limited offering exemption is not available if the issuer or its affiliates have previously sold securities of such issuer or affiliate under the provisions of RCW 21.20.210 (registration by qualification) or RCW 21.20.180 (registration by coordination) or of similar provisions of the securities or blue sky laws of any other state. The total amount of funds raised by the issuer and its affiliates under all exemptions, including the limited offering exemption, but excepting the statutory nonpublic offering exemption of RCW 21.20.320(1), may not exceed \$500,000 in any 12-month period during which the limited offering exemption is used. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-020, filed 10/5/82.]

**WAC 460-46A-025 No sales commission.** No commission or other remuneration may be paid directly or indirectly for offering or making sales of shares under the limited offering exemption. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-025, filed 10/5/82.]

**WAC 460-46A-030 Affiliate--Definition.** "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. For example, corporations with common principal owners or executive management are "affiliates." [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-030, filed 10/5/82.]

**WAC 460-46A-040 Maximum number of purchasers under exemption.** The maximum number of purchasers under the limited offering exemption in any consecutive 12 months shall be 25. Husband and wife shall be counted as one purchaser, as shall an estate. Each shareholder of a corporation and each beneficiary of a trust shall be counted separately as a purchaser in addition to the corporation or trust unless the shareholder or beneficiary has been such for at least six months prior to the purchase. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-040, filed 10/5/82.]

**WAC 460-46A-050 Maximum amount of cheap and promotional shares.** In no event shall the aggregate amount of cheap and promotional shares exceed 40 percent of the outstanding shares of a corporation using the limited offering exemption after the completion of the offering, except that this prohibition shall not apply if the net tangible book value (under generally accepted accounting principles) per share for all shares outstanding after the offering will exceed 60 percent of the offering price per share. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-050, filed 10/5/82.]

**WAC 460-46A-060 Promoter--Definition.** "Promoter" means 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. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-060, filed 10/5/82.]

**WAC 460-46A-070 Cheap and promotional shares--Definition.** "Promotional" shares means any shares which are issued by a corporation using the limited offering exemption (1) in consideration for services rendered in connection with the founding or organization of its business, or (2) to a promoter in consideration for any intangible property, including such property as patents, copyrights or goodwill or any tangible property, unless there exists an active public trading market therefor so that the fair market value thereof at the time of issuance may be clearly ascertained. "Cheap" shares means any shares issued to persons for consideration per share less than the proposed offering price per share under the limited offering exemption. At the time of issuance of any promotional or cheap shares, if there shall be paid into the corporation any cash consideration therefore, or any tangible property for which there exists a public trading market, the calculation of the number of promotional or cheap shares shall show as a deduction the number of shares which would be fully paid at the offering price in the limited offering based upon the amount of any such cash and the fair market value of any such tangible property. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-070, filed 10/5/82.]

**WAC 460-46A-080 Stock options.** The maximum amount of stock options may not exceed ten percent of all outstanding shares of the same or similar class of the issuer after the completion of an offering based upon the limited offering exemption. The exercise price per share under such option must be at least equal to the price per share paid by the purchaser for similar shares sold under the limited offering exemption. Such option may not be exercisable after three years, except that the option may be exercisable for up to five years if the exercise price per share in the fourth and fifth years is at least 120% of the price per share in the offering. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-080, filed 10/5/82.]

**WAC 460-46A-085 Inapplicability of cheap and promotional share, and stock option, restrictions.** The above notwithstanding, the restrictions of WAC 460-46A-050, and 460-46A-080 shall not apply if the provisions of either paragraph (1), (2), (3) or (4) below apply:

(1) All of the investors in the limited offering fall within one or more of the following categories:

- (A) Executive officers of the issuer;
- (B) Persons who are then currently licensed to practice law, public accountants specializing in the securities area, registered securities broker-dealers, securities salespersons, registered investment advisors, investment advisor salespersons, in any jurisdiction; or
- (C) Entities specified in RCW 21.20.320(8); or

(2) All investors in the limited offering purchase for cash on the same terms and conditions, and the investors purchasing a majority of the securities sold in the limited offering fall within categories (1), (2) or (3) above.

(3) The excess amounts of cheap or promotional shares and options above the maximum limits established by WAC 460-46A-050 and 460-46A-080 shall be placed in an escrow established by order of the administrator allowing them to be released from escrow only if within 5 years the net worth of the issuer (under generally accepted accounting principles) increases above the amount of net worth of the issuer at the commencement of the offering:

(A) In the case of promotional or cheap shares, the number of promotional or cheap shares released shall be a number equal to the amount such increase in net worth exceeds 300% of the proceeds of the limited offering, divided by the offering price per share in the limited offering; and

(B) In the case of options, the number of options released shall be those covering an underlying number of shares equal to the amount such increase in net worth (after allowing for that applied to the release from escrow of any promotional or cheap shares) exceeds 300% of the proceeds of the limited offering, divided by the offering price per share in the limited offering.

(4) Upon written request, such restrictions have been waived in writing by the administrator as not being necessary under the circumstances to protect investors

against undue dilution. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-085, filed 10/5/82.]

**WAC 460-46A-090 Disclosure document.** Each offeree under the limited offering exemption must be furnished a disclosure document on a form provided by the securities administrator (called "Form LOE-82"). A copy of such disclosure document with all attachments must be furnished to prospective purchasers 24 hours before either agreeing to purchase the shares or making any payment of consideration, whichever is earlier. A manually signed copy of the disclosure document must be filed with the securities administrator at least 5 business days prior to commencement of the offering. If the financial statements attached to the disclosure document are audited, a copy of the disclosure document and all attachments shall be forwarded to the auditor at the same time it is forwarded to the securities administrator. Certified mail, return receipt requested, is recommended. If during the course of an offering made under the limited offering exemption there shall occur an event which would materially affect the issuer, its prospects or properties, or otherwise materially affect the accuracy or completeness of the information contained in the disclosure document, the disclosure document shall be promptly revised to reflect such event, filed with the securities administrator as so revised, and used for all sales of shares in the offering thereafter. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-090, filed 10/5/82.]

**WAC 460-46A-095 Price of shares.** All shares sold pursuant to the limited offering exemption must be sold for cash, must be of the same class, and must be offered and sold at the same price. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-095, filed 10/5/82.]

**WAC 460-46A-100 Time purchase of shares under limited offering exemption.** The terms of the subscription of purchase for all shares sold under the limited offering exemption must provide that such shares shall be fully paid for within ninety days of the date of subscription. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-100, filed 10/5/82.]

**WAC 460-46A-105 Maximum and minimum offering amounts.** The issuer must specify the minimum amount of funds necessary to achieve the results anticipated in the disclosure document required under WAC 460-46A-090, and this shall be the minimum amount of funds to be raised under an offering under the limited offering exemption. The issuer must also establish a maximum amount of funds to be so raised, and the minimum amount shall not be less than 75 percent of the maximum amount. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-105, filed 10/5/82.]

**WAC 460-46A-110 Monies to be deposited in escrow account--Period of escrow and of offering.** The issuer must establish a separate escrow account with a bank acting as escrow agent for all funds received for sales of securities under the limited offering exemption until at least the minimum amount has been raised. If the minimum amount is not raised within six months of the first offer, then all funds, including any interest thereon, shall be promptly returned to the investors. In any event, the offering period may not exceed nine months from the time of the first offer. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-110, filed 10/5/82.]

**WAC 460-46A-120 Startup management compensation prohibited.** No initial management compensation in cash or property may be paid to any promoter, officer, director, or person owning 10 percent or more of the outstanding shares of the issuer: *Provided*, That actual out-of-pocket expenses may be reimbursed to said promoter, officer, director or person owning 10 percent or more of the outstanding shares of the issuer: *And provided further*, That reasonable salaries may be paid to any such persons during periods when the issuer is actually conducting business operations. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-120, filed 10/5/82.]

**WAC 460-46A-145 Restrictions on transferability.** The issuer must place a legend on the stock certificate evidencing the shares sold under the limited offering exemption in substantially the following form:

"These shares are not registered under the Securities Act of Washington and may not be offered, or sold, pledged (except a pledge pursuant to the terms of which any offer or sale upon foreclosure would be made in a manner that would not violate the registration provisions of the Securities Act of Washington) or otherwise distributed for value, nor may these shares be transferred on the books of the Company, without opinion of counsel, concurred in by counsel for the Company, that no violation of said registration provisions would result therefrom."

[Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-145, filed 10/5/82.]

**WAC 460-46A-150 Suitability of investors.** No person may purchase shares under the limited offering exemption in excess of (a) \$15,000, (b) 25% of his or her annual income for the last calendar year, or (c) 25% of his or her net worth, exclusive of equity in residence, automobiles, furnishings, jewelry and personal effects, whichever amount is greater. The issuer must obtain and preserve for three years a signed statement from any purchaser who purchases more than \$15,000 worth of shares in the offering that the amount of his or her investment does not exceed 25% of his or her annual income or net worth. [Statutory Authority: RCW

21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-150, filed 10/5/82.]

**WAC 460-46A-155 Attorney to review disclosure document.** In order for the limited offering exemption to be available, an attorney, who is a member in good standing of a state bar association, must sign the disclosure form required under WAC 460-46A-090. The attorney need not independently verify the accuracy or completeness of the information contained therein but must certify that he has reviewed the responses to the questions in the form and that (with the exception of the financial statements required under the form) the responses set forth the type of information requested by the form. He must further render an opinion that the shares to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and non-assessable. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-155, filed 10/5/82.]

**WAC 460-46A-160 Signing and verification of information in disclosure document.** All directors and the chief executive and accounting officers of the issuer shall sign the disclosure form under WAC 460-46A-090 and by such action shall certify that they each have made reasonable efforts to verify the material accuracy and completeness of the information therein contained. In order for this limited offering exemption to be available, the chief executive and accounting officers of the issuer shall make themselves and the issuer's books and records available to each investor to respond to questions and otherwise verify the information contained in the disclosure document prior to the investment by such investor. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-160, filed 10/5/82.]

**WAC 460-46A-165 Annual reports to stockholders.** Issuers using the limited offering exemption shall thereby undertake to investors in the limited offering to annually provide for 5 years thereafter written financial reports containing a balance sheet as of the end of the issuer's fiscal year and a statement of profits and losses for said fiscal year, all prepared in accordance with generally accepted accounting principles. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-165, filed 10/5/82.]

## Title 461 WAC SHORELINES HEARINGS BOARD

<b>Chapters</b>	
<b>461-08</b>	<b>Practice and procedure--Review of the granting, denying or rescinding of substantial development permits--Hearings.</b>
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