

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.
- 460-31A Real estate programs exceeding five million dollars.
- 460-32A Real estate programs not exceeding five million dollars.
- 460-33A Regulations concerning securities involving mortgages, trust deeds or property sales contracts.
- 460-34A Oil and gas programs.
- 460-36A Real estate investment trusts.
- 460-40A Investment companies.
- 460-42A Exempt securities.
- 460-44A Exempt transactions.
- 460-46A Washington state limited offering exemption.
- 460-52A Nonprofit organizations.
- 460-60A Financial statements and reports—Contents and filing requirements.
- 460-64A Capital requirements—Definitions.
- 460-65A Regulations on procedures related to the entry of orders.
- 460-80 Franchise registration.
- 460-82 Broker/selling agent.
- 460-90A Camping clubs—Contracts—Resale, etc.

Reviser's note: The securities division of the department of licensing in accordance with RCW 21.20.460 and 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 Repealed by Order 304, filed 2/28/75, effective 4/1/75.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 Repealed by Order 304, filed 2/28/75, effective 4/1/75.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 Repealed by Order 304, filed 2/28/75, effective 4/1/75.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 Repealed by Order 304, filed 2/28/75, effective 4/1/75.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 Repealed by Order 304, filed 2/28/75, effective 4/1/75.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.

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

- 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.
- 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.	460-60-280	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.
460-60-120	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.	460-60-285	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.
460-60-130	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.	460-60-290	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.
460-60-140	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.	460-60-295	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.
460-60-200	Form, order, and terminology. [Order 10, § 460-60-200, filed 11/12/71.] Repealed by Order 304, filed 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
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.		

- 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.
- 460-60-520 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.
- 460-60-525 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.
- 460-60-530 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.
- 83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-030.
- 460-90-122 Consent to service process. [Order 12, § 460-90-122, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-125 Availability of campsites. [Order 12, § 460-90-125, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-130 Membership contract. [Order 453-DOL, § 460-90-130, filed 10/5/77; Order 12, § 460-90-130, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-140 Financial statements. [Order 453-DOL, § 460-90-140, filed 10/5/77; Order 12, § 460-90-140, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-040.
- 460-90-150 Management fees. [Order 12, § 460-90-150, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-160 Certificates of local authorities. [Order 12, § 460-90-160, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-170 Change of development plans. [Order 12, § 460-90-170, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-180 Amendments. [Order 12, § 460-90-180, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-190 Approval not endorsement. [Order 12, § 460-90-190, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-050.
- 460-90-200 Notice of termination of sale. [Order 12, § 460-90-200, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-060.
- 460-90-300 Receipt of offering circular. [Order 453-DOL, § 460-90-300, filed 10/5/77; Order 12, § 460-90-300, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-310 Offering circular. [Order 453-DOL, § 460-90-310, filed 10/5/77; Order 12, § 460-90-310, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-320 Required information in offering circular. [Order 12, § 460-90-320, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-330 Sequence of presentation. [Order 453-DOL, § 460-90-330, filed 10/5/77; Order 12, § 460-90-330, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-400 Imposition of impound. [Order 12, § 460-90-400, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-410 Special impound. [Order 12, § 460-90-410, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.

Chapter 460-90
CAMPING CLUBS

- 460-90-100 Camping club registration applications. [Order 12, § 460-90-100, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-010.
- 460-90-110 Camping club registration exhibits. [Order 453-DOL, § 460-90-110, filed 10/5/77; Order 12, § 460-90-110, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-020.
- 460-90-120 Signing of application. [Order 12, § 460-90-120, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-

- 460-90-420 Presumption of impound. [Order 12, § 460-90-420, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-430 Depository. [Order 12, § 460-90-430, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-080.
- 460-90-440 Purchase receipts. [Order 12, § 460-90-440, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-450 Operation of impound condition. [Order 12, § 460-90-450, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-090.
- 460-90-460 Release of a portion of the impound. [Order 12, § 460-90-460, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-470 Cost of selling. [Order 12, § 460-90-470, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-480 Release of impounds. [Order 12, § 460-90-480, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-100.
- 460-90-490 Fee for impound. [Order 12, § 460-90-490, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-105.
- 460-90-500 Advertising. [Order 12, § 460-90-500, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-140.
- 460-90-510 Renewals. [Order 453-DOL, § 460-90-510, filed 10/5/77.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-110.
- 460-90-900 Application form. [Order 12, § 460-90-900, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.

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-170 Officer.
- 460-10A-175 Director.
- 460-10A-180 Promoter.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 460-10A-165 Real estate investment trusts. [Order SD-131-77, § 460-10A-165, filed 11/23/77.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

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 as WAC 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 bylaws 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, nonrecurring 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, § 460-10A-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 4/1/75.]

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-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-108	Inapplicability of restrictions on amounts of cheap and promotional shares.
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 nonparticipating and nonconvertible) 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 nonparticipating and nonconvertible 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 antidilution 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 preexisting 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 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-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.]

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 coordination, 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 registration and examination.
- 460-20A-225 Exemptions from salesmen examinations.
- 460-20A-230 Broker-dealer registration and examination.
- 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.

(1) 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 WAC 460-20A-200 (1)(1) 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 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-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 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.]

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 ADVISORS

WAC

460-24A-010	Investment advisors—Where rules apply.
460-24A-030	Use of the term "investment counsel."
460-24A-050	Investment advisor and investment advisor salesperson (representative) registration and examinations.
460-24A-060	Financial statements required on investment advisors.
460-24A-100	Advertisements by investment advisors.
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 advisors.
460-24A-205	Notice of changes by investment advisor.
460-24A-210	Notice of complaint.

WAC 460-24A-010 Investment advisors—Where rules apply. These rules apply only to that part of the investment advisors' 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 advisor 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 Advisors 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 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 complete the uniform securities agent state law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better:

(a) NASD General Securities Principal Examination (Series 24) or

(b) NASD Investment Company Products/Variable Contracts Principal Examination (Series 26).

The applicant must also complete a Form ADV for the state of Washington.

(2) An individual applicant, an officer if the applicant is a corporation or a general partner if the applicant is a partnership any one of which has completed the uniform securities agent state law examination with a score of seventy percent or better and which holds one of the following designations, shall not be required to complete the exams designated in subsection (1)(a) and (b) in order to apply for an investment advisors license:

- (a) Chartered investment counselor, or
- (b) Chartered financial analyst, or
- (c) Certified financial planner which designation is completed on or after the effective date of these rules.

[The applicant must also complete a Form ADV for the state of Washington.]

(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 examinations required in (1) above within two months in order to maintain the investment advisor license.

(4) In order to be licensed in this state as an investment advisor salesperson (representative) the individual applicant shall complete the uniform securities agent state law examination with a score of seventy percent or better and complete one of the following with a score of seventy percent or better unless section (6) applies:

[(a)] NASD General Securities Representative Examination (Series 7), or

[(b)] NASD Investment Company Products/Variable Contracts Limited Representative Qualifications Examination (Series 6).

The applicant must also complete the [NASD] Form U-4 for the state of Washington.

(5) An individual who has completed the uniform securities agent state law examination with a score of seventy percent or better and who holds one of the following designations shall not be required to complete the exams designated in subsection (4) in order to apply for an investment advisor salesperson (representative) license.

- (a) Chartered investment counselor
- (b) Chartered financial analyst
- (c) Certified financial planner whose designation is completed on or after the effective date of these rules.

[The applicant must also complete the Form U-4 for the state of Washington.]

(6) The administrator may waive the testing requirements in section (5) for an investment advisor representative whose activities will be limited to supervising the firm's investment advisory activities in Washington, provided that the applicant has been employed for five years preceding the filing of the application in a supervisory capacity, or as a portfolio manager, by an investment advisor registered under the Investment Advisors Act of 1940 for at least five years and the investment advisor has been engaged in rendering "investment supervisory services" as defined in Section 202(a)(13) of the Investment Advisors Act of 1940.

(7) 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 [(4)] 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.

(8) 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 and 21.20.040. 83-03-024 (Order SDO-6-83), § 460-24A-050, filed 1/13/83. 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.]

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 460-24A-060 Financial statements required on investment advisors. Every investment advisor 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 advisor 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 advisor'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 advisors. (1) 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 an investment advisor, 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 advisor or concerning any advice, analysis, report or other service rendered by such investment advisor; or

(b) Which refers, directly or indirectly, to past specific recommendations of such investment advisor 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 advisor 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 advisor 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 advisor as agent or trustee for such clients, and

(c) The investment advisor 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 advisor, 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 advisor 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 advisor 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 advisor. 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 advisor'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 advisor 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 advisor 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 advisors. (1) Every licensed investment advisor 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 advisor for the purchase or sale of any security, of any instruction received by the investment advisor 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 advisor 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 advisor.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment advisor as such.

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

(g) Originals of all written communications received and copies of all written communications sent by such investment advisor 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 advisor 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 advisor: *And provided,* That if the investment advisor sends any notice, circular or other advertisement offering any report,

analysis, publication or other investment advisory service to more than 10 persons, the investment advisor 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 advisor 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 advisor 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 advisor, or copies thereof.

(j) All written agreements (or copies thereof) entered into by the investment advisor with any client or otherwise relating to the business of such investment advisor 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 advisor circulates or distributed, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment advisor), 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 advisor indicating the reasons therefor.

(2) A record of every transaction in a security in which the investment advisor or any investment advisor salesman (as hereinafter defined) of such investment advisor 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 advisor nor any investment advisor salesman of the investment advisor 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 advisor or investment advisor 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 advisor salesman" shall mean any partner, officer or director of the investment advisor; 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 advisor who obtains information concerning securities recommendations being made by such investment advisor other than a regular client of such investment advisor.

An investment advisor does not violate the provisions of this clause (2) because of his failure to record securities transactions of any investment advisor 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 advisor 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 advisor 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 advisor, 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 advisor 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 advisor in such manner that the identity of any client to whom such investment advisor 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 advisor.

(b) Charter documents, minute books and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

(7) A licensed investment advisor, before ceasing to conduct or discontinuing business as an investment advisor, 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 advisor, 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 advisor. (1) Each licensed investment advisor 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 advisor registered under the Investment Advisors 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 advisor 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 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 460-31A WAC

**REAL ESTATE PROGRAMS EXCEEDING FIVE
MILLION DOLLARS**

WAC

460-31A-410	Application.
460-31A-415	Definitions.
460-31A-420	Experience of sponsor.

460-31A-425	Net worth of sponsor.
460-31A-430	Reports to administrator.
460-31A-435	Liability of sponsor.
460-31A-440	Suitability standards for the participants.
460-31A-445	Sales to appropriate persons.
460-31A-450	Maintenance of record of suitability.
460-31A-455	Minimum investment of participant.
460-31A-460	Fees, compensation and expenses.
460-31A-465	Organization and offering expenses.
460-31A-470	Investment in properties.
460-31A-475	Program management fee.
460-31A-480	Promotional interest.
460-31A-485	Real estate commissions on resale.
460-31A-490	Property management fee.
460-31A-495	Insurance services.
460-31A-500	Sales, leases, loans, and related programs.
460-31A-505	Exchange of limited partnership interests.
460-31A-510	Exclusive agreement.
460-31A-515	Sales commissions on reinvestment or distribution.
460-31A-520	Expenses of the program.
460-31A-525	Reimbursement of costs.
460-31A-530	Other services by sponsor.
460-31A-535	Rebates, kickbacks and reciprocal arrangements.
460-31A-540	Commingling.
460-31A-545	Investments in other programs.
460-31A-550	Lending practices.
460-31A-555	Development or construction contract.
460-31A-560	Completion bond requirements.
460-31A-565	Requirement for real property appraisal.
460-31A-570	Nonspecified property programs.
460-31A-575	Minimum capitalization.
460-31A-580	Experience of sponsor.
460-31A-585	Statement of investment objectives.
460-31A-590	Period of offering and expenditure of proceeds.
460-31A-595	Special reports.
460-31A-600	Assessments.
460-31A-605	Multiple programs.
460-31A-610	Rights and obligations of participants—Meetings.
460-31A-615	Voting rights of limited partners.
460-31A-620	Reports to holders of limited partnership interests.
460-31A-625	Access to records.
460-31A-630	Admission of participants.
460-31A-635	Redemption of program interests.
460-31A-640	Transferability of program interests.
460-31A-645	Assessments and defaults.
460-31A-650	Sales literature.
460-31A-655	Group meetings.
460-31A-660	Contents of prospectus.
460-31A-665	Use of forecasts.
460-31A-670	Forecasts for specified property programs.
460-31A-675	Realistic forecasts.
460-31A-680	Material information.
460-31A-685	Presentation of forecasts.
460-31A-690	Additional disclosures and limitations.
460-31A-695	Forecasts for unimproved property programs.
460-31A-700	Fiduciary duty.
460-31A-705	Deferred payments.
460-31A-710	Reserves.
460-31A-715	Reinvestment of cash flow and proceeds on disposition of property.
460-31A-720	Financial information required on application.
460-31A-725	Opinions of counsel.
460-31A-730	Provisions of the partnership agreement.

WAC 460-31A-410 Application. (1) The rules in this chapter 460-31A WAC apply to registration of real estate programs in the form of limited partnerships (herein sometimes called "program" or "partnerships") whose total offering exceeds five million dollars. An applicant for registration may also elect to follow the rules of this chapter.

(2) The rules of this chapter will be applied by analogy to real estate programs in other forms. While applications not conforming to the rules of this chapter shall

be looked upon with disfavor, where good cause is shown, certain rules may be modified or waived by the administrator.

(3) Where the individual characteristics of specific programs warrant modification of the rules of this chapter, such modification will be accommodated, insofar as possible while still being consistent with the spirit of these rules. A cross reference sheet shall be furnished with the application (see WAC 460-31A-415(11)).

(4) Where these rules conflict with requirements of the securities and exchange commission, the rules will not apply unless otherwise directed by the administrator.

(5) The term "total offering" in subsection (1) above shall be liberally construed and shall, for the purposes of WAC 460-31A-410(1) only, apply to that amount of securities which is filed with the state securities division under one registration statement. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-410, filed 11/21/83.]

WAC 460-31A-415 Definitions. For the purposes of this chapter, the following definitions shall apply. (1) "Acquisition expenses" means expenses including but not limited to legal fees and expenses, travel and communications expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether or not acquired.

(2) "Acquisition fee" means the total of all fees and commissions paid by any party in connection with the purchase or development of property by a program, except a development fee paid to a person not affiliated with a sponsor in connection with the actual development of a project after acquisition of the land by the program. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated.

(3) "Administrator" means the administrator of securities administering the Securities Act of Washington, chapter 21.20 RCW.

(4) "Affiliate" means (a) any person directly or indirectly controlling, controlled by or under the common control with another person (b) any person owning or controlling ten percent or more of the outstanding voting securities of such other person (c) any officer, director, partner of such person and (d) if such other person is an officer, director or partner, any company for which such person acts in any such capacity.

(5) "Assessments" means additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond his subscription commitment.

(6) "Capital contribution" means the gross amount of investment in a program by a participant, or all participants as the case may be.

(7) "Cash flow" means 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 payments, capital improvements and replacements.

(8) "Cash available for distribution" means cash flow less amount set aside for restoration or creation of reserves.

(9) "Competitive real estate commission" means that real estate or brokerage commission paid for the purchase or sale of property which is reasonable, customary and competitive in light of the size, type and location of the property.

(10) "Construction fee" means a fee for acting as general contractor to construct improvements on a program's property either initially or at a later date.

(11) "Cross reference sheet" means a compilation of the sections of the rules referenced to the page of the prospectus, partnership agreement, or other exhibits, and justification of any deviation from the rules.

(12) "Development fee" means 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.

(13) "Front-end fees" means fees and expenses paid by any party for any services rendered during the program's organizational or acquisition phase including organization and offering expenses, acquisition fees, acquisition expenses, and any other similar fees, however designated by the sponsor.

(14) "Investment in properties" means the amount of capital contributions actually paid or allocated to the purchase, development, construction or improvement of properties acquired by the program (including the purchase of properties, working capital reserves allocable thereto (except that working capital reserves in excess of five percent shall not be included), and other cash payments such as interest and taxes but excluding front-end fees).

(15) "Net worth" means the excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets: *Provided*, That the amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.

(16) "Nonspecified property program" means a program where, at the time a securities registration is ordered effective, less than 75 percent of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties, or a program in which the proceeds from any sale or refinancing of properties may be reinvested. Reserves shall be included in the nonspecified 25 percent.

(17) "Organization and offering expenses" means 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 and all advertising expenses.

(18) "Participant" means the holder of a program interest.

(19) "Person" means any natural person partnership, corporation, association or other legal entity.

(20) "Program" means 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.

(21) "Program interest" means the limited partnership unit or other indicia of ownership in a program.

(22) "Program management fee" means a fee paid to the sponsor or other persons for management and administration of the program.

(23) "Property management fee" means the fee paid for day-to-day professional property management services in connection with a program's real property projects.

(24) "Prospectus" means the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary prospectus: *Provided, however*, That such term as used herein shall also include an offering circular as described in Rule 256 of the general rules and regulations under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

(25) "Purchase price of property" means the price paid upon the purchase or sale of a particular property, including the amount of acquisition fees and all liens and mortgages on the property, but excluding points and prepaid interest.

(26) "Sponsor" means 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, 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-415, filed 11/21/83.]

WAC 460-31A-420 Experience of sponsor. The sponsor, the general partner or their chief operating officers shall have at least two years relevant real estate or other experience demonstrating the knowledge and experience to acquire and manage the type of properties being acquired, and any of the foregoing or any affiliate providing services to the program shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed. [Statutory Authority: RCW 21.20.450. 83-23-

087 (Order SDO-215-83), § 460-31A-420, filed 11/21/83.]

WAC 460-31A-425 Net worth of sponsor. The financial condition of the sponsor liable for the debts of the program must be commensurate with any financial obligations assumed in the offering and in the operation of the program. As a minimum, such sponsor shall have an aggregate financial net worth, exclusive of home, automobile and home furnishings, of the greater of either \$50,000 or an amount at least equal to five percent of the gross amount of all offerings sold within the prior 12 months plus five percent of the gross amount of the current offering, to an aggregate maximum net worth of such sponsor of one million dollars. In determining net worth for this purpose, evaluation will be made of contingent liabilities and the use of promissory notes, to determine the appropriateness of their inclusion in computation of net worth. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-425, filed 11/21/83.]

WAC 460-31A-430 Reports to administrator. The sponsor shall submit to the administrator any information required to be filed with the administrator, including, but not limited to, reports and statements required to be distributed to limited partners. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-430, filed 11/21/83.]

WAC 460-31A-435 Liability of sponsor. (1) Sponsors shall not attempt to pass on to limited partners the general liability imposed on them by law except that the partnership agreement may provide that a general partner shall have no liability whatsoever to the partnership or to any limited partner for any loss suffered by the partnership which arises out of any action or inaction of the general partner, if the general partner, in good faith, determined that such course of conduct was in the best interests of the partnership, and such course of conduct did not constitute negligence of the general partner. The sponsor may be indemnified by the program against losses sustained in connection with the program, provided the losses were not the result of negligence or misconduct on the part of the sponsors.

(2) The program may not incur the cost of that portion of liability insurance which insures the sponsor for any liability as to which the sponsor is prohibited from being indemnified under this section. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-435, filed 11/21/83.]

WAC 460-31A-440 Suitability standards for the participants. Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many real estate programs, the sponsors and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type

of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives of a program, a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the administrator in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, tax implications, balloon payment financing, excessive investments in unimproved land, and uncertain or no cash flow from program property. As a general rule, programs structured to give deductible tax losses of 50 percent or more of the capital contribution of the participant in the year of investment should be sold only to persons in higher income tax brackets considering both state and federal income taxes. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-440, filed 11/21/83.]

WAC 460-31A-445 Sales to appropriate persons. The sponsor and each person selling program interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the program interests are suitable, in light of the standards set forth in WAC 460-31A-440, and the program interests are appropriate for the customers' investment objectives and financial situations.

The sponsor or his representatives shall ascertain that the investor can reasonably benefit from the program, and the following shall be evidence thereof:

(1) The investor has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

- (a) The nature of employment experience;
- (b) Educational level achieved;
- (c) Access to advice from qualified sources, such as, attorney, accountant and tax advisor;
- (d) Prior experience with investments of a similar nature.

(2) The sponsor or his representatives shall ascertain that the investor has apparent understanding:

- (a) Of the fundamental risks and possible financial hazards of the investment;
- (b) Of the lack of liquidity of this investment;
- (c) That the investment will be directed and managed by the sponsor; and
- (d) Of the tax consequences of the investment.

(3) The participant can reasonably benefit from the program in view of his overall investment objectives and portfolio structure.

(4) The participant is able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the administrator approves a lower suitability standard, participants shall have a minimum annual gross income of \$30,000 and a net worth of \$30,000, or in the alternative, a net worth

of \$75,000. For purposes of this calculation, the investment price includes cash, notes and other recourse liability; and, additional contributions, whether voluntary or mandatory; and, the cost of assessments or cost of exercising warrants or options. In high risk or principally tax oriented offerings, higher suitability standards may be required. In the case of sales to fiduciary accounts, the suitability standards shall be met by the fiduciary or by the fiduciary account or by a donor who directly or indirectly supplies the funds to purchase the program interests. Net worth shall be determined exclusive of home, home furnishings and automobiles. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-445, filed 11/21/83.]

WAC 460-31A-450 Maintenance of record of suitability. The sponsor shall maintain a record of the information obtained to indicate that a participant meets the suitability standards employed in connection with the offer and sale of its interests and a representation of the participant that he is purchasing for his own account or, in lieu of such representation, information indicating that the participants for whose account the purchase is made meet such suitability standards. Such information may be obtained from the participant through the use of a form which sets forth the prescribed suitability standards in full and which includes a statement to be signed by the participant in which he represents that he meets such suitability standards and is purchasing for his own account. However, where the offering is underwritten or sold by a broker-dealer, the sponsor shall obtain a commitment from the broker-dealer to maintain the same record of information required of the sponsor. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-450, filed 11/21/83.]

WAC 460-31A-455 Minimum investment of participant. A minimum initial cash purchase of \$2,500 per investor shall be required. Subsequent transfers of such interests shall be limited to no less than a minimum unit equivalent to an initial minimum purchase, except for transfers by gifts, inheritance, intrafamily transfers, family dissolutions, and transfers to affiliates. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-455, filed 11/21/83.]

WAC 460-31A-460 Fees, compensation and expenses. (1) The total amount of consideration of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable, considering all aspects of the syndication program and the investors. Such consideration may include, but is not limited to:

- (a) Organization and selling expenses.
- (b) Compensation for acquisition services.
- (c) Compensation for development or construction services.
- (d) Compensation for program management.
- (e) Additional compensation to the sponsor including subordinated interests and promotional interests.
- (f) Real estate brokerage commissions on resale of property.

(g) Property management fee.

(h) Insurance services.

(2) Except to the extent that a subordinated interest is permitted for promotional activities pursuant to WAC 460-31A-480 hereof, consideration may only be paid for reasonable and necessary goods, property or services.

(3) The application for qualification or 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-460, filed 11/21/83.]

WAC 460-31A-465 Organization and offering expenses. All organization and offering expenses incurred in order to sell program interests shall be reasonable. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-465, filed 11/21/83.]

WAC 460-31A-470 Investment in properties. (1) The sponsor shall be required to commit a substantial portion of the program's capital contributions toward investment in properties. The remaining capital contributions may be used to pay front-end fees. When acquisition fees are paid by the seller of properties, such fees shall not be included in satisfying the required minimum investment in properties. Additionally, in determining the amount committed to investment in properties, such calculation shall not take into account any front-end fees.

If capital contributions are paid on an installment basis, the front-end fee shall be paid to the sponsor pro rata as installments are paid.

(2) At a minimum, the sponsor shall commit a percentage of the capital contributions to investment in properties which is equal to the greater of:

(a) 80 percent of the capital contributions reduced by .1625 percent for each one percent of indebtedness encumbering program properties; or

(b) 67 percent of the capital contributions.

(3) If the total amount of the investment in properties exceeds the minimum required amount in WAC 460-31A-470(2) above, for each one percent of front-end fees deferred the sponsor may take an additional promotional interest upon sale of the properties equal to one percent of the net proceeds remaining from the sale or refinancing of the property after payment to investors of an amount equal to 100 percent of capital contributions.

To calculate the percent of indebtedness encumbering program properties in WAC 460-31A-470(2), divide the amount of indebtedness by the purchase price of property, excluding front-end fees. The quotient is multiplied by .1625 percent to determine the percentage to be deducted from 80 percent.

The following are examples of application of the formula using capital contributions of \$1 million in each case:

- (a) No indebtedness - 80 percent to be committed to investment in properties.

- (b) 50 percent indebtedness — $50 \times .1625\% = 8.125\%$
 $80 - 8.125\% = 71.875\%$ to be committed to investment in properties.
- (c) 80 percent indebtedness — $80 \times .1625\% = 13\%$
 $80 - 13\% = 67\%$ to be committed to investment in properties.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-470, filed 11/21/83.]

WAC 460-31A-475 Program management fee. (1)

A general partner of a program owning unimproved land shall be entitled to annual compensation not exceeding 1/4 of one percent of the cost of such unimproved land for operating the program until such time as the land is sold or improvement of the land commences by the limited partnership. In no event shall this fee exceed a cumulative total of two percent of the original cost of the land regardless of the number of years held.

(2) A general partner of a program holding property in government subsidized projects shall be entitled to annual compensation not exceeding 1/2 of one percent of the cost of such property for operating the program until such time as the property is sold.

(3) Program management fees other than as set forth above shall be prohibited. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-475, filed 11/21/83.]

WAC 460-31A-480 Promotional interest. An interest in the program will be allowed as a promotional interest and program management fee, provided the amount or percentage of such interest is reasonable. Such an interest will be considered presumptively reasonable if it is within the limitations expressed below:

(1) An interest equal to 25 percent of cash to be distributed from the net proceeds remaining 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 six percent of capital contributions per annum cumulative, less the sum of prior distributions to investors from cash available for distribution; or

(2) An interest equal to:

(a) Ten percent of distributions from cash available for distribution; and

(b) Fifteen percent of cash to be distributed from the net proceeds remaining 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 six percent of capital contributions per annum cumulative, less the sum of prior distributions to investors from cash available for distribution.

(3) For purposes of this WAC 460-31A-480, the capital contribution of the investors shall only be reduced by a cash distribution to investors of the proceeds from the sale or refinancing of properties. In addition, the cumulative return to each investor shall commence no later than the end of the calendar quarter in which his capital contribution is made.

(4) Dissolution and liquidation of the partnership. The distribution of assets upon dissolution and liquidation of

the partnership shall conform to the applicable subordination provisions of WAC 460-31A-480 (1) and (2)(b), and appropriate language shall be included in the partnership agreement. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-480, filed 11/21/83.]

WAC 460-31A-485 Real estate commissions on re-sale.

The total compensation paid to all persons for the sale of a program property shall be limited to a competitive real estate commission, not to exceed six percent of the contract price for the sale of the property. The sponsor may receive up to one-half of the competitive real estate commission, not to exceed three percent and subordinated to payment to the investors of an amount equal to 100 percent of capital contributions, if he provides a substantial amount of the services in the sales effort. Such commission shall be subordinated as in WAC 460-31A-480(2). If the sponsor participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the sponsor. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-485, filed 11/21/83.]

WAC 460-31A-490 Property management fee.

Should the sponsor or its affiliates perform property management services permitted under WAC 460-31A-520 and 460-31A-525, the fees paid to the sponsor or its affiliates shall be the lesser of the maximum fees set forth in subsections (1) through (3) below or the fees which are competitive for similar services in the same geographic area. Included in such fees shall be book-keeping services and fees paid to nonrelated persons for property management services.

(1) In the case of a residential property, the maximum property management fee (including all rent-up, leasing, and re-leasing fees and bonuses, and leasing related services, paid to any person) shall be five percent of the gross revenues from such property.

(2) In the case of industrial and commercial property, except as set forth in (3) below, the maximum property management fee from such leases shall be six percent of the gross revenues where the sponsor or its affiliates includes leasing, re-leasing and leasing related services, and the maximum property management fee from such leases shall be three percent of the gross revenues where the sponsor or its affiliates do not perform the leasing, re-leasing and leasing related services with respect to the property.

(3) In the case of industrial and commercial properties which are leased on a long term (ten or more years) net (or similar) basis, the maximum property management fee from such leases shall be one percent of the gross revenues, except for a one time initial leasing fee of three percent of the gross revenues on each lease payable over the first five full years of the original term of the lease. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-490, filed 11/21/83.]

WAC 460-31A-495 Insurance services. The sponsor or his affiliate may provide insurance brokerage services in connection with obtaining insurance on the program's property so long as the cost of providing such service, including cost of the insurance, is not greater than the lowest quote obtained from two unaffiliated insurance agencies and the coverage and terms are likewise comparable. In no event may such services be provided by the sponsor or his affiliate unless they are independently engaged in the business of providing such services to other than affiliates and at least 75 percent of their insurance brokerage service gross revenue is derived from other than affiliates. [Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-495, filed 11/21/83.]

WAC 460-31A-500 Sales, leases, loans, and related programs. (1) 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 two years), the assumption by the promoter of the risk of obtaining a rezoning of the property and its subsequent rezoning, 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 temporarily 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, except compensation in accordance with WAC 460-31A-460 through 460-31A-495, 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) 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) No loans may be made by the program to the sponsor or affiliate.

(4) A program shall not acquire property from a program in which the sponsor has an interest. [Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-500, filed 11/21/83.]

WAC 460-31A-505 Exchange of limited partnership interests. The program may not acquire property in exchange for limited partnership interests, except for property which is described in the prospectus or offering circular 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 disclosure as to tax effects of such exchange are set forth in the prospectus or offering circular;

(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 appraisal prepared by an independent qualified appraiser;

(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 appraiser 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;

(6) No securities sales or underwriting commissions shall be paid in connection with such exchange. [Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-505, filed 11/21/83.]

WAC 460-31A-510 Exclusive agreement. A program shall not give a sponsor an exclusive right to sell or exclusive employment to sell property for the program. [Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-510, filed 11/21/83.]

WAC 460-31A-515 Sales commissions on reinvestment or distribution. A program shall not pay, directly or indirectly, a commission or fee (except as permitted under WAC 460-31A-460 through 460-31A-490) to a sponsor in connection with the reinvestment or distribution of the proceeds of the resale, exchange, or refinancing of program property. [Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-515, filed 11/21/83.]

WAC 460-31A-520 Expenses of the program. (1) All expenses of the program shall be billed directly to and paid by the program. The sponsor may be reimbursed for the actual cost of goods and materials used

for or by the program and obtained from entities unaffiliated with the sponsor. The sponsor may be reimbursed for the administrative services necessary to the prudent operation of the program provided that the reimbursement shall be at the lower of the sponsor's actual cost or the amount the program would be required to pay to independent parties for comparable administrative services in the same geographic location. No reimbursement shall be permitted for services for which the sponsor is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under WAC 460-31A-470(1)) shall be:

(a) Rent or depreciation, utilities, and capital equipment and other overhead items, and;

(b) Salaries, fringe benefits, and other administrative items, travel expenses, and other overhead items incurred or allocated to any controlling persons of the sponsor or affiliates.

(2) Controlling person, for purpose of this section, includes but is not limited to, any person, whatever his or her title, who performs functions for the sponsor similar to those of:

(a) Chairman or member of the board of directors;

(b) Executive management, such as the

(i) President,

(ii) Vice president or senior vice president,

(iii) Corporate secretary,

(iv) Treasurer;

(c) Senior management, such as the vice president of an operating division who reports directly to executive management; or, those holding five percent or more equity interest in the sponsor or a person having the power to direct or cause the direction of the sponsor, whether through the ownership of voting securities, by contract, or otherwise. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-520, filed 11/21/83.]

WAC 460-31A-525 Reimbursement of costs. The annual program report must contain a breakdown of the costs reimbursed to the sponsor. Within the scope of the annual audit of the sponsor's financial statement, the independent certified public accountants must verify the allocation of such costs to the program. The method of verification shall at minimum provide:

(1) A review of the time records of individual employees, the costs of whose services were reimbursed;

(2) A review of the specific nature of the work performed by each such employee;

(3) A review of the reasonableness of the determination of the hourly rate for each such employee; and

(4) A verification of the comparability of the rate of the independent party to the rate for the specific services being performed by each such employee.

The methods of verification shall be in accordance with generally accepted auditing standards and shall accordingly include such tests of the accounting records and such other auditing procedures which the sponsor's independent certified public accountants consider appropriate in the circumstance. The additional costs of such verification will be itemized by said accountants on a

program by program basis and may be reimbursed to the sponsor by the program in accordance with this subsection only to the extent that such reimbursement when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined above.

The prospectus must disclose in tabular form an estimate of such proposed expenses for the next fiscal year together with a breakdown by year of such expenses reimbursed in each of the last five public programs formed by the sponsor. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-525, filed 11/21/83.]

WAC 460-31A-530 Other services by sponsor. No other services may be performed by the sponsor for the program except in extraordinary circumstances fully justified to the administrator. As a minimum, self-dealing arrangements must meet the following criteria:

(1) 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 or selling or leasing comparable goods which could reasonably be made available to the programs and shall be on competitive terms, and

(2) The fees and other terms of the contract shall be fully disclosed and

(3) 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

(4) All services or goods for which the sponsor 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, which contract may only be modified by a vote of the majority of the limited partners. Said contract shall contain a clause allowing termination without penalty on 60 days notice. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-530, filed 11/21/83.]

WAC 460-31A-535 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-535, filed 11/21/83.]

WAC 460-31A-540 Commingling. The funds of a program shall not be commingled with the funds of any other person. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-540, filed 11/21/83.]

WAC 460-31A-545 Investments in other programs.

(1) Investments in limited partnership interests of another program shall be prohibited; however, nothing herein shall preclude the investment in general partnerships or ventures which own and operate a particular property provided the program acquires a controlling interest in such other ventures or general partnerships (except as permitted by subsection (3)). In such event, duplicate property management or other fees shall not be permitted.

(2) Such prohibitions shall not apply to programs participating in the subsidized housing provisions of the National Housing Act or any similar programs that may be enacted, but unless prohibited by the applicable federal statute, such partnership (herein referred to as lower tier partnership) shall provide for its limited partners all of the rights and obligations required to be provided by the original program in WAC 460-31A-610 through 460-31A-645 of this chapter.

(3) The program shall be permitted to invest in joint venture arrangements with another program formed by the sponsor if all of the following conditions are met.

(a) The two programs have identical investment objectives.

(b) There are no duplicate property management or other fees.

(c) The sponsor compensation should be substantially identical in each program.

(d) The program must have a right of first refusal to buy if the other program wishes to sell property held in the joint venture.

(e) The investment of each program is on substantially the same terms and conditions.

(f) The prospectus must disclose the potential risk of impasse on joint venture decisions since neither program controls and the potential risk that while one program may buy the property from the other joint venturer, in the event of a sale, it may not have the resources to do so. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-545, filed 11/21/83.]

WAC 460-31A-550 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 lending institutions on comparable loans for the same purpose in the same locality of the property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by either a first or a junior or all-inclusive trust deed, mortgage or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance. Except as permitted by subsection (2) of this section, the sponsor shall

be prohibited from providing permanent financing for the program.

(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 the following conditions are complied with:

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

(c) A paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to 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 program. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-550, filed 11/21/83.]

WAC 460-31A-555 Development or construction contract. The sponsor will not be permitted to construct or develop properties, or render any services in connection with such development or construction unless all of the following conditions are satisfied:

(1) The transactions occur at the formation of the program.

(2) The specific terms of the development and construction of identifiable properties are ascertainable and fully disclosed in the prospectus.

(3) The purchase price to be paid by the program is based upon a firm contract price which in no event can exceed the sum of the cost of the land and the sponsor's cost of construction. For the purposes of this subdivision, cost of construction includes the contractor or construction fee customarily paid for services as a general contractor, provided, however, that any overhead of the general contractor is not charged to the program or included in the cost of construction.

(4) In the case of construction, the only fees paid to the sponsor in connection with such project shall consist of a construction fee for acting as a general contractor, which fees must be comparable and competitive with the fee of disinterested persons rendering comparable services (excluding, however, any overhead of the contractor) and a real estate commission in connection with the acquisition of the land, if appropriate under the circumstances. Any such real estate commission shall be subject to the provisions of WAC 460-31A-470.

(5) The sponsor demonstrates the presence of extraordinary circumstances as required by WAC 460-31A-530 and otherwise complies with subdivisions (2), (3),

and (4) thereunder. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-555, filed 11/21/83.]

WAC 460-31A-560 Completion bond requirements. The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate completion bond or other satisfactory arrangements. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-560, filed 11/21/83.]

WAC 460-31A-565 Requirement for real property appraisal. All real property acquisitions must be supported by an appraisal prepared by a competent, independent appraiser. 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 shall contain notice of this right. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-565, filed 11/21/83.]

WAC 460-31A-570 Nonspecified property programs. In addition to other rules in this chapter, the following special provisions in WAC 460-31A-575 through 460-31A-605 shall apply to nonspecified property programs. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-570, filed 11/21/83.]

WAC 460-31A-575 Minimum capitalization. A nonspecified property program shall provide for a minimum gross proceeds from the offering of not less than \$1,000,000.00 to be available for investment in properties. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-575, filed 11/21/83.]

WAC 460-31A-580 Experience of sponsor. For nonspecified property programs, the sponsor or at least one of its principals must establish that he has had the equivalent of not less than five years experience in the real estate business in an executive capacity and two years experience in the management and acquisition of the type of properties to be acquired or otherwise must demonstrate to the satisfaction of the administrator that he has sufficient knowledge and experience to acquire and manage the type of properties proposed to be acquired by the nonspecified property program. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-580, filed 11/21/83.]

WAC 460-31A-585 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 and the experience of the sponsors. 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;

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

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

(4) The statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-585, filed 11/21/83.]

WAC 460-31A-590 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 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 so long as the adjusted investment in properties is in compliance with section WAC 460-31A-470. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-590, filed 11/21/83.]

WAC 460-31A-595 Special reports. At least quarterly, a "special report" of real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the partners as set forth in WAC 460-31A-590. Such notice shall describe the real properties, and include a description of the geographic 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-595, filed 11/21/83.]

WAC 460-31A-600 Assessments. Plans calling for installment payments, warrants, options, or other staged or deferred payments shall not be allowed. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-600, filed 11/21/83.]

WAC 460-31A-605 Multiple programs. Sponsors shall not be permitted to offer for sale more than one nonspecified property program at any point in time unless the programs have different investment objectives. Additionally, new offerings by the same sponsor shall not be permitted if that sponsor has not substantially committed or placed the funds raised from similar nonspecified property programs. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-605, filed 11/21/83.]

WAC 460-31A-610 Rights and obligations of participants--Meetings. Meetings of the program may be called by the sponsor or the participants holding more than ten percent of the then outstanding limited partnership interests, for any matters for which the participants may vote as set forth in the limited partnership agreement. A list of the names and addresses of all participants shall be maintained as part of the books and records of the limited partnership and shall be made available on request to any participants 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 sponsor shall provide all participants 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-610, filed 11/21/83.]

WAC 460-31A-615 Voting rights of limited partners. To the extent the law of the state in question is not inconsistent, the limited partnership agreement must provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the sponsor, vote to (1) amend the limited partnership agreement, (2) dissolve the program, (3) remove the sponsor and elect a new sponsor, and (4) approve or disapprove the sale of all or substantially all of the assets of the program. The agreement should provide for a method of valuation of the sponsor interest, upon removal of the sponsor, that would not be unfair to the participants. The agreement should also provide for a successor sponsor where the only sponsor of the program is an individual. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-615, filed 11/21/83.]

WAC 460-31A-620 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) In the case of a program registered under section 12(g) of the Securities Exchange Act of 1934, within sixty days after the end of each quarter of the program, a report containing:

(a) A balance sheet, which may be unaudited,

(b) A statement of income for the quarter then ended, which may be unaudited, and

(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) In the case of all other programs in addition to the annual report required by subsection (4) hereof, within sixty days after the end of the program's first six-month period, a semiannual report containing the same information as to the preceding six-month period as that required in quarterly reports under subsection (1) hereof;

(3) In the case of all programs, within 75 days after the end of each program's fiscal year, all information necessary for the preparation of the limited partners' federal income tax returns;

(4) In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing (i) a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a cash flow statement, for the year then ended, all of which, except the cash flow statement, shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant, (ii) a report of the activities of the program during the period covered by the report, and (iii) 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 (a) cash flow from operations during the period, (b) cash flow from operations during a prior period which had been held as reserves, (c) proceeds from disposition of property and investments, (d) lease payments on net leases with builders and sellers, and (e) reserves from the gross proceeds of the offering originally obtained from the limited partners.

(5) Where assessments have been made during any period covered by any report required by subsections (1), (2) and (4) hereof, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments; and

(6) Where any sponsor receives fees for services, then he shall, within 60 days of the end of each quarter wherein such fees were received, send to each limited partner a detailed statement setting forth the services rendered, or to be rendered by such sponsor and the amount of the fees received. This requirement may not be circumvented by lump-sum payments to management

companies or other entities who then disburse the funds. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-620, filed 11/21/83.]

WAC 460-31A-625 Access to records. The participants and their designated representatives shall be permitted access to all records of the program at all reasonable times. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-625, filed 11/21/83.]

WAC 460-31A-630 Admission of participants. Admission of participants to the program shall be subject to the following:

(1) Upon the original sale of partnership units by the program, the purchasers should be admitted as limited partners not later than 15 days after the release from impound of the purchaser's funds to the program, and thereafter purchasers should be admitted into the program not later than the last day of the calendar month following the date their subscription was accepted by the program. Subscriptions shall be accepted or rejected by the program within 30 days of their receipt; if rejected, all subscription monies should be returned to the subscriber forthwith.

(2) The program shall amend the certificate of limited partnership at least once each calendar quarter to effect the subscription of substituted participants, although the sponsor may elect to do so more frequently.

In the case of assignments, where the assignee does not become a substituted limited partner, the program shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-630, filed 11/21/83.]

WAC 460-31A-635 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 interests if such purchase does not impair the capital or the operation of the program. Notwithstanding the foregoing, a real estate program may provide for mandatory redemption rights under the following necessitous circumstances:

(1) Death or legal incapacity of the owner, or

(2) A substantial reduction in the owner's net worth or income provided that (a) the program has sufficient cash to make the purchase, (b) the purchase will not be in violation of applicable legal requirements and (c) not more than 15 percent of the outstanding units are purchased in any year. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-635, filed 11/21/83.]

WAC 460-31A-640 Transferability of program interests. Restrictions on assignment of limited partnership interests will not be allowed. Restrictions on the substitution of a limited partner are generally disfavored and

will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-640, filed 11/21/83.]

WAC 460-31A-645 Assessments and defaults. (1) Except in the case of nonspecified property programs, as provided in WAC 460-31A-600, if the anticipated cash flow from property (after payment of debt service and all operating expenses) is not sufficient to pay taxes 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.

(2) In the event of a default in the payment of assessments by a participant 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 provision 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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-645, filed 11/21/83.]

WAC 460-31A-650 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 and chapter 460-28A WAC. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-650, filed 11/21/83.]

WAC 460-31A-655 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 participants 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 audio-visual 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. This section and WAC 460-31A-650 shall not apply to meetings consisting only of representatives of securities broker-dealers. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-655, filed 11/21/83.]

WAC 460-31A-660 Contents of prospectus. The prospectus shall meet the requirements of Guide 5 as promulgated under general Securities and Exchange Commission guides for the preparation of registration statements relating to interests in real estate limited partnerships. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-660, filed 11/21/83.]

WAC 460-31A-665 Use of forecasts. The presentation of predicted future results of operations of real estate programs shall be permitted but not required for specified property programs investing primarily in improved property and shall be prohibited for nonspecified property programs or specified property programs investing primarily in unimproved land. The covers of the prospectus must contain in bold face language one of the following statements:

(1) For specified property program:

"FORECASTS ARE CONTAINED IN THIS PROSPECTUS (OFFERING CIRCULAR). ANY PREDICTIONS AND REPRESENTATIONS, WRITTEN OR ORAL, WHICH DO NOT CONFORM TO THOSE CONTAINED IN THE PROSPECTUS (OFFERING CIRCULAR) SHALL NOT BE PERMITTED."

(2) For nonspecified property and unimproved land programs:

"THE USE OF FORECASTS IN THIS OFFERING IS PROHIBITED. ANY REPRESENTATIONS TO THE CONTRARY AND ANY PREDICTIONS, WRITTEN OR ORAL, AS TO THE AMOUNT OR CERTAINTY OF ANY PRESENT OR FUTURE CASH BENEFIT OR TAX CONSEQUENCE WHICH MAY FLOW FROM AN INVESTMENT IN THIS PROGRAM IS NOT PERMITTED."

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-665, filed 11/21/83.]

WAC 460-31A-670 Forecasts for specified property programs. Forecasts for specified property programs shall be included in the prospectus, offering circular or sales material of the program only if they comply with

WAC 460-31A-675 through 460-31A-695. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-670, filed 11/21/83.]

WAC 460-31A-675 Realistic forecasts. Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts should be reviewed by an independent certified public accountant in accordance with the Guide for a Review of a Financial Forecast as promulgated by the American Institute of Certified Public Accountants, and that person or firm should be identified in the prospectus or offering circular as being responsible for the preparation of the forecasts. No forecasts shall be permitted in any sales literature which does not appear in the prospectus or offering circular. If any forecasts are included in the sales literature, all forecasts must be presented. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-675, filed 11/21/83.]

WAC 460-31A-680 Material information. Forecasts shall include all the following information:

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

(2) Annual predicted expenses;

(3) Mortgage obligation—annual payments for principal and interest, points and financing fees, shown as dollars, not percentages;

(4) The required occupancy rate in order to meet debt service and all expenses;

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

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

(7) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may not be used;

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

(9) Accounting policies—e.g., with respect to points, financing costs and depreciation. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-680, filed 11/21/83.]

WAC 460-31A-685 Presentation of forecasts. (1) Forecasts 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 occur and may not be relied upon to indicate the actual results which will be obtained.

(2) Explanatory notes describing assumptions made and referring to risk factors should be integrated with tabular and numerical information.

(3) When a sale-leaseback is employed, the statement that the seller is assuming the operating risk and consequently may have charged a higher price for the property must be included. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-685, filed 11/21/83.]

WAC 460-31A-690 Additional disclosures and limitations. (1) Forecasts shall be for a period at least equivalent to the anticipated holding period for the property, or ten years, whichever is shorter, and project a resale occurrence, including depreciation recapture, if applicable. The forecasted resale price must be reasonable.

(2) Adequate disclosure shall be made of the changing economic effects upon the limited partners resulting principally from federal income tax consequences over the life of the partnership property, e.g., substantial tax losses in early years followed by increasing amount of taxable income in later years.

(3) Forecasts 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).

(4) In computing the return to investors, no appreciation, so called "equity buildup," or any other benefits from unrealized gains or value shall be shown or included. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-690, filed 11/21/83.]

WAC 460-31A-695 Forecasts for unimproved property programs. Forecasts 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 shall be required. Additionally, the consequences of a delayed selling program shall be shown. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-695, filed 11/21/83.]

WAC 460-31A-700 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.

In addition, the program shall not permit the participant to contract away the fiduciary duty owed to the participant by the sponsor under the common law. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-700, filed 11/21/83.]

WAC 460-31A-705 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 on the note.

(3) Deferred payments shall be evidenced by a promissory note of the investor. Such notes shall be with recourse and shall not be negotiable and shall be assignable only subject to defenses of the maker. Such notes shall not contain a provision authorizing a confession of judgment.

(4) The program shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the program.

(5) In the event of a default in the payment of deferred payments by a participant, his interests may be subjected to a reasonable penalty, as set forth in WAC 460-31A-645. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-705, filed 11/21/83.]

WAC 460-31A-710 Reserves. Provision 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 five percent of the offering proceeds will be considered adequate. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-710, filed 11/21/83.]

WAC 460-31A-715 Reinvestment of cash flow and proceeds on disposition of property. Reinvestment of cash flow (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. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-715, filed 11/21/83.]

WAC 460-31A-720 Financial information required on application. In any offering of interests by a program, the program shall provide as an exhibit to the application the following financial information:

(1) A balance sheet of any corporate sponsors as of the end of their most recent fiscal year, examined and reported upon by an independent certified public accountant and prepared in accordance with generally accepted accounting principles. An unaudited balance sheet as of a date not more than one hundred thirty-five days prior to the date of filing should also be prepared. Such statements shall be included in the prospectus.

(2) A balance sheet for each noncorporate sponsor (including individual partners or individual joint ventures of a sponsor) as of a time not more than one hundred thirty-five days prior to the date of filing an application; such balance sheet shall be examined and reported upon by an independent certified public accountant under the limited review standards set forth by

the American Institute of Certified Public Accountants, and shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus, or in the alternative, a representation that such sponsor meets the net worth requirements of WAC 460-31A-425. [Statutory Authority: RCW 21.20.180(8) and 21.20.210(14). 83-23-087 (Order SDO-215-83), § 460-31A-720, filed 11/21/83.]

WAC 460-31A-725 Opinions of counsel. The application for registration shall contain a favorable ruling from the Internal Revenue Service or an opinion of independent 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 sponsor. The administrator may request from counsel as supplemental information such supporting legal memoranda and an analysis as he 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 sponsor, 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.

There shall be included also an opinion of independent counsel to the effect that the securities being offered are duly authorized or created and validly issued interests to the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-725, filed 11/21/83.]

WAC 460-31A-730 Provisions of the partnership agreement. The requirements or provisions of appropriate portions of the following sections shall be included in a partnership agreement:

WAC 460-31A-430; 460-31A-475; 460-31A-480; 460-31A-485; 460-31A-490; 460-31A-495; 460-31A-500; 460-31A-505; 460-31A-510; 460-31A-515; 460-31A-520; 460-31A-525; 460-31A-530; 460-31A-535; 460-31A-540; 460-31A-545; 460-31A-550; 460-31A-565; 460-31A-585; 460-31A-590; 460-31A-595; 460-31A-600; 460-31A-610; 460-31A-615; 460-31A-620; 460-31A-625; 460-31A-630; 460-31A-635; 460-31A-645; 460-31A-700; 460-31A-705(4); 460-31A-710;

460-31A-715. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-730, filed 11/21/83.]

Chapter 460-32A WAC

REAL ESTATE PROGRAMS NOT EXCEEDING FIVE MILLION DOLLARS

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-400	Sales in condominiums or units in real estate development.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-32A-300	Oil and gas programs. [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.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
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.
- 460-32A-315 Title. [Order 304, § 460-32A-315, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
- 460-32A-320 Regulation B filings. [Order 304, § 460-32A-320, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
- 460-32A-325 Funds to be held in trust. [Order 304, § 460-32A-325, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.

WAC 460-32A-010 Application. (1) The rules contained in WAC 460-32A-010 through 460-32A-255 apply to registrations of real estate programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships") whose total offering does not exceed five million dollars. These rules 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.

(3) In lieu of the application of WAC 460-32A-010 through 460-32A-255, a registrant may elect to apply WAC 460-31A-410 [460-32A-410] through 460-321-730 [460-32A-730], those rules applicable to offerings whose total dollar amount exceeds five million dollars.

(4) The term "total offering" in subsection (1) above shall be liberally construed and shall, for the purposes of WAC 460-32A-010(1), apply to the total dollar amount of securities which is filed with the state securities division under one registration statement. [Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-32A-010, filed 11/21/83; 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 semiannual 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 rezoning of the property and its subsequent rezoning, 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 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 days immediately following the written notice. At said meeting, rejection of the pending acquisition by sixty-six 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 forepart 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. Furnished 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" on 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 preexisting unspecified property programs. [Order 304, § 460-32A-255, 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 460-33A WAC

REGULATIONS CONCERNING SECURITIES INVOLVING MORTGAGES, TRUST DEEDS OR PROPERTY SALES CONTRACTS

WAC

460-33A-010	Application.
460-33A-015	Definitions.
460-33A-016	Registration of real property securities.
460-33A-017	Registration not required.
460-33A-020	Optional registration procedures for securities involving real property securities.
460-33A-025	Contents of the real property securities registration statement.
460-33A-030	Contents of the specific offering circular.
460-33A-035	Limitations on the use of optional registration under WAC 460-33A-020.
460-33A-040	Net liquid assets or net worth requirement.
460-33A-050	Banks and financial institution.
460-33A-055	Trust account.
460-33A-060	Recordation.
460-33A-065	Authorization.
460-33A-070	Assignment.
460-33A-075	Advertising.
460-33A-080	Registration and examination of real property securities dealers.
460-33A-085	Registration and examination of real property securities salesperson.
460-33A-090	Denial, suspension, revocation of registration—grounds.
460-33A-100	Written statement.
460-33A-105	Appraisals.
460-33A-110	Annual reports.

WAC 460-33A-010 Application. (1) The rules contained in these regulations are intended to offer an optional method for the registrations of real estate securities involving mortgages, trust deeds or property sales contracts and related instruments. 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, if consistent with the spirit of these rules.

(2) The application of these rules in no way effects those issuers to which or to whom the debenture company sections of the Securities Act apply. If applicable, issuers must comply with those statutory sections.

(3) These rules do not affect the statutory exemptions provided for by RCW 21.20.310 or 21.20.320, nor do they intend to expand the definition of "securities" as defined in RCW 21.20.005.

(4) The rules contained in this chapter will not be applied to those securities exempt under RCW 21.20.310 or 21.20.320.

(5) The rules contained in this chapter are only applicable to real property securities, real property securities dealers and real property securities salespersons required to be registered under this chapter. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-010, filed 1/13/83.]

WAC 460-33A-015 Definitions. As used in this chapter:

(1) "Liquid assets" means cash and other nonpledged assets which are convertible into cash within a five-day period in the normal course of business.

(2) "Real property securities dealer" means a person who effects transactions involving real property securities for the person's own account or for the account of others.

(3) "Real property securities registration statement" means a registration that gives a general description of what is involved in the purchase of real property securities and the business of offering the real property securities including a description of the real property securities [dealer].

(4) "Real property securities salespersons" means a person other than a real property securities dealer who represents a real property securities dealer in effecting offers or sales of real property securities.

(5) "Real property securities" means:

(a) Notes and bonds secured by mortgage or trust deeds on real property or on a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing when offered or sold under an arrangement constituting an investment contract as described in WAC 460-33A-017 provided that, notes or bonds secured by mortgages, deeds of trust, or a vendor's interest in a property sales contracts when given by a borrower to a lender at the time of the origination of the loan in the context of a loan transaction shall not, within the context of such transaction be included within the definition of real property securities.

(b) A partial interest in more than one mortgage, trust deed, or property sales contract acquired by an investor along with other investors.

(c) An interest of several investors in a single mortgage, trust deed or single property sales contracts.

(6) "Specific offering circular" means a document describing the specific real property securities offering, which is meant to accompany the general registration statement. [Statutory Authority: RCW 21.20.450. 83-15-043 (Order SDO-90-83), § 460-33A-015, filed

7/19/83; 83-03-025 (Order SDO-7-83), § 460-33A-015, filed 1/13/83.]

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 460-33A-016 Registration of real property securities. Only those real property securities not exempted under RCW 21.20.310, 21.20.320 and WAC 460-33A-017 must be registered. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-016, filed 1/13/83.]

WAC 460-33A-017 Registration not required. Each of the following shall be exempt from registration under these regulations:

(1) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer.

(2) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, any savings bank, or any bank, savings bank, or trust company organized or supervised under the laws of any state.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any transaction in a note or bond secured by real property is exempt if the entire mortgage, deed of trust, or agreement, is offered and sold as a unit: *Provided*, That any transaction including the following elements shall not be deemed to be exempt under this provision:

(i) Guarantying the note or contract against loss at any time, or

(ii) Guarantying that payments of principal or interest will be paid, or

(iii) Assuming any payments necessary to protect the security of the note or contract, excluding necessary advances for taxes and insurance, or

(iv) Accepting, from time to time, partial payments toward the purchase of the note or contract, or

(v) Guarantying a specific yield or return on the note or contract, or

(vi) Paying any interest or premium for a period prior to actual purchase and delivery of the note or contract, or

(vii) Paying any money other than that collected from the borrower after the note or contract falls into arrears, or

(viii) Repurchasing the note or contract, provided that, this is not intended to prohibit good faith repurchases as an effort to assist the investor as long as the representation is not made at the time of sale and not as a part of the sales program, or

(ix) Accepting the grant of complete discretionary authority in collection of payments, forwarding of payments to other lienholders and investors, resolving delinquency problems, managing the investment or handling of foreclosures and the like for the investors. This does not include such servicing provided by an escrow company, the services strictly limited to the collection and remittance of interest to the investor, or services contractually necessitated by seller financed insurance, or

(x) Promising the investor a market for the resale of the real property securities. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-017, filed 1/13/83.]

WAC 460-33A-020 Optional registration procedures for securities involving real property securities. (1) An applicant for registration of a real property securities offering may elect to register the offering under this rule in lieu of following the full registration procedure under chapters 460-16A and 460-32A WAC. Registration under this chapter requires the filing of a registration application accompanied by the following, in addition to payment of the registration fee prescribed in RCW 21.20.340 and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section.

(a) One copy of the real property securities registration statement.

(b) One copy of the specific offering circular.

(c) The amount of securities to be offered in this state.

(d) A copy of any adverse order, judgment or decree previously entered in connection with the offering by any other state securities division, any court or the securities and exchange commission.

(e) One copy of the articles of incorporation and bylaws.

(2) The securities division will examine the real property securities registration statement for disclosure of material facts involving the purchase of the real property securities for disclosure of the general description of the business of the real property securities dealer and for the compliance with applicable rules.

(3) The securities division will examine the sample specific offering circular for sample disclosure of material facts concerning specific real property securities offerings. Actual copies of the specific offering circulars given to each offeree need not be filed unless such a request is made by the administrator. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-020, filed 1/13/83.]

WAC 460-33A-025 Contents of the real property securities registration statement. This registration shall provide for disclosure of all material facts which shall include the sections enumerated in the securities divisions sample form for real property securities registration statement for securities involving mortgages, trust deeds or property sales contracts, if applicable, and present a discussion of the related information as set forth in that form. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-025, filed 1/13/83.]

WAC 460-33A-030 Contents of the specific offering circular. The specific offering circular shall provide for disclosure of all material facts and shall contain at least the applicable sections enumerated in the securities divisions sample form for specific offering circulars for securities involving mortgages, trust deeds or property sale contracts, and present a discussion of the related information as set forth in that sample form. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-030, filed 1/13/83.]

WAC 460-33A-035 Limitations on the use of optional registration under WAC 460-33A-020. The following types of securities cannot be offered or sold under WAC 460-33A-020 unless written permission is obtained from the administrator based upon a showing that the investors are adequately protected:

(1) Offerings involving construction loans and loans exceeding 90 percent of the value of the property including existing improvements may not be sold using the real property securities registration statement under WAC 460-33A-020. These have to be registered separately. An offering exceeds 90 percent of the value of the property and existing improvements if the principal amount of the note secured by a mortgage or trust deed or land sale contract together with the unpaid principal amount of any senior encumbrances on the property, plus unpaid interest to date of the transaction, exceeds 90 percent of the reasonable market value of the real property including improvements.

(2) Offerings involving the real property securities dealer, its officers, agents, affiliates, and persons controlling the real property securities dealer or affiliates may not be sold as part of the optional registration unless the registration with the administrator includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups.

(3) Offerings involving documents reserving the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale.

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration. However, where only first liens are involved, the registrant may apply for a modification to allow sales up to twenty five investors.

(5) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-035, filed 1/13/83.]

WAC 460-33A-040 Net liquid assets or net worth requirement. (1) All persons and entities meeting the definition of a real property securities dealer must meet one of the following:

(a) Minimum net liquid assets of twenty five thousand dollars, to be maintained at all times. (1) To calculate the twenty five thousand dollars, total all liquid assets then subtract from that all current liabilities. (2) The real property securities dealer shall complete an affidavit semiannually to verify to the administrator that this requirement is being met. Such report shall be on such a form as may be prescribed by the director, or

(b) A minimum net worth of 5% of the amount of securities sold in this state during each fiscal year but in no instance less than \$100,000 or more than \$1,000,000. (1) To calculate net worth total all assets then subtract all liabilities as determined by generally accepted accounting practices. (2) The real property securities dealer shall complete an affidavit semiannually to verify to the administrator that this requirement is being met. Such report shall be on such a form as may be prescribed by the director.

(2) Real property securities dealers failing to meet the above mentioned minimums must inform the securities division of such failure within seventy-two hours at which time all sale of securities must be suspended. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-040, filed 1/13/83.]

WAC 460-33A-050 Banks and financial institution. For the purposes of WAC 460-33A-017 and only for the purposes of offering or selling "real property securities" the following definitions shall apply:

"Bank" shall include any holding company of such bank and any subsidiary of such bank.

"Financial institutions" shall include (1) any corporation or other entity with a net worth of \$100,000 or more and (2) any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-050, filed 1/13/83.]

WAC 460-33A-055 Trust account. (1) All funds received from lenders or investors to purchase real property securities shall be deposited in a trust account maintained for that purpose. All necessary disbursements shall be made from that account.

(2) No person acting as a real property securities dealer or his agent shall accept any purchase or investment funds for real property securities in advance of the time necessary to fund the loan transaction. No such

fund shall be maintained in such account for longer than sixty days without disbursing the funds unless there is a separate written agreement to do so: *Provided*, That the interest from funds so retained shall not accrue to the benefit of the real property securities dealer or his agent.

(3) The trust agreement shall provide that the funds will not be subject to the real property securities dealer's creditors.

(4) The account shall be subject to an audit at any reasonable time by the securities division. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-055, filed 1/13/83.]

WAC 460-33A-060 Recordation. Every person acting as a real property securities dealer or his agent selling real property securities must record the applicable instrument in the applicable place before any disbursement of funds takes place. Such recorded instrument must bear the name of the lienholder or beneficiary and not the name of the real property securities dealer unless the real property securities dealer is the actual lender: *Provided*, That such lienholder or beneficiary may by written request specify otherwise. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-060, filed 1/13/83.]

WAC 460-33A-065 Authorization. (1) Every person acting as a real property securities dealer who undertakes to service a real property security shall have a written authorization from the lender or holder of the contract setting forth specifically what services will be provided. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-065, filed 1/13/83.]

WAC 460-33A-070 Assignment. Every real property securities dealer or his agent who lends or finances transactions and later offers these as real property securities to lenders or investors must disclose his interest in the property or the transaction and must not disburse funds from the trust account until the applicable instrument has been properly recorded in the name of the new assignee; provided that the lender or investor may by written request specify otherwise. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-070, filed 1/13/83.]

WAC 460-33A-075 Advertising. (1) No person effecting transaction in real property securities shall advertise in any manner any statement or representation, with regard to any real property security, which is false, misleading or deceptive.

(2) Every real property securities dealer or his agent shall file with the administrator five days prior to use, true copies of all advertising materials. If not disallowed by written notice or otherwise within five days from the date filed, the material may be disseminated. No dealer shall use any such material in any way after the administrator gives written notice that such material contains any statement or omission that is false or misleading.

[Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-075, filed 1/13/83.]

WAC 460-33A-080 Registration and examination of real property securities dealers. (1) Every person acting as a real property securities dealer, unless otherwise exempt, must first obtain a broker dealers license.

(2) Every applicant for registration as a real property securities dealer shall pass the Uniform Securities Agent State Law Examination (Series 63) with a score of 70% or better and complete the application form as prescribed by the director.

(3) Every applicant shall provide the securities administrator proof of compliance with WAC 460-33A-040. (Net liquid asset or net worth requirement.)

(4) For registration of a real property securities dealer, the fee shall be one hundred fifty dollars for original registration and seventy five dollars for each annual renewal. The licenses shall be effective until December 31 of the year of passage at which time it shall be renewed or delinquent. For any renewal application postmarked after December 31 but before March 1 the late fee shall be twenty five dollars. No renewal applications will be accepted after March 1. Such licensee must submit a new application and filing fee. When an application is denied or withdrawn, the director shall return one-half the fee.

(5) A person may elect to register under this section in lieu of the full registration procedures under chapter 460-20A WAC only if the applicant deals solely in real property securities as defined herein.

(6) Upon written application and approval, the administrator may exempt from the testing requirement for both real property securities dealers and salespersons no more than a total of two officers of the original real property securities offering. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-080, filed 1/13/83.]

WAC 460-33A-085 Registration and examination of real property securities salesperson. (1) Every person acting as a real property securities salesperson, unless otherwise exempt, must first obtain a salesperson's license and be employed by a real property securities dealer.

(2) Every applicant for registration as a real property securities salesperson, shall pass the Uniform Securities Agent State Law Examination (Series 63) with a score of 70% or better and complete the application form prescribed by the director.

(3) For registration of a real property securities salesperson, the fee shall be thirty five dollars for original registration and fifteen dollars for each annual renewal. The licenses shall be effective until December 31 of the year of passage at which time it shall be renewed or delinquent. For any renewal application postmarked after December 31 but before March 1, the late fee shall be ten dollars. No renewal applications will be accepted after March 1. Such licensee must submit a new application and filing fee. When an application is denied or withdrawn, the director shall retain one-half the fee.

(4) A person may elect to register under this section in lieu of the full registration procedures under chapter 460-20A WAC only if the applicant deals solely in real property securities.

(5) Upon written application and approval, the administrator may exempt from the testing requirement for both real property securities dealers and salespersons no more than a total of two officers of the original real property securities offering. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-085, filed 1/13/83.]

WAC 460-33A-090 Denial, suspension, revocation of registration—grounds. The administrator may by order deny, suspend, or revoke registration of any real property securities dealer or real property securities salesperson if the administrator finds that the order is in the public interest and that the applicant or registrant or, in the case of the real property securities dealer any partner, officer or director:

(1) Has filed an application for registration which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has wilfully violated or wilfully failed to comply with any provision of the Securities Act or a predecessor act or any rule or order thereunder;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security or any aspect of the securities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser salesperson;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or the substantial equivalent of those terms as defined in the Securities Act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order;

(7) Has engaged in dishonest or unethical practices in the securities business;

(8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against a real property securities dealer under this clause without a

finding of insolvency as to the real property securities dealer; or

(9) Has not complied with a condition imposed by the director under WAC 460-33A-080 or 460-33A-085 on the basis of such factors as training, experience, or knowledge of the securities business; or

(10) Has not complied with WAC 460-33A-055;

(11) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-090, filed 1/13/83.]

WAC 460-33A-100 Written statement. Every person selling a real property security that is required to be registered under these regulations shall require the purchaser or his agent or appointee of such to sign a receipt for the offering circular containing all the applicable information required by WAC 460-33A-025 and 460-33A-030 before the purchaser shall be obligated to fund the transaction. No seller shall permit the purchaser to sign such receipt if any of the required information is omitted. The seller shall retain an executed copy of receipt for four years. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-100, filed 1/13/83.]

WAC 460-33A-105 Appraisals. (1) An appraisal of each parcel of real property which relates to a transaction subject to the provisions of this chapter shall be made by the real property securities dealer or by an independent appraiser unless the purchaser of the obligation to which the parcel relates indicates in writing that he will obtain his own appraisal. An appraisal by the dealer or agent or waiver thereof shall be kept on file for four years.

(2) An appraisal made by either of the above mentioned individuals within the 12 month period prior to the sale of the real property security is sufficient. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-105, filed 1/13/83.]

WAC 460-33A-110 Annual reports. (1) Every real property securities dealer shall file with the administrator annually, a report containing financial statements prepared in accordance with generally accepted accounting principles, accompanied by an opinion thereon by a certified public accountant or a public accountant, based upon an examination in accordance with generally accepted accounting standards. The report shall include, but not be limited to the receipt and disposition of all funds handled in connection with transactions subject to these rules. The report shall be filed with the administrator within 90 days after the close of the period of the report unless, for good cause shown, the administrator in writing, extends the time therefor. The report shall contain the following:

(a) Total number of sales, as principal or agent, subject to these rules during the period, and

(b) Total dollar volume of such sales.

(2) When the requirement under subsection (1) would cause undue hardship and where good cause is shown, the administrator may waive the requirement for audited financials. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-110, filed 1/13/83.]

Chapter 460-34A WAC OIL AND GAS PROGRAMS

WAC

460-34A-010	Application.
460-34A-015	Definitions.
460-34A-020	Net worth, experience and investment requirements of sponsor.
460-34A-025	Participants suitability standards.
460-34A-030	Minimum investment.
460-34A-035	Fees, compensation and expenses.
460-34A-037	Organization and offering expenses, and management fees.
460-34A-040	Promotional compensation.
460-34A-045	Program expenses.
460-34A-050	Transactions with affiliates.
460-34A-055	Farm-outs.
460-34A-060	Rights and obligations of participants.
460-34A-065	Assessability and defaults.
460-34A-070	Voting rights of limited partners.
460-34A-075	Minimum program capital.
460-34A-080	Temporary investment of proceeds.
460-34A-085	Return of unused proceeds.
460-34A-090	Deferred payments.
460-34A-095	Cash redemption values.
460-34A-100	Future exchange.
460-34A-105	Reinvestment of revenues.
460-34A-110	Distribution of revenues.
460-34A-112	Selling of units.
460-34A-115	Sales materials and marketing restrictions.
460-34A-120	Contents of the prospectus.
460-34A-125	Financial information required on applications.
460-34A-130	Opinions of counsel.
460-34A-135	Liability and indemnification.
460-34A-200	Regulation B filings.

WAC 460-34A-010 Application. The rules contained in this chapter apply to the registration of oil and gas programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships") and will be applied by analogy to oil and gas programs in other forms. While applications not conforming to the standards contained in this chapter shall be looked upon with disfavor, where good cause is shown, certain standards may be modified or waived by the administrator if consistent with the spirit of these rules. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-010, filed 9/14/83.]

WAC 460-34A-015 Definitions. As used in this chapter:

(1) "Affiliate" means, in addition to those persons set out in WAC 460-10A-060, any person 10 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by such other person.

(2) "Capital expenditures" means those costs which are generally accepted as capital expenditures pursuant to the provisions of the Internal Revenue Code.

- (3) "Cost" means, when used with respect to property,
- (a) The sum of the prices paid by the seller for such property, including bonuses;
- (b) Title insurance or examinations costs, brokers' commissions, filing fees, recording costs, transfer taxes, if any, and like charges in connection with the acquisition of such property; and
- (c) Rentals and ad valorem taxes paid by the seller with respect to such property to the date of its transfer to the buyer, interest on funds used to acquire or maintain such property, and such portion of the seller's reasonable, necessary and actual expenses for geological, geophysical, seismic, land engineering, drafting, accounting, legal and other like services allocated to the property in accordance with generally accepted industry practices, except for expenses in connection with the past drilling of wells which are not producers of sufficient quantities of oil or gas to make commercially reasonable their continued operations, and provided that the expenses enumerated in subsection (c) hereof shall have been incurred not more than 36 months prior to the purchase by the program; provided that such period may be extended, at the discretion of the administrator upon proper justification. When used with respect to services, "cost" means the reasonable, necessary and actual expense incurred by the seller on behalf of the program in providing such services, determined in accordance with generally accepted accounting principles. As used elsewhere, "cost" means the price paid by the seller in an arm's-length transaction.
- (4) "Development well" means a well drilled as an additional well to the same reservoir as other producing wells on a lease, or drilled on an offset lease usually not more than one location away from a well producing from the same reservoir.
- (5) "Exploratory well" means a well drilled either
- (a) In search of a new and as yet undiscovered pool of oil or gas, or
- (b) With the hope of greatly extending the limits of a pool already developed.
- (6) "Farm-out" means an agreement whereby the owner of the leasehold or working interest agrees to assign his interest in certain specific acreage to the assignees, retaining some interest such as an overriding royalty interest, an oil and gas payment, offset acreage or other type of interest, subject to the drilling of one or more specific wells or other performance as a condition of the assignment.
- (7) "General and administrative overhead" means all customary and routine legal, accounting, geological, engineering, well supervision fee, travel, office rent, telephone, secretarial, salaries, and other incidental reasonable expenses necessary to the conduct of the partnership business, and generated by the sponsor.
- (8) "Landowner's royalty interest" means an interest in production, or the proceeds therefrom, to be received free and clear of all costs of development, operation, or maintenance, reserved by a landowner upon the creation of an oil and gas lease.

(9) "Noncapital expenditures" means expenditures that under present law are generally accepted as fully deductible currently for federal income tax purposes.

(10) "Operating costs" means expenditures made and costs incurred in producing and marketing oil or gas from completed wells, including, in addition to labor, fuel, repairs, hauling, materials, supplies, utility charges and other costs incident to or therefrom, ad valorem and severance taxes, insurance and casualty loss expense, and compensation to well operators or others for services rendered in conducting such operations.

(11) "Organization and offering expenses" means all costs of organizing and selling the offering including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys), expenses for printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories, engineers and other experts, expenses of qualification of the sale of the securities under federal and state law, including taxes and fees, accountants' and attorneys' fees.

(12) "Overriding royalty interest" means an interest in the oil and gas produced pursuant to a specified oil and gas lease or leases, or the proceeds from the sale thereof, carved out of the working interest, to be received free and clear of all costs of development, operation, and maintenance.

(13) "Program" means or refers to a single partnership. (This does not mean that a prospectus may not offer a series of partnerships, with individual partnerships being formed in sequence as the minimum amount necessary to form a partnership is obtained.)

(14) "Prospect" means an area in which the program owns or intends to own one or more oil and gas interests, which is geographically defined on the basis of geological data by the sponsor of such program and which is reasonably anticipated by the sponsor to contain at least one reservoir.

(15) "Proved reserves" means those quantities of crude oil, natural gas, and natural gas liquids which, upon analysis of geologic and engineering data, appear with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Proved reserves are limited to those quantities of oil and gas which can be expected, with little doubt, to be recoverable commercially at current prices and costs, under existing regulatory practices and with existing conventional equipment and operating methods. Depending upon their status of development, such proved reserves shall be subdivided into the following classifications:

(a) "Proved developed reserves." These are proved reserves which can be expected to be recovered through existing wells with existing equipment and operating methods. This classification shall include:

(i) "Proved developed producing reserves." These are proved developed reserves which are expected to be produced from existing completion interval(s) now open for production in existing wells; and

(ii) "Proved developed nonproducing reserves." These are proved developed reserves which exist behind the casing of existing wells, or at minor depths below the present bottom of such wells, which are expected to be produced through these wells in the predictable future, where the cost of making such oil and gas available for production should be relatively small compared to the cost of a new well.

Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "proved developed reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(b) "Proved undeveloped reserves." These are proved reserves which are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units, which are virtually certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation.

Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir. If warranted, however, a narrative discussion can be provided to point out those areas where future drilling or other operations may develop oil and gas production which at the time of filing is considered too uncertain to be expressed as numerical estimates for proved reserves.

(16) "Sponsor" means, in addition to those persons set out in WAC 460-10A-155, any person who, pursuant to a contract with the program, regularly performs or selects the person who performs 25% or more of the exploratory, developmental or producing activities of the program or segment thereof.

(17) "Working interest" means an interest in an oil and gas leasehold which is subject to some portion of the expense of development, operation or maintenance. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-015, filed 9/14/83.]

WAC 460-34A-020 Net worth, experience and investment requirements of sponsor. (1) Net worth. (a) The financial condition of the general partner must be commensurate with any financial obligations assumed by it. The general partner must specifically have a minimum aggregate net worth at all times equal to 5% of participants' capital in all existing programs organized by the general partner plus 5% of total subscriptions in the program being offered, but such minimum required net worth shall in no case be less than \$100,000 nor shall net worth in excess of \$1,000,000 be required. An

individual general partner's net worth shall be determined exclusive of home, home furnishings and automobiles. Audited balance sheets of sponsors shall be furnished, except that in the event that an individual is a general partner, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual general partner may be accepted for the purpose of determining said required net worth, in the discretion of the administrator, and such unaudited statement will be carefully scrutinized.

(b) In determining a general partner's net worth, the discounted value of proved reserves, as determined by an independent petroleum appraiser, of oil, gas and other minerals owned by a general partner may be used. Notes and accounts receivables from all programs, interests in all programs, and all contingent liabilities will be scrutinized carefully to determine the appropriateness of their inclusion in the net worth computation. If an individual general partner's net worth is used in complying with the above requirements, a statement as to such net worth shall be included in the prospectus.

(c) If more than one person acts or serves as general partner of a program, the net worth requirements may be met by aggregating the net worth of all such persons. In addition, the net worth of any guarantor of the general partner's obligations to or for the program may be included in the net worth computation, but only if the guarantor's liability is coextensive with that of the general partner.

(2) Experience. The general partner or its chief operating officers shall have at least three years relevant oil and gas experience demonstrating the knowledge and experience to carry out the stated program policies and to manage the program operations. Additionally, the general partner or any affiliate providing services to the program shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed. If any managerial responsibility for the program is to be rendered by persons other than the general partner, then such persons must be identified in the prospectus, their experience must be similar to that required of a general partner and must be set out in the prospectus, and a contract setting forth the basis of their relationship with the program must be filed with and not disapproved by the administrator.

(3) In appropriate cases, the administrator may require that the sponsor purchase for cash a minimum amount of participation units. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-020, filed 9/14/83.]

WAC 460-34A-025 Participants suitability standards. (1) In view of the limited transferability, the relative lack of liquidity, the high risk of loss or the specific tax orientation of many oil and gas programs, suitability standards which are reasonably related to the risks to be undertaken, will be required for the participants, and they must be set forth both in the prospectus and in a written instrument to be executed by each participant.

(2) The sponsor and each person selling limited partnership interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the limited partnership interests are appropriate in light of the suitability standards as required, whether purchase is appropriate to the customers' investment objectives and financial situations, whether the participant can reasonably benefit from the program and whether the participant is able to bear the economic risk of the investment.

(3) For purposes of determining whether the participant can meet the criteria in WAC 460-34A-025(2), the following shall be evidence thereof:

(a) The participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

- (i) The nature of employment experience;
- (ii) Educational level achieved;
- (iii) Access to advice from qualified sources, such as attorney, accountant and tax adviser; and
- (iv) Prior experience with investments of a similar nature.

(b) The participant has apparent understanding of the fundamental risks, possible financial hazards of the investment and the lack of liquidity of the investment.

(c) The participant has the following, unless circumstances warrant and the administrator allows another standard:

(i) A net worth of \$225,000 or more (exclusive of home, furnishings and automobiles), or

(ii) A net worth of \$60,000 or more (exclusive of home, furnishings, and automobiles) and had during the last tax year, or estimates that he will have during the current tax year, "taxable income" as defined in Section 63 of the Internal Revenue Code of 1954, as amended, of \$60,000 or more, without regard to the investment in the program.

(4) In the case of programs engaged primarily in investing in income producing properties (production purchase program) the administrator may allow lower suitability standards than those described in (c) above. Subject to a satisfactory showing as to the plan of business of the program, the following suitability standards will be deemed reasonable:

(a) The participant has a net worth of \$90,000 or more (exclusive of home, furnishings and automobiles), or

(b) The participant has a net worth of \$25,000 (exclusive of home, furnishings and automobiles) and an annual income of \$25,000 or more.

(5) The broker-dealer or sponsor shall retain for at least six years all records necessary to substantiate the fact that program interests were sold only to purchasers for whom such securities were suitable. The administrator may require broker-dealers or sponsors to obtain from the purchaser a letter justifying the suitability of such investment. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-025, filed 9/14/83.]

WAC 460-34A-030 Minimum investment. For a drilling program, the minimum purchase shall not be less than \$5,000 and the initial investment by a participant not less than \$5,000, and for an income or production purchase program, the minimum purchase shall not be less than \$2,500 and the initial investment not less than \$2,500. All of the aforesaid minimums must be paid within 12 months from the date the program commences. Assignability of the unit must be limited so that no assignee (transferee) or assignor (transferor) may hold less than the prescribed minimums except by gifts or by operation of law. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-030, filed 9/14/83.]

WAC 460-34A-035 Fees, compensation and expenses. The total amount of consideration of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable. Such consideration may include but is not limited to:

(a) Organization and offering expenses and management fees

(b) Promotional compensation; and

(c) Program expenses. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-035, filed 9/14/83.]

WAC 460-34A-037 Organization and offering expenses, and management fees. (1) All organization and offering expenses incurred in order to sell program units shall be reasonable, and the total of those organization and offering expenses, which may be charged to the program, plus any management fee, which may be charged by the sponsor, shall not exceed 15% of the initial subscriptions.

(2) Commissions payable on the sale of program units shall be paid in cash solely on the amount of initial subscriptions. Payment of commissions in the form of overriding royalties, net profit interests or other interests in production will not be approved, except that no objection will be raised to the payment of commissions in the form of interests in the program, provided the amount does not exceed that purchasable by applying the aggregate cash commission allowable to the unit offering price.

(3) All items of compensation to underwriters or broker-dealers, including, but not limited to, selling commissions, expenses, rights of first refusal, consulting fees, finders' fees and all other items of compensation of any kind or description paid by the program, directly or indirectly, shall be taken into consideration in computing the amount of allowable selling commissions. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-037, filed 9/14/83.]

WAC 460-34A-040 Promotional compensation. (1) The participation in program revenues by the sponsor and any affiliate shall be reasonable taking into account all relevant factors. Overriding royalty interests will be looked upon with disfavor. Sponsors' interests in revenues will be considered reasonable if they meet the standards set forth below. Any other combination of

fees, working or net profits interests, or interests subordinated to payout to the public investors, which are justified, in light of the entire offering, may be considered reasonable by the administrator. References in this section WAC 460-34A-040 to a percent of revenues refer to that percent of program revenues, and references to a percent working interest refer to that percent of the working interest owned by a program in a prospect, if the program does not own the total working interest.

(2) **Drilling program—Functional allocation.** (a) Where the sponsor agrees to pay all capital expenditures of the program, but in any case at least 10% of the capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates), his share or revenues will be determined by the following formula:

(i) If the agreement is to pay all capital expenditures but in any case a sum of not less than 10% of the capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates), the sponsor will be entitled to receive 35% of program revenues;

(ii) The sponsor's revenue sharing may be increased in additional increments of 5% for each additional 5% increase in the percentage of capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates) agreed to be paid by him up to a maximum of 50% of revenues subject to sponsor's agreement to pay in any case all capital expenditures.

(b) As one alternative to subdivision (a), the sponsor may elect to receive 15% of revenues and an additional percentage of revenues determined by computing the sponsor's capital expenditures as compared to total costs associated with obtaining production, on a prospect basis, until such time as the sponsor shall have received from such additional percentage of revenues an amount equal to his capital expenditures; after which, revenues shall be distributed as follows: 15% of revenues to the sponsor and 85% of revenues to the participants until the participants shall have received on a program basis a return of their capital contributions in cash and then 15% plus the additional percentage of revenues shall be paid to the sponsor and the remainder to the participants.

(c) In connection with other possible alternatives that may be submitted to the above subdivision (a), a promotional interest in excess of 25% on a program basis will not be permitted, and a minimum commitment by the sponsor to pay at least 10% of the total program's contributions will be required.

(d) The aforesaid arrangement to pay capital expenditures refers to and includes all capital expenditures for the drilling and completing of wells during the life of the program, but does not include capital expenditures for facilities downstream of a wellhead. If the sponsor should enter into farm-out or other arrangements through which only he is relieved of his obligations to pay for such capital expenditures, then the sponsor's share of revenue shall be proportionately reduced, the amount to be determined on an individual basis.

(e) In order to elect a sharing arrangement as above provided, the sponsor must have a net worth of \$300,000 or 10% of the total contributions to the program by the participants, whichever is greater, and must be under a contractual obligation to pay his share of expenses as such expenses are paid by the program and to complete his minimum financial commitment to the program by the payment of cash by the end of the third fiscal year succeeding the fiscal year in which the program commenced operations. Any additional contributions made by the sponsor will be used to pay program expenses which would otherwise be charged to the participants.

(f) For the purposes of this subsection, if a well is not abandoned within 60 days following the commencement of production, then it shall be deemed to be a commercial well insofar as the program is concerned and the sponsor may not recapture its capital expenditures from the program, which otherwise would be treated as non-capital expenditures upon abandonment. As used herein, production shall refer to the commencement of the commercial marketing of oil or gas, and shall not include any spot sales of oil or gas produced as a result of testing procedures. All revenues from a well abandoned under this subsection shall be allocated pro rata to those persons bearing the costs of such well.

(g) The sharing arrangement set forth in this subsection shall not be considered presumptively reasonable (i) in the case of sharing arrangements in which the sponsor pays all development costs and exploratory wells are drilled on prospects which cannot reasonably be expected to require developmental drilling if the exploratory drilling is successful, or (ii) in the case of sharing arrangements where the sponsor does not pay his share or category of costs on a current basis.

(3) **Drilling programs—Subordinated or reversionary working interest.** (a) As an alternative to sharing revenues on a basis related to costs paid, it will be considered reasonable for a sponsor of a drilling program to receive a promotional interest in the form of a subordinated percentage of the working interest. The holder of a subordinated working interest shall be entitled to receive his share of revenues only after the participants have had allocated to their respective accounts an amount determined in accordance with either one of the following alternative formulas:

(i) An amount which reflects that the participants' share of revenues from production and other items credited to a prospect equal the sum of the costs of acquisition, drilling and development, all costs of operating the leases underlying the prospect, and an appropriately allocated portion of all other program expenses, including organizational and offering expenses in which case the sponsor shall be entitled to 25% of program revenues, or

(ii) An amount which reflects that the revenues of the program equal all the expenses of the program, in which case the sponsor's interest may equal up to 33 1/3% of program revenues.

(b) At such time as the sponsor is entitled to receive his promotional interest, he shall also bear program costs in the same ratio as he participates in program revenues.

(4) **Income or production purchase programs.** (a) Where a major portion of the sponsor's management and operating responsibilities are performed by third parties, the cost of which is paid by the program, the sponsor may take a 3% working interest convertible to not more than a 5% working interest after the return from production to the investors of 100% of their capital contribution, computed on a total program basis.

(b) Where the sponsor maintains the operating capabilities and technical staff so as to be in a position to, and in fact does, provide the program with a major part of the management and operating responsibilities of the program, the sponsor may take no more than a 15% working interest.

(c) Where the individual characteristics of specific programs warrant modification from the above two approaches to production purchase programs, they will be accommodated, insofar as possible, while still being consistent with the aforesaid compensation arrangements.

(d) The sponsor's interest in a program or in properties owned by a program shall bear a pro rata share of all costs, expenses and obligations of the program including, but not limited to, costs of operations, general and administrative expenses, debt service and any other items of expense chargeable to the operation of the program.

(5) The sharing arrangement set forth above in this rule shall not be considered presumptively reasonable for a sponsor who does not actively participate in obtaining a significant portion of the program's prospects and who does not assume management responsibility for drilling, completing, equipping and operating a significant portion of a program's wells, unless such sponsor shall satisfactorily demonstrate that his compensation together with the costs of procuring such services for the program from third parties does not exceed the permissible compensation to the sponsor set forth above in this rule. For purposes of these rules, a sponsor shall be deemed to be actively participating in obtaining a significant portion of a program's prospects if the sponsor has in-house or under contract the technical capability of originating or fully evaluating the prospects to be acquired by that program. "Prospect origination" is the process of formulating a geological or geophysical concept and negotiating for the acquisition of a sufficient acreage interest in the area to warrant drilling and testing. "Prospect evaluation" is the process of determining the viability of a prospect which has been originated by a third party.

(a) The sponsor's ability to originate or evaluate the prospects he intends to transfer to the program shall be disclosed in the "operation" section of the offering circular and in the "management section" if in-house or if the capability is provided by third parties under contract, the third party should be identified, their qualifications described and the contracted nature of the arrangement fully disclosed, including the administrative process involved.

(b) If the capability is provided by third parties, it will be deemed presumptively unreasonable if the contracts do not provide the program with comparable capabilities

to those that would be provided if the sponsor's capability was in-house, including, among other things, availability of technical expertise and the provision of adequate response time. Unless the sponsor can adequately demonstrate the availability of such capability, it will not be permitted to elect any of the sharing of costs and revenues described in the rules of this chapter. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-040, filed 9/14/83.]

WAC 460-34A-045 Program expenses. (1) All actual and necessary expenses incurred by the program may be paid by the sponsor out of capital contributions and out of program revenues.

(2) A sponsor may be reimbursed out of capital contributions and program revenues for all actual and necessary direct expenses paid or incurred by it in connection with its operation of a program, and for an allocable portion of its general and administrative overhead, computed on a cost basis and determined in accordance with generally accepted accounting principles, subject to annual independent audit. Administrative and similar charges for services must be fully supportable as to the necessity thereof and the reasonableness of the amount charged.

(3) The sponsor shall bear a percentage of general and administrative overhead equal to its percentage of revenue participation.

(4) The following is a sample format for tabular disclosure for information described in this rule. The format tabular presentation should be modified to fit a particular circumstance of each program and the allocation formula chosen should be adequately disclosed.

ESTIMATED PROGRAM EXPENSES

The sponsor estimates that direct expenses and general and administrative expenses allocable to the program for the first twelve months of operation will be approximately \$ if the minimum program capital is received (representing % of program capital) and approximately \$ if the maximum program capital is received (representing % of program capital). The sponsor estimates that the components of such allocable amounts will be as follows:

	Minimum Program	Maximum Program
General and administrative overhead		
Legal	\$	\$
Accounting		
Geological		
Engineering		
Well Supervision fees		
Travel		
Office rent		
Telephone		
Secretarial		
	Minimum Program	Maximum Program
Salaries of officers, directors and other principals	\$	\$
Other (list)		

	Minimum Program	Maximum Program
Direct expenses		
External legal
Audit fees
Independent engineering reports
Outside computer services
Other (list)
TOTAL	\$	\$

The steps followed to determine the amounts of general and administrative overhead to be allocated to the program are enumerated as follows:

- 1.
- 2.
- 3.
4. etc.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-045, filed 9/14/83.]

WAC 460-34A-050 Transactions with affiliates. (1) Sales and purchases of properties. (a) Neither the sponsor of a drilling program nor any affiliated person shall sell, transfer or convey any property to or purchase any property from the program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions:

(i) In the case of a sale, transfer or conveyance to a program;

(A) The prospectus discloses the fact that the sponsor will sell, transfer or convey property to the program and whether or not the property will be sold from the sponsor's existing inventory.

(B) The property is sold, transferred or conveyed to the program at the cost of the sponsor, unless the seller has reasonable grounds to believe that cost is materially more than the fair market value of such property, in which case such sale should be made for a price not in excess of its fair market value.

(C) If the sponsor sells, transfers or conveys any oil, gas or other mineral interests or property to the program, he must, at the same time, sell to the program an equal proportionate interest in all his other property in the same prospect. If the sponsor or any affiliate subsequently proposes to acquire an interest in a prospect in which the program possesses an interest or in a prospect abandoned by the program within one year preceding such proposed acquisition, the sponsor shall offer an equivalent interest therein to the program; and, if cash or financing is not available to the program to enable it to consummate a purchase of an equivalent interest in such property, neither the sponsor nor any of its affiliates shall acquire such interest or property. The term "abandon" for the purpose of the subsection shall mean the termination, either voluntarily or by operation of the lease or otherwise, of all of the program's interest in the prospect. The provisions of this subsection shall not apply after the lapse of 5 years from the date of formation of the program. For the purpose of this subsection, the terms "sponsor" and "affiliate" shall not include another

program where the interest of the sponsor is identical to, or less than, his interest in the subject program.

(D) A sale, transfer or conveyance of less than all of the ownership of the sponsor in any interest or property is prohibited unless the interest retained by the sponsor is a proportionate working interest, the respective obligations of the sponsor and the program are substantially the same after the sale of the interest by the sponsor and his interest in revenues does not exceed the amount proportionate to his retained working interest. The sponsor may not retain any overrides or other burden on the interest conveyed to the program and may not enter into any farm-out arrangements with respect to his retained interest, except to nonaffiliated third parties or other programs managed by the sponsor.

(ii) In the case of a transfer of nonproducing property from a program, the transfer is made at a price which is the higher of the fair market value or the cost of such property.

(iii) The sponsor, or affiliates other than other public programs, shall not be permitted to purchase producing property from a program.

(b) Neither the sponsor of a production purchase program nor any affiliated person shall sell, transfer or convey any property to or purchase any property from the program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions:

(i) In the case of a purchase from or sale to a program.

(A) The prospectus discloses the fact that the sponsor may sell property to the program and whether or not the property will be sold from the sponsor's existing inventory.

(B) The purchase from or sale to the program is at cost as adjusted for intervening operations, unless the sponsor has reasonable grounds to believe that cost is materially more than or less than the fair market value of such property, in which case such sale or purchase should be made for a price not in excess of its fair market value, as determined by an independent petroleum reservoir engineer.

(ii) Any such transaction must be consistent with the objectives of the program.

(c) The program shall not purchase properties from nor sell properties to any program in which its sponsor or any affiliated person has an interest. This subsection shall not apply to transactions among programs for whom the same person acts as sponsor by which property is transferred from one to another in exchange for the transferee's obligation to conduct drilling activities on such property or to joint ventures among such programs, provided that the respective obligations and revenue sharing of all parties to the transactions are substantially the same and provided further that the compensation arrangement or any other interest or right of the sponsor and any affiliated person of such sponsor is the same in each program, or, if different, the aggregate compensation of the sponsor does not exceed the

lower of the compensation he would have received in any one of the programs.

(2) **Restricted and prohibited transactions.** (a) During the existence of a program and before it has ceased operations, neither the sponsor nor any affiliate (excluding another program where the interest of the sponsor is identical to or less than his interest in the first program) shall acquire, retain, or drill for its own account any oil and gas interest in any prospect upon which such program possesses an interest, except for transactions which comply with WAC 460-34A-050 (1)(a)(i)(D). In the event the program abandons its interest in a prospect, this restriction shall continue for one year following abandonment. The geological limits of a prospect shall be enlarged or contracted on the basis of subsequently acquired geological data to define the productive limits of a reservoir, and must include all of the acreage determined by the subsequent data to be encompassed by such reservoir; provided however, that the program shall not be required to expend additional funds unless they are available from the initial capitalization of the program or if the sponsor believes it is prudent to borrow for the purpose of acquiring such additional acreage. If the geological limits of a prospect as so enlarged encompass any interest held by a sponsor or affiliate, that interest shall be sold to the program in accordance with the provisions of WAC 460-34A-050 (1)(a)(i)(C) above if the interest held by the sponsor at the time of the prospect's enlargement has been proved up by the program.

(b) A sponsor shall not take any action with respect to the assets or property of the program which does not primarily benefit the program, including among other things:

(i) The utilization of program funds as compensating balances for its own benefit, and

(ii) The commitment of future production.

(c) All benefits from marketing arrangements or other relationships affecting property of the sponsor and the program shall be fairly and equitably apportioned according to the respective interests of each.

(d) Any agreements or arrangements which bind the program must be fully disclosed in the prospectus.

(e) Anything to the contrary notwithstanding, a sponsor may never profit by drilling in contravention of his fiduciary obligation to the participants.

(f) Neither the sponsor nor any affiliate shall render to the program any oil field, equipment or drilling services nor sell or lease to the program any equipment or related supplies unless:

(i) Such person is engaged, independently of the program and as an ordinary and ongoing business, in the business of rendering such services or selling or leasing such equipment and supplies to a substantial extent to other persons in the oil and gas industry in addition to programs in which he has an interest,

(ii) The compensation, price or rental therefor is competitive with the compensation, price or rental of other persons in the area engaged in the business of

rendering comparable services or selling or leasing comparable equipment and supplies which could reasonably be made available to the program,

(iii) The drilling services are billed on either a per foot, per day, or per hour rate, or some combination thereof, and

(iv) Provided, that, if such person is not engaged in a business within the meaning of subdivision (i), then such compensation, price or rental shall be the cost of such services, equipment or supplies to such person or the competitive rate which could be obtained in the area whichever is less.

(g) With the exception of compensation authorized by WAC 460-34A-040, all services for which the sponsor and any affiliated person 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.

(h) No loans may be made by the program to the sponsor.

(i) On loans made available to the program by the sponsor, the sponsor may not receive interest in excess of its interest costs, nor may the sponsor receive interest in excess of the amounts which would be charged the program (without reference to the sponsor's financial abilities or guarantees) by unrelated banks on comparable loans for the same purpose and the sponsor shall not receive points or other financing charges or fees regardless of the amount.

(3) **Custody of program funds and properties.** (a) Funds of a program must not be commingled with funds of any other entity and the prospectus must so state. Advance payments to the sponsor or its affiliates should be prohibited, except where necessary to secure tax benefits of prepaid drilling costs. Advance payments should not include nonrefundable payments for completion costs prior to the time that a decision is made that the well or wells warrant a completion attempt.

(b) Program properties may be held in the names of nominees temporarily to facilitate the acquisition of properties and for similar valid purposes. On a permanent basis, program properties may be held in the name of a special nominee entity organized by the general partner provided the nominee's sole purpose is holding of record title for oil and gas properties and it engages in no other business and incurs no other liabilities. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-050, filed 9/14/83.]

WAC 460-34A-055 Farm-outs. (1) **Disclosure.** (a) The prospectus shall state the circumstances under which the sponsor may farm-out a prospect or lease, the ability to farm-out to other public programs of the sponsor or its affiliates and any limitations on the ability to farm-out to such public programs.

(b) If the sponsor or any of its affiliates enters into a farm-out or other similar agreement with its program all such transactions must be in accordance with these guidelines and subject to the following conditions:

(i) The sponsor, exercising the standard of a prudent operator shall determine that the farm-out is in the best interests of the program, and

(ii) The terms of the farm-out are consistent with and in any case no less favorable than those utilized in the geographic area for similar arrangements.

(c) No program lease will be farmed out, sold or otherwise disposed of unless the sponsor, exercising the standard of a prudent operator, determines:

(i) The program lacks sufficient funds to drill on the leases and cannot obtain suitable alternative financing for such drilling; or

(ii) The leases have been downgraded by events occurring after assignment to the program so that drilling would no longer be desirable for the program; or

(iii) Drilling on the leases would result in an excessive concentration of program funds creating in the sponsor's opinion undue risk to the program; or

(iv) The best interests of the program would be served by the farm-out.

(2) **Conflict of interest.** (a) The prospectus shall state that the decision with respect to making a farm-out and the terms of a farm-out to a program involve conflicts of interest, as the sponsor may benefit from cost savings and reduction of risk, and in the event of a farm-out to an affiliated public program, the sponsor will represent both partnerships.

(b) The prospectus shall contain a statement regarding farm-outs from a drilling or combination program to another such program meeting the requirements of WAC 460-34A-050 (1)(c).

(c) Except as required by WAC 460-34A-050 (1)(a)(i)(C) the prospectus shall state that the program shall acquire only those leases that are reasonably acquired for the stated purpose of the program and no leases shall be acquired for the purpose of subsequent sale or farm-out, unless the acquisition of such leases by the program is made after a well has been drilled to a depth sufficient to indicate that such an acquisition is believed to be in the best interests of the program.

(d) The prospectus shall state that the sponsor shall not farm-out a lease for the primary purpose of avoiding payment of sponsor's costs relating to drilling a lease or prospect. [Statutory Authority: RCW 21.20.450, 83-19-035 (Order SDO-181-83), § 460-34A-055, filed 9/14/83.]

WAC 460-34A-060 Rights and obligations of participants. (1) **Meetings.** Meetings of the participants may be called by the general partner(s) or by participants holding more than 10% of the then outstanding units for any matters for which the participants may vote as set forth in the limited partnership agreement or charter document. Such call for a meeting shall be deemed to have been made upon receipt by the general partner of a written request from holders of the requisite percentage of units stating the purpose(s) of the meeting. The general partner shall deposit in the United States mails within fifteen days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on

a date not less than thirty nor more than sixty days after the date of mailing of said notice, at a reasonable time and place.

(2) **Annual and periodic reports.** (a) The partnership agreement or charter document shall provide for the transmittal to each participant of an annual report within 120 days after the close of the fiscal year, and commencing with the year following investment of substantially all the program subscriptions, a report within 75 days after the end of the first six months of its fiscal year, containing, except as otherwise indicated, at least the following information:

(i) Financial statements, including a balance sheet and statements of income, partners' equity and changes in financial position prepared in accordance with generally accepted accounting principles and accompanied by a report of an independent certified public accountant or independent public accountant stating that his examination was made in accordance with generally accepted auditing standards and that in his opinion such financial statements present fairly the financial position, results of operations and the changes in financial position in accordance with generally accepted accounting principles consistently applied, except that semiannual reports need not be audited. Along with such financial statements shall be a summary itemization, by type and/or classification of the total fees and compensation, including any overhead reimbursements, paid by the program, or indirectly on behalf of the program, to the sponsor and affiliates of the sponsor. If compensation is paid on a subordinated interest, a reconciliation of all such payments to the conditions precedent and limitations thereto.

(ii) A description of each geological prospect in which the program owns an interest, except succeeding reports need contain only material changes, if any, regarding such geological prospects.

(iii) A list of the wells drilled by such program (indicating whether each of such wells has or has not been completed), and a statement of the cost of each well completed or abandoned. Justification shall be included for wells abandoned after production has commenced.

(iv) With respect to a program which compensates the sponsor on a basis related to certain costs paid by the sponsor, (A) a schedule reflecting the total program costs, and where applicable, the costs pertaining to each prospect, the costs paid by the sponsor and the costs paid by the participants, (B) the total program revenues, the revenues received or credited to the sponsor and the revenues received or credited to the participants and (C) a reconciliation of such expenses and revenues to the limitations prescribed.

(v) Annually, beginning with the fiscal year succeeding the fiscal year in which the program commenced operations, a computation of the total oil and gas proven reserves of the program and dollar value thereof at then existing prices and of each participant's interest in such reserve value. The reserve computations shall be based upon engineering reports prepared by qualified independent petroleum consultants. In addition, there shall be

included an estimate of the time required for the extraction of such reserves and the present worth of such reserves, with a statement that because of the time period required to extract such reserves the present value of revenues to be obtained in the future is less than if immediately receivable. In addition to the annual computation and estimate required, as soon as possible, and in no event more than 90 days after the occurrence of an event leading to a reduction of such reserves of the program of more than 10%, excluding reduction as a result of normal production, a computation and estimate shall be sent to each participant.

(b) By March 15 of each year, the general partner must furnish a report to each participant containing such information as is pertinent for tax purposes.

(c) Production purchase programs that are subject to the continuing reporting requirements of the Securities Exchange Act of 1934 and agree to make all such reports available to participants on request, will not be required to transmit to participants reports other than the annual reports required under subsection (a) above, and the reports for tax purposes required by subsection (b) above.

(d) The semiannual report shall contain a description of all farm-outs including sponsors' justification, location, time, to whom, and general description of terms.

(3) **Access to program records.** (a) The general partner shall maintain a list of the names and addresses of all participants at the principal office of the partnership. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request either in person or by mail the general partner shall furnish a copy of such list to any participant or his representative for the cost of reproduction and mailing.

(b) The participants and/or their accredited representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. The sponsor shall maintain and preserve during the term of the program and for four years thereafter all accounts, books, and other relevant program documents. Notwithstanding the foregoing, the sponsor may keep logs, well reports and other drilling data confidential for a reasonable period of time.

(c) The sponsor shall agree to file with the administrator, if he so requests it, concurrently to their transmittal to participants, a copy of each report made pursuant to (3)(a) of this rule.

(4) **Transferability of program interests.** Restrictions on assignment of units will be looked upon with disfavor. Restrictions on the substitution of a limited partner are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel as to its legal necessity. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-060, filed 9/14/83.]

WAC 460-34A-065 Assessability and defaults. (1) In appropriate cases there may be a provision for assessability: *Provided, however,* That the maximum amount

for voluntary assessments shall not exceed 100% of initial subscriptions and for mandatory assessments shall not exceed 25% of initial subscriptions, and provided further, that in no case shall the total of all assessments exceed 100% of initial subscriptions. All assessments shall be made solely for the purpose of conducting subsequent operation on prospects upon which evaluation had begun during a program's initial operation, or on leases sufficiently related to such prospects as to merit, in the sponsor's judgment, additional operations to fully develop those prospects. In such cases, the aggregate offering price of the units as set forth in the application shall include and show separately the basic unit offering price and the maximum amount of the assessment.

(2) In the event of a default in all or a portion of the payment of assessments, the participant's percentage interest in the program represented by his unit should not be subject to forfeiture, but may be subject to a reasonable reduction for the failure of the participant to meet his commitment. Provisions which conform to the following will be considered reasonable.

(a) For voluntary assessments,

(i) A proportionate reduction of the participant's percentage interest in revenues derived from future development based on the ratio of his unpaid assessment to all capital contributions and assessments used for such future development, or

(ii) A subordination of the defaulting participant's right to receive revenues from future development until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from revenues of the program from future development equal to 300% of the proportionate amount of the defaulted assessment which they paid.

(b) For mandatory assessments,

(i) A proportionate reduction of the participant's percentage interest in program revenues based on the ratio of his unpaid assessment to all capital contributions and assessments, or

(ii) A subordination of the defaulting participant's right to receive revenues from the program until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from all revenues of the program equal to 300% of the proportionate amount of the defaulted assessment which they paid, or

(iii) Personal liability of a participant as to the amount defaulted upon. The sponsor may enforce such personal liability through the lien on the participant's program interest, which permits the sponsor to withhold and apply all revenues attributable to the participant to the payment of any delinquent assessment. For purposes of this subsection, voluntary assessments which a participant has committed to pay will be considered mandatory assessments.

(c) In order to make any assessment, the sponsor shall include with the call for such assessment a statement of the purpose and intended use of the proceeds from such assessment, a statement of the reduction to be imposed for failure of the participant to meet the assessment, and

to the extent practicable, a summary of pertinent geological data on the relevant properties to which the assessments relate.

(d) The above alternatives, set forth in (a) and (b), are not exclusive and other provisions demonstrated to be essentially equivalent to these alternatives may be permitted by the administrator. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-065, filed 9/14/83.]

WAC 460-34A-070 Voting rights of limited partners. To the extent the law of the state of organization is not inconsistent, the limited partnership agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the general partner, vote to (1) amend the limited partnership agreement or charter document, (2) dissolve the program, (3) remove the general partner and elect a new general partner, (4) elect a new general partner if the general partner elects to withdraw from the program, (5) approve or disapprove the sale of all or substantially all of the assets of the program, and (6) cancel any contract for services with the sponsor or any affiliate without penalty upon sixty days notice. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-070, filed 9/14/83.]

WAC 460-34A-075 Minimum program capital. The minimum amount of funds to activate a partnership shall be sufficient to accomplish the objectives of the program, including "spreading the risk." Any minimum less than \$1,000,000 will be presumed to be inadequate to spread the risk of the public investors. In those instances where it appears unlikely that the stated objectives of the program can be achieved with the minimum subscriptions, the administrator may require a greater amount or a reduction of the stated objectives of the program. Provision must be made for the return to public investors of one hundred percent of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus. [Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-075, filed 9/14/83.]

WAC 460-34A-080 Temporary investment of proceeds. Until proceeds from the public offering are invested in the program's operations, such proceeds may be temporarily invested in short-term highly liquid investments, where there is appropriate safety of principal, such as U.S. Treasury Bills. [Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-080, filed 9/14/83.]

WAC 460-34A-085 Return of unused proceeds. (1) Any proceeds of the public offering of a drilling program

not used, or committed for use, in the program's operations within one year of the closing of the offering, except for necessary operating capital, must be distributed pro rata to the participants as a return of capital, and without any deductions for selling and offering expenses.

(2) If a production purchase program sponsor has not used, or committed for use, an amount equal to 80% of the proceeds of the public offering which are available for property acquisitions within one year of the closing of the offering, such sponsor shall not be permitted to continue offering interests in subsequent programs of a similar nature, until such time as the requirement has been met. If the production purchase program sponsor has not used, or committed for use, an amount equal to 100% of the proceeds of the public offering which are available for property acquisitions within two years of the closing of the offering, any excess proceeds, except for necessary operating capital, must be distributed pro rata to the participants as a return on capital, and without any charges for selling or offering expenses being allocable to the return of capital. [Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-085, filed 9/14/83.]

WAC 460-34A-090 Deferred payments. (1) 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:

(a) The period of deferred payments shall coincide with the anticipated cash needs of the program, but the full amount of the purchase price shall be paid within nine months of the date on which the program commences operations.

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

(c) The program shall not sell or assign the deferred payments.

(2) In the event of a default in the payment of any deferred payment when due, the participant's percentage interests in the program shall not be subject to forfeiture but may be subject to a reasonable reduction for failure of the participant to meet his commitment. Reduction provisions will be considered reasonable if they conform to the reduction provisions provided for in WAC 460-34A-065 (2)(b) relating to defaults of mandatory assessments. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-090, filed 9/14/83.]

WAC 460-34A-095 Cash redemption values. When cash redemption values of units are computed, such value must be clearly based on appraisal of properties by qualified independent petroleum consultants. Any evaluation by company personnel must be based on such independent appraisals. Any redemption must be for cash. No redemption shall be considered effective until after cash payments have been paid to the participants. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-095, filed 9/14/83.]

WAC 460-34A-100 Future exchange. (1) No sponsor or any affiliate shall make or cause to be made any offer to a participant to exchange his units for a security of any company, unless:

(a) Such offer is made after the expiration of two years after such program commenced operations;

(b) Such offer is made to all participants;

(c) Such offer, if made by a third party to the sponsor or principal underwriter, or any affiliate of such sponsor or principal underwriter, is on a basis not more advantageous to such sponsor, principal underwriter or affiliate than to participants;

(d) The value of the security or other consideration offered is at least equivalent to the value of the units;

(e) The value of any reserves used in computing the exchange ratio is supported by an appraisal prepared by an independent petroleum consultant within 120 days of the date such exchange is to be made; the value of any undeveloped acreage used in computing the exchange ratio is at cost unless fair market value, as evidenced by supporting data, is higher; and the value of other assets used in computing the exchange ratio is based upon audited financial statements prepared in accordance with generally accepted accounting principles consistently applied, and

(f) The offer is made pursuant to all registration requirements under both federal and state laws.

(2) For the purposes of this section, an "offer of exchange" includes any security of a program which is convertible into a security issued by the sponsor or another issuer. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-100, filed 9/14/83.]

WAC 460-34A-105 Reinvestment of revenues. No offering will be approved by the administrator that includes a provision which requires that the participant reinvest his share of distributable cash distributions. Subject to compliance with applicable securities laws, a program may make available to its participants a voluntary plan for systematic reinvestments in such program or in any other program. No sales commissions may be charged the participants, however, for effecting such reinvestment. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-105, filed 9/14/83.]

WAC 460-34A-110 Distribution of revenues. From time to time and not less often than quarterly, the sponsor will review the program's accounts to determine whether cash distributions are appropriate. The program will distribute pro rata to the participants' funds received by the program and allocated to their accounts which the sponsor deems unnecessary to retain in the program. Cash distributions from the program to the sponsor shall only be made out of funds properly allocated to the sponsor's account. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-110, filed 9/14/83.]

WAC 460-34A-112 Selling of units. (1) Compensation to broker-dealers shall be a cash commission. Indeterminate compensation to broker-dealers, such as overriding interest and net profit interests, for example, is prohibited. In the absence of a firm underwriting, warrants or options to broker-dealers are prohibited.

(2) Compensation to wholesale dealers must be a cash commission, must be reasonable and must be fully disclosed.

(3) Sales commissions based on assessment of units are prohibited. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-112, filed 9/14/83.]

WAC 460-34A-115 Sales materials and marketing restrictions. (1) **Sales literature.** Sales literature, including without limitation, books, pamphlets, movies, slides, article reprints, and television and radio commercials, sales presentations (including prepared presentations to prospective participants at group meetings) and all other advertising used in the offer or sale of units shall conform in all applicable respects to filing, disclosure and adequacy requirements currently imposed on the sale of corporate securities under chapter 460-28A WAC. When periodic or other reports, except those required by and filed with the Securities and Exchange Commission, furnished to participants in prior programs are furnished to prospective participants in a program not yet sold, such reports will be treated as sales literature subject to the above requirements. Sales literature shall not be so excessive in size or amount as to detract from the prospectus, nor shall any sales literature be used by securities broker-dealers or agents unless such literature has been approved by the sponsor in writing.

(2) **Group meetings.** All advertisements of, and oral or written invitations to "seminars" or other group meetings at which units are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such units for sale, the minimum purchase price thereof, the suitability standards to be employed, and the name of the person selling the units. No cash, merchandise or other items of value shall be offered as an inducement to any prospective participants to attend any such meeting.

(3) Supplementary material (including prepared presentations for group meetings) must be submitted to the administrator in advance of use, and its use must either be preceded by or accompanied with an effective prospectus.

(4) The provisions of this section shall not apply to meetings consisting only of representatives of securities broker-dealers. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-115, filed 9/14/83.]

WAC 460-34A-120 Contents of the prospectus. (1) The following information shall be included in the prospectus of each program.

(a) Initial information:

(i) 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 units 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, or if such commissions are paid by the sponsor); the nature of any sharing arrangement and fees; the estimated amount to be paid during the first twelve months following commencement of operations for administrative and similar services.

(ii) Sales to appropriate persons. There should be set forth in the second page of the prospectus, the suitability requirements for participants as set forth in WAC 460-34A-025.

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

(c) Risk factors. Offerees 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. In particular, in those cases where the sponsor has elected the compensation arrangement described in WAC 460-34A-040(2), there should be set forth the fact that there is a conflict where the sponsor must decide whether to complete a well which is anticipated to have a marginal return since the tangible costs he would incur would not appear to warrant his investment, although completion of the well would be in the best interests of the participants.

(d) Business experience. The business experience of the sponsor(s), including 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 function) and others responsible for 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, or other person supplying services to the program, shall be prominently disclosed in the prospectus.

(e) Compensation:

(i) All indirect and direct compensation which may be paid by the program to the sponsor or any affiliate of every type and from every source shall be summarized in tabular form and in narrative where appropriate to fully disclose material information, in one location, in the forepart of the prospectus. Also include estimates of all actual and necessary direct expenses paid or incurred or to be paid or incurred by the sponsor for a period of three years in connection with its operations of a program for which the sponsor is to be reimbursed out of capital contributions and program revenues. Such table shall also include administrative and similar charges for services.

(ii) In a program where the sponsor elects to receive a promotional interest in the form of a subordinated percentage of the working interest, whether determined in accordance with the formula stated in WAC 460-34A-040 (3)(a)(i) or (ii), the following factor shall be disclosed: The sponsor shall be entitled to receive program revenues attributable to this subordinated percentage of the working interest after the participants have had program revenues credited or allocated to their respective accounts in an amount sufficient to trigger the subordinated percentage of the working interest in favor of the sponsor. This method of crediting program revenues is an allocation method and does not necessarily result in the distribution of cash to participants. Distribution of cash will be delayed to the extent such allocated revenues are applied in satisfaction of program or prospects costs and expenses attributable to the participants.

(iii) In a program where the sponsor elects to receive a promotional interest in the form of a subordinated percentage of the working interest based upon the formula stated in WAC 460-34A-040 (3)(a)(i), the following factor shall be disclosed: It is possible that the sponsor may receive cash distributions prior to participants receiving the same since revenues of participants which might otherwise be available for distribution to participants incurred before the sponsor commenced sharing in program revenues or because such revenues could be used to pay the participants costs and expenses arising out of developments, production, and operations of other program prospects which have not attained the status set forth in the formula stated in WAC 460-34A-040 (3)(a)(i).

(f) Use of proceeds. State the purposes for which the net proceeds to the program are intended to be used and the approximate amount and percentages 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 the purpose.

(g) Deferred payment schedule. If deferred payments are called for or allowed, the schedule of payment shall be set forth.

(h) Assessments. If provisions for assessments are provided, the method of assessment and the penalty for default shall be prominently set forth.

(i) 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. State the approximate percentage of exploratory and developmental drilling to be done by the program, the method of acquisition of leases, including information as to possible farm-outs, and the approximate percentage of development drilling to be done through acquisition of offsetting leases as opposed to development of drilling sites acquired in the exploratory state. State also the expected percentage of leases where the program will not have control of drilling and operation.

(j) Farm-outs. The prospectus shall disclose in tabular form an estimate of such expenses to be charged to the program showing direct expenses and general and administrative overhead separately, and the sponsor must demonstrate that it has a reasonable basis for such estimates. The estimate of general and administrative overhead shall be broken down into the various types of services and costs, with a separate breakdown for salaries to officers, directors and other principals of the sponsor and any affiliate of the sponsor; a summary of the manner in which such expenses are allocated shall be included. In addition, the prospectus shall disclose in tabular form for each program formed in the last three years the dollar amount of the expenses so charged and allocated, and the percentage of subscriptions raised reflected thereby.

(k) Description of oil and gas interests. State the location and describe the general character of all materially important oil and gas interests now held or presently intended to be acquired by the program.

(l) "Performance," when required or permitted by the administrator, shall contain the following information:

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

(A) Involved a public offering registered under state or federal securities laws;

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

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

(A) Name of the program, including the type of legal entity and state of incorporation or organization;

(B) The effective date of the offering, the date it commenced operations and the date of dissolution or termination, or if it is continuing;

(C) The total amount of units, the gross amount of capital raised by the program, the number of participants, and the amount of investment of the sponsor, if applicable;

(D) The drilling results of the program, including the number of gross and net wells drilled, both oil and gas, both exploratory and developmental, and both successful and unsuccessful;

(E) Total dollar amounts of federal tax deductible items passed on to participants;

(F) Income credited and cash distributed to participants and the sponsor;

(G) Compensation and fees to the sponsor and its affiliates, segregated as to type;

(H) Disclosure of any development wells drilled which did not or have not returned the investment therein within four years;

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

(iii) All of the foregoing information shall be set forth on a cumulative basis for each program, and in tabular form wherever possible.

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

(v) The foregoing information shall be supported in the application by an affidavit of the sponsor that the performance summary is a fair representation of the information containing the audited financial statement or the federal income tax returns of the program or in other reports or data of the program or sponsor.

(m) Operating data. Include appropriate data with respect to each property which is separately described in answer to paragraph (j) above.

(n) The program:

(i) Date of formation.

(ii) Place of formation.

(iii) Sponsor.

(iv) Address and telephone number of the program and the sponsor.

(v) Duration.

(vi) Information called for in items (i) through (v) hereof shall be given for any other programs in which the program invests.

(o) Summary of terms of the program:

(i) Powers of the sponsor.

(ii) Rights and liabilities of the participants.

(iii) Allocation of costs and revenues.

(iv) Termination and dissolution.

(v) Meetings and reports.

(vi) Indemnification to sponsor.

(vii) Amendment of partnership agreement.

(viii) Provision for additional assessments.

(ix) Other pertinent matters.

(p) Federal tax consequences:

(i) A summary of an opinion of tax counsel acceptable to the administrator or a ruling from the IRS covering federal tax questions relative to the program, which may be based on reasonable assumptions described in the opinion letter. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the 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.

(ii) Tax treatment of the program.

(iii) Tax treatment of the participants.

(iv) Allocation of intangible drilling deductions, depreciation, depletion allowances.

(v) Method of allocation of losses or profits and cash distributions upon transfer of a unit or the rights to income or revenues.

(vi) Any other pertinent information applicable to the tax shelter aspects of the investment.

(vii) Possibility of requirement for filing tax returns with states in which prospects are located.

(viii) In all programs where applicable, the prospectus shall disclose that participants will have to pay federal

income taxes upon program revenues allocated to their respective accounts which revenues are not distributed to the participants, but rather are used to pay other program or prospect costs attributable to their respective accounts.

- (q) Units:
 - (i) Amount.
 - (ii) Minimum purchase.
 - (iii) Assessability.
 - (iv) Transferability.
 - (v) Voting rights.
 - (vi) Redemption provisions, including the basis for appraisal.
 - (r) Plan of distribution:
 - (i) Discounts and commissions.
 - (ii) Estimated fees and expenses paid or reimbursed by the program.
 - (iii) Indemnification and hold harmless provisions.
 - (iv) Terms of payment.
 - (v) Identity of underwriter, managing dealer and/or principal selling agent.
 - (vi) Type of underwriting—best efforts or firm commitment.
 - (vii) Minimum and maximum sales.
 - (viii) Escrow provisions.
 - (ix) Material relationship of underwriter to the program, if any.
 - (s) Pending legal proceedings. Briefly describe any 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. Also, describe any material legal proceedings to which any of the program's or sponsor's property is subject.
 - (t) Conflicts of interest and transactions with affiliates. Describe fully any transactions and the dollar amount thereof which may be entered into between the program and the sponsor or any affiliate. Include a full description of the material terms of any agreement and the dollar amount thereof between the program and the sponsor or any affiliate. Where the sponsor originates or promotes other programs, describe the equitable principles which will apply in resolving any conflict between the programs. In the case where the program has been in existence, include all transactions and contracts of the program with the sponsor or any affiliate during the period of such existence. All conflicts shall be set forth in one section and shall be denominated with the title of this subsection.
 - (u) Interest of affiliates in program property. If within the past five years the sponsor or any affiliate has been in the chain of title or had a beneficial interest in any property to be acquired by the program this fact must be disclosed.
 - (v) 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 units being registered or upon other legal matters in connection with the registration or offering of such units, there should be disclosed

in the conflict of interests section in the prospectus the nature and amount of any direct or indirect material interest of any such counsel, other than legal fees to be received by such counsel, in the sponsor or any affiliate. Any such interest received or to be received in connection with the registration or offering of the units being registered, including the ownership or receipt by counsel, or by members of the firm participating in the matter, of securities of the sponsor or any affiliate of the program, for services shall be disclosed. Employment by the sponsor, other than retainer as legal counsel, should be disclosed in the prospectus.

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

(x) Financial statements. As provided in WAC 460-34A-125.

(y) Additional information. Any additional information which is material should be included. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-120, filed 9/14/83.]

WAC 460-34A-125 Financial information required on applications. The sponsor or the program shall provide as an exhibit to the application or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

(1) **Balance sheet of general partner.** (a) Corporate general partner. A balance sheet of any corporate general partners as of the end of their most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited balance sheet as of a date not more than ninety days prior to the date of filing. Such statements shall be included in the prospectus.

(b) Other general partners. A balance sheet for each noncorporate general partner (including individual partners or individual joint ventures of a sponsor) as of a time not more than ninety days prior to the date of filing an application; such balance sheet, which may be unaudited, should conform to generally accepted accounting principles and shall be signed and sworn to by such general partners. A representation of the amount of such net worth must be included in the prospectus.

(2) **Statement of income for corporate general partners.** A statement of income for the last fiscal year of any corporate general partner (or for the life of the corporate general partner, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than ninety days prior to the date of filing an application.

(3) **Balance sheet of program.** As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year prepared in accordance with

generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited balance sheet as of a date not more than ninety days prior to the date of filing.

(4) **Statements of income, partner's equity, and changes in financial position of program.** As part of the prospectus, if the program has been formed and owns assets, statements of income, statements of partner's equity, and statements of changes in financial position for the program for each of the last three fiscal years of the program (or for the life of the program, if less), all of which statements shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and unaudited statements for any interim period ending not more than ninety days prior to the date of filing an application.

(5) **Cash flow statement of program.** As part of the prospectus, if the program has been formed and owns assets, a cash flow statement, which may be unaudited, for the program for each of the last three fiscal years of the program (or for the life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

(6) **Filing of other statements.** Upon request by an applicant, the administrator may, where consistent with the protection of investors, permit the omission of one or more of the statements required under this section and the filing, in substitution thereof, of appropriate statements verifying financial information having comparable relevance to an investor in determining whether he should invest in the program. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-125, filed 9/14/83.]

WAC 460-34A-130 Opinions of counsel. (1) The application for qualification shall contain a favorable ruling from the IRS or an opinion of counsel to the effect that the program will be treated as a "partnership" and not as an "association taxable as a corporation" for federal income tax purposes. An opinion of counsel shall be in form 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 (a) facts or proposed operations as set forth in the prospectus and organization document; (b) the absence of future changes in applicable laws; (c) 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 (d) the continued maintenance of or compliance with certain financial, ownership or other requirements by the sponsor or general partner. The administrator may request from counsel as supplemental information such supporting legal

memoranda and an analysis as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the sponsor or general partner, the 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.

There shall be included also an opinion of counsel to the effect that the units being offered will be duly authorized or created and validly issued interests in the program, and that the liability of the participants will be limited to their respective capital contributions, except as set forth in the prospectus. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-130, filed 9/14/83.]

WAC 460-34A-135 Liability and indemnification. The sponsors shall not attempt to pass on to participants the unlimited liability imposed upon them by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated:

(1) In any threatened, pending or completed action, suit or proceeding to which the sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was the sponsor of the program (other than an action by or in the right of the program) involving an alleged cause of action for damages arising from the performance of oil and gas activities including exploration, development, completion, or operation or other activities relative to management and disposition of oil and gas properties or production from such properties, the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program.

(2) In any threatened, pending or completed action or suit by or in the right of the program, to which the sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of the sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be

in or not opposed to the best interests of the program as specified in this subsection (2), except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the performance of his duty to the program as specified in this subsection (2), unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (1) or (2) above, or in defense of any claim, issue or matter therein, the program may indemnify him against the expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under subsection (1) or (2) above, unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or (2) above. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-135, filed 9/14/83.]

WAC 460-36A-190 Other limitations. The REIT may not:

(1) Invest more than ten percent of its total assets in unimproved real property or mortgage loans on unimproved real property.

(2) Invest in commodities or commodity future contracts. Such limitation is not intended to apply to interest rate futures, when used solely for hedging purposes.

(3) Invest in junior mortgage loans unless, by appraisal or other method that the independent trustees determine,

(a) The capital invested in such mortgage loan is adequately secured on the basis of the equity of the borrower in the property underlying such investment and the ability of the borrower to repay the mortgage loan, or

(b) Such mortgage loan of the REIT is a financing device entered into by the REIT to establish the priority of its capital investment over the capital invested by others investing with the REIT in a real estate project. The trustees shall determine that any such junior mortgage loan is not and may not be made subordinate to a mortgage held by the advisor, an affiliate of the advisor, or a trustee of the REIT.

(4) Issue redeemable equity securities.

(5) Issue debt securities unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt.

(6) Issue options or warrants to purchase its shares at exercise prices less than the fair market value of such securities on the date of grant and for consideration (which may include services) that in the judgment of the independent trustees, has a market value less than the value of such option on the date of grant. In no event shall such options or warrants be exercisable later than five years from the date of the issuance thereof. In addition, the aggregate number of shares issuable at any time upon exercise of outstanding options or warrants shall not exceed an amount equal to ten percent of the outstanding shares of the REIT on the date of grant of any options or warrants.

(7) Invest more than one percent of its assets in real estate contracts of sale, unless such real estate contracts of sale are recordable in the chain of title. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-190, filed 9/14/83.]

WAC 460-34A-200 Regulation B filings. An issuer filing with the Securities and Exchange Commission under Regulation B must register its offering in the state of Washington pursuant to registration by qualification, RCW 21.20.210, and this chapter. [Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-200, filed 9/14/83.]

Chapter 460-36A WAC

REAL ESTATE INVESTMENT TRUSTS

WAC

460-36A-100	Definitions of terms.
460-36A-105	Fairness of REIT offerings.
460-36A-110	Trustees.
460-36A-115	Investment policy.
460-36A-120	Liability of shareholders.
460-36A-125	Reports and meetings.
460-36A-130	Special meetings.
460-36A-135	Inspection of records.
460-36A-140	Distributions.
460-36A-145	Change in declaration of trust.
460-36A-150	Termination of REIT.
460-36A-155	Advisory contract.
460-36A-160	Advisor compensation.
460-36A-165	Total expenses.
460-36A-170	Leverage.
460-36A-175	Minimum capital.
460-36A-180	Appraisal.
460-36A-185	Indemnification.
460-36A-190	Other limitations.
460-36A-195	Implementation.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-36A-010	Amendment of declaration of trust. [Order 304, § 460-36A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-015	Investment policy. [Order 304, § 460-36A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-020	Minimum net capital. [Order 304, § 460-36A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order

- SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-025 Annual expenses. [Order 304, § 460-36A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-030 Investment and activities. [Order 304, § 460-36A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-035 Period of investment advisory contract. [Order 304, § 460-36A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-040 Number and election of trustees. [Order 304, § 460-36A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-045 Removal of trustees. [Order 304, § 460-36A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-050 Terms and conditions of securities. [Order 304, § 460-36A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-055 Annual meetings. [Order 304, § 460-36A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-060 Annual reports. [Order 304, § 460-36A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-065 Inspection of records. [Order 304, § 460-36A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-070 Disclosure on distribution. [Order 304, § 460-36A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
- 460-36A-075 Termination of trust. [Order 304, § 460-36A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

WAC 460-36A-100 Definitions of terms. For the purposes of this chapter, the following definitions shall apply. (1) "Administrator" means the administrator of securities of the department of licensing.

(2) "Advisor" means the person(s) or entity responsible for directing or performing the day-to-day business affairs of a real estate investment trust (REIT), including a person or entity to which an advisor subcontracts substantially all such functions. To the extent the provisions of these rules are germane they shall apply to self-administered REITs.

(3) "Average invested assets" for any period shall mean the average of the aggregate book value of the assets of the trust invested, directly or indirectly, in equity

interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar noncash reserves computed by taking the average of such values at the end of each month during such period.

(4) "Declaration of trust" means the declaration of trust, certificate or or articles of incorporation or other governing instrument pursuant to which a REIT is organized.

(5) "Independent trustee(s)" means the trustee(s) of a REIT who are not affiliated, directly or indirectly, with an advisor of the REIT, whether by ownership of, ownership interest in, employment by, any business or professional relationship with, or serves as an officer or director of, such advisor or an affiliated business entity of such advisor. Independent trustees shall also mean those who perform no other services for the REIT, except as trustee(s). An indirect relationship shall include circumstances in which a member of the immediate family of a trustee has one of the foregoing relationships with an advisor of the REIT or the REIT for which he or she serves as trustee.

(6) "Leverage" means the aggregate amount of indebtedness of a REIT for money borrowed (included purchase money mortgage loans) outstanding at any time, both secured and unsecured.

(7) "Net assets" means the total assets (other than intangibles) at cost before deducting depreciation or other noncash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

(8) "Net income" for any period shall mean total revenues applicable to such period, less the expenses applicable to such period other than additions to reserves for depreciation or bad debts or other similar noncash reserves.

(9) "Real estate investment trust" ("REIT") is a corporation, trust or association (other than a real estate syndication) which is engaged primarily in investing in equity interests in real estate (including fee ownership and leasehold interests) or in loans secured by real estate or both.

(10) "Shares" means shares of beneficial interest or of common stock of a REIT of the class that has the right to elect the trustees of such REIT.

(11) "Shareholders" of a REIT means the registered holders of its shares.

(12) "Total operating expenses" for any period shall mean all cash operating expenses, including additional expenses paid directly or indirectly by the REIT to the advisor, its affiliates, or third parties based upon their relationship with the REIT, including loan administration, servicing, engineering, inspection and all other expenses paid by the REIT, except the expense related to raising capital, for interest, taxes, and direct property acquisition, operation, maintenance and management costs.

(13) "Trustee(s)" means the member(s) of the board of trustees or directors or other body which manages the REIT.

(14) "Unimproved real property" means the property of a REIT which has the following three characteristics:

(1) An equity interest in property which was not acquired for the purpose of producing rental or other operating income, (2) has no development or construction in process on such land, and (3) no development or construction on such land is planned in good faith to commence on such land within one year. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-100, filed 9/14/83.]

WAC 460-36A-105 Fairness of REIT offerings. The offer or sale of securities of a REIT may be deemed fair and equitable to public investors if any applicable statute of the jurisdiction in which the REIT is organized or its declaration of trust or any other operative instrument which may not be amended without the approval of the holders of at least a majority of the outstanding shares of the REIT contains provisions which satisfy the rules of this chapter 460-36A WAC. Registration applications not conforming to the rules of this chapter shall be looked upon with disfavor, unless for good cause shown specific rules are waived by the administrator. A public offering of equity securities of a REIT other than shares (i.e., voting shares) will be looked upon with disfavor unless it can be demonstrated that the shares of the REIT are publicly held. The voting rights per share of equity securities of the REIT (other than the publicly held equity securities of the REIT) sold in a private offering shall not exceed voting rights which bear the same relationship to the voting rights of the publicly held shares of the REIT as the consideration paid to the REIT for each privately offered REIT share bears to the book value of each outstanding publicly held share. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-105, filed 9/14/83.]

WAC 460-36A-110 Trustees. (1) The REIT shall have a minimum of three trustees, each of whom (other than a trustee elected to fill the unexpired term of another trustee) is elected by the shareholders of the REIT, for a term not exceeding one year. Independent trustees shall nominate replacements for vacancies amongst the independent trustees' positions.

(2) The trustees shall establish written policies on investments and borrowing and shall monitor the administrative procedures, investment operations and performance of the REIT and the advisor to assure that such policies are carried out. The trustees may establish such committees as they deem appropriate (provided the majority of the members of each committee are independent trustees).

(3) No trustee, officer, or advisor of the REIT or any person affiliated with such a person shall, directly or indirectly, purchase any asset from the REIT or acquire any asset for the purpose of reselling it to the REIT except,

(a) initially to accumulate a portfolio of investments for the REIT under circumstances which are fully disclosed, including the cost of such property to the affiliate, in the prospectus by which the shares of the REIT are first offered to the public, or

(b) thereafter, to purchase property to be acquired by the REIT upon completion of financing arrangements by the REIT.

(4) A trustee may be removed by the vote or written consent of the holders of a majority of the outstanding shares of the REIT and can be removed at a special meeting. The declaration of trust of the REIT shall provide for a call of a special meeting of shareholders for the purpose of removing a trustee in a manner consistent with the provisions of WAC 460-36A-130.

(5) The declaration of trust shall specifically charge the independent trustees of the REIT with a fiduciary duty to the shareholders to supervise the relationship of the REIT with the advisor. The declaration of trust shall set forth specific requirements for the approval by at least a majority of the independent trustees of matters to which this section and WAC 460-36A-115, 460-36A-125, 460-36A-155, 460-36A-160, 460-36A-165, 460-36A-170, 460-36A-180 and 460-36A-190 of this chapter relate. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-110, filed 9/14/83.]

WAC 460-36A-115 Investment policy. The prospectus or offering circular relating to each offering of securities of a REIT must contain a statement in reasonable detail (except in coordination offerings with the securities and exchange commission) of the investment policies and objectives of the REIT being followed at the time or intended to be followed by the trustees. Such registration statement of the securities of the REIT shall include an explanation of the borrowing policies of the REIT. The independent trustees shall review the investment policies of the REIT with sufficient frequency and at least annually to determine that the policies being followed by the REIT at any time are in the best interests of its shareholders. Each such determination and the basis therefor shall be set forth in the minutes of the trustees. All documents incorporated by reference in coordination filings shall be submitted to the administrator in connection with the application for registration of the REIT's securities. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-115, filed 9/14/83.]

WAC 460-36A-120 Liability of shareholders. The declaration of trust shall provide that (1) the shares of the REIT shall be nonassessable by the REIT whether a trust, corporation or other entity, (2) the shareholders of the REIT which is not a corporation shall not be personally liable on account of any of the contractual obligations undertaken by the REIT, and (3) all written contracts to which the REIT which is not a corporation is a party shall include a provision that the shareholder shall not be personally liable thereon. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-120, filed 9/14/83.]

WAC 460-36A-125 Reports and meetings. The REIT shall prepare an annual report concerning its operations for each fiscal year ending after the initial public offering of its securities containing financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants. Each annual report shall be mailed or delivered to each shareholder as of a record date after the end of such fiscal year and each holder of other publicly held securities of the REIT within 120 days after the end of the fiscal year to which it relates. There shall be an annual meeting of the shareholders of the REIT upon reasonable notice and within a reasonable period following delivery of the annual report. The independent trustees shall take reasonable steps to insure that these requirements are met. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-125, filed 9/14/83.]

WAC 460-36A-130 Special meetings. Special meetings of the shareholders may be called by the chief executive officer, by a majority of the trustees or by a majority of the independent trustees, and shall be called by any officer of the REIT upon written request of shareholders holding in the aggregate of not less than ten percent of the outstanding shares of the REIT entitled to vote at such meeting. The call of a special meeting shall state the nature of the business to be transacted and that no other business shall be considered at such meeting.

Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting requested by shareholders, the REIT shall provide all shareholders, within ten business days after receipt of said request, written notice (either in person or by mail) of a meeting and the purpose of such meeting to be held on a date not less than twenty nor more than sixty days after receipt of said request, at a time and place convenient to shareholders. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-130, filed 9/14/83.]

WAC 460-36A-135 Inspection of records. A list of the names and addresses of all shareholders shall be maintained as part of the books and records of the REIT. Inspection of the REIT books and records (including shareholder records) by the administrator shall be provided upon request upon reasonable notice and during normal business hours. Inspection of such books and records by shareholders shall be permitted to the same extent as permitted under law applicable to shareholders of a corporation organized in the jurisdiction in which the REIT is organized. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-135, filed 9/14/83.]

WAC 460-36A-140 Distributions. The declaration of trust shall state the manner in which distributions to shareholders are to be determined. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-140, filed 9/14/83.]

WAC 460-36A-145 Change in declaration of trust. No change shall be made in the declaration of trust of the REIT without the vote or written consent of the holders of a majority of the outstanding shares. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-145, filed 9/14/83.]

WAC 460-36A-150 Termination of REIT. The declaration of trust shall provide for the termination of the REIT by a vote of shareholders holding a majority of its outstanding shares. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-150, filed 9/14/83.]

WAC 460-36A-155 Advisory contract. It shall be the duty of the trustees to evaluate the performance of the advisor before entering into or renewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of such meeting. Each contract for the services of an advisor entered into by the trustees shall have a term of no more than one year. Each advisory contract shall be terminable by a majority of the independent trustees, or the advisor on sixty days written notice without cause. In the event of the termination of such contract, the advisor will cooperate with the REIT and take all reasonable steps requested to assist the trustees in making an orderly transition of the advisory function. The qualifications of the advisor shall be set forth in the prospectus or offering circular relating to the initial public offering of the shares of the REIT and the trustees shall determine that any successor advisor possesses sufficient qualifications (1) to perform the advisory function for the REIT and (2) to justify the compensation provided for in its contract with the REIT. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-155, filed 9/14/83.]

WAC 460-36A-160 Advisor compensation. The independent trustees shall determine from time to time and at least annually that the compensation which the REIT contracts to pay to the advisor is reasonable in relation to the nature and quality of services performed. The independent trustees shall also supervise the performance of the advisor and the compensation paid to it by the REIT to determine that the provisions of such contract are being carried out. Each such determination shall be based on the factors set forth below and all other factors such independent trustees may deem relevant and the findings of such trustees on each of such factors shall be recorded in the minutes of the trustees:

(1) The size of the advisory fee in relation to the size, composition and profitability of the portfolio of the REIT;

(2) The success of the advisor in generating opportunities that meet the investment objectives of the REIT;

(3) The rates charged to other REITs and to investors other than REITs by advisors performing similar services;

(4) Additional revenues realized by the advisor and its affiliates through their relationship with the REIT, including loan administration, underwriting or broker

commissions, servicing, engineering, inspection and other fees, whether paid by the REIT or by others with whom the REIT does business;

(5) The quality and extent of service and advice furnished by the advisor.

(6) The performance of the investment portfolio of the REIT, including income, conservation or appreciation of capital, frequency of problem investments and competence in dealing with distress situations, and

(7) The quality of the portfolio of the REIT in relationship to the investments generated by the advisor for its own account. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-160, filed 9/14/83.]

WAC 460-36A-165 Total expenses. The declaration of trust shall provide that the independent trustees will determine, from time to time but at least annually, that the total fees and expenses of the REIT are reasonable in light of the investment experience of the REIT, its net assets, its net income, and the fees and expenses of other comparable advisors in real estate. Each such determination shall be reflected in the minutes of the meeting of the trustees.

The total operating expenses of the trust shall (in the absence of a satisfactory showing to the contrary) be deemed to be excessive if they exceed in any fiscal year the greater of two percent of its average invested assets or twenty-five percent of its net income for such year. The independent trustees shall have the fiduciary responsibility of limiting such expenses to amounts that do not exceed such limitations unless such independent trustees shall have made a finding that, based on such unusual or nonrecurring factors which they deem sufficient, a higher level of expenses is justified for such year. Any such finding and the reasons in support thereof shall be reflected in the minutes of the meeting of the trustees.

Within sixty days after the end of any fiscal quarter of the trust for which total operating expenses (for the twelve months then ended) exceeded two percent of average assets or twenty-five percent of net income, whichever is greater, there shall be sent to the shareholders of the trust a written disclosure of such fact, together with an explanation of the factors the independent trustees considered in arriving at the conclusion that such higher operating expenses were justified.

In the event the independent trustees do not determine such excess expenses are justified, the advisor shall reimburse the REIT at the end of the twelve month period the amount by which the aggregate annual expenses paid or incurred by the REIT exceed the limitations herein provided.

The trust shall also publish to its shareholders quarterly (1) the ratio of the costs of raising capital during the quarter to the capital raised, and (2) the aggregate amount of advisory fees and the aggregate amount of other fees paid to the advisor and all affiliates of the advisor by the REIT and including fees or charges paid

to the advisor and all affiliates of the advisor by third parties doing business with the REIT. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-165, filed 9/14/83.]

WAC 460-36A-170 Leverage. The aggregate borrowings of the REIT, secured and unsecured, shall be reasonable in relation to the net assets of the REIT and shall be reviewed by the trustees at least quarterly. The maximum amount of such borrowings in relation to the net assets shall, in the absence of a satisfactory showing that a higher level of borrowing is appropriate, not exceed three hundred percent. Any excess in borrowing over such 300% level shall be approved by a majority of the independent trustees and disclosed to shareholders in the next quarterly report of the REIT, along with justification for such excess. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-170, filed 9/14/83.]

WAC 460-36A-175 Minimum capital. Prior to the initial public offering, the net assets of the REIT shall be not less than the lesser of (1) ten percent of the total net assets upon completion of such public offering, or (2) \$200,000. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-175, filed 9/14/83.]

WAC 460-36A-180 Appraisal. The consideration paid for real property acquired by the REIT shall ordinarily be based on the fair market value of the property as determined by a majority of the trustees. In cases in which a majority of the independent trustees so determine, such fair market value shall be as determined by a qualified independent real estate appraiser selected by the independent trustees. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-180, filed 9/14/83.]

WAC 460-36A-185 Indemnification. The trustees and advisor of the REIT shall be deemed to be in a fiduciary relationship to the public investors, and the prospectus or offering circular shall so state. Trustees and advisors shall not be exonerated from liability to investors for any losses caused by gross negligence or willful or wanton misconduct. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-185, filed 9/14/83.]

WAC 460-36A-190 Other limitations. The REIT may not:

(1) Invest more than ten percent of its total assets in unimproved real property or mortgage loans on unimproved real property.

(2) Invest in commodities or commodity future contracts. Such limitation is not intended to apply to interest rate futures, when used solely for hedging purposes.

(3) Invest in junior mortgage loans unless, by appraisal or other method that the independent trustees determine,

(a) The capital invested in such mortgage loan is adequately secured on the basis of the equity of the borrower in the property underlying such investment and the ability of the borrower to repay the mortgage loan, or

(b) Such mortgage loan of the REIT is a financing device entered into by the REIT to establish the priority of its capital investment over the capital invested by others investing with the REIT in a real estate project. The trustees shall determine that any such junior mortgage loan is not and may not be made subordinate to a mortgage held by the advisor, an affiliate of the advisor, or a trustee of the REIT.

(4) Issue redeemable equity securities.

(5) Issue debt securities unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt.

(6) Issue options or warrants to purchase its shares at exercise prices less than the fair market value of such securities on the date of grant and for consideration (which may include services) that in the judgment of the independent trustees, has a market value less than the value of such option on the date of grant. In no event shall such options or warrants be exercisable later than five years from the date of the issuance thereof. In addition, the aggregate number of shares issuable at any time upon exercise of outstanding options or warrants shall not exceed an amount equal to ten percent of the outstanding shares of the REIT on the date of grant of any options or warrants.

(7) Invest more than one percent of its assets in real estate contracts of sale, unless such real estate contracts of sale are recordable in the chain of title. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-190, filed 9/14/83.]

WAC 460-36A-195 Implementation. To provide an orderly implementation of the rules of this chapter 460-36A WAC any changes that need to be made in the declaration of trust of the REIT in order to comply with these rules may be made at the next regularly scheduled meeting of the shareholders of the REIT. [Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-195, filed 9/14/83.]

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

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-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."
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-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.
- 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-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.]

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 WAC 460-44A-501 (1)(a), (b), (c), (d), (f), or (g);

(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 noncash 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 WAC 460-44A-501 (5)(a)(i) or (iii) 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 WAC 460-44A-501 (5)(a)(i) or (iii) 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 WAC 460-44A-501 (1)(h), 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 WAC 460-44A-501 (8)(a)(i) or (iii) 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 WAC 460-44A-501 (8)(a)(i) or (ii) 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 WAC 460-44A-501 (8)(c) 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 WAC 460-44A-502(1) 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, WAC 460-44A-502(2) 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 WAC 460-44A-502 (2)(b) 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 WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations, in addition to information required by WAC 460-44A-502 (2)(b), 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 this WAC 460-44A-506(2) 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 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, 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.

(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

460-46A-010	Limited offering exemption—Conditions to be met.
460-46A-020	Availability of exemption.
460-46A-025	No sales commission.
460-46A-030	Affiliate—Definition.
460-46A-040	Maximum number of purchasers under exemption.
460-46A-050	Maximum amount of cheap and promotional shares.
460-46A-060	Promoter—Definition.
460-46A-070	Cheap and promotional shares—Definition.
460-46A-080	Stock options.
460-46A-085	Inapplicability of cheap and promotional share, and stock option, restrictions.
460-46A-090	Disclosure document.
460-46A-091	Advertisements.
460-46A-095	Price of shares.

460-46A-100	Time purchase of shares under limited offering exemption.
460-46A-105	Maximum and minimum offering amounts.
460-46A-110	Monies to be deposited in escrow account—Period of escrow and of offering.
460-46A-120	Startup management compensation prohibited.
460-46A-145	Restrictions on transferability.
460-46A-150	Suitability of investors.
460-46A-155	Attorney to review disclosure document.
460-46A-160	Signing and verification of information in disclosure document.
460-46A-165	Annual reports to stockholders.

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 provided however, that upon written request, this requirement may be waived by the administrator as not being necessary under the circumstances for the protection of investors. 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. 83-15-025 (Order SDO-95-83), § 460-46A-020, filed 7/15/83; 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 (except incentive stock option plans under Section 422A of the Internal Revenue Code of 1954, as amended, held by employees, who are not officers, directors or promoters of the issuer) 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. Options subject to the restrictions of this provision 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. 83-15-025 (Order SDO-95-83), § 460-46A-080, filed 7/15/83; 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) The issuer has had significant earnings and operated at a profit during at least one of the last three fiscal years.

(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 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

(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 a five-year escrow established by order of the administrator. Shares and options shall be released only upon the order of the administrator and under the following conditions:

(a) The per share net worth of the issuer on a fully diluted basis under generally accepted accounting principles is at least one hundred percent greater than the

per share offering price under the limited offering exemption; or

(b) The issuer has completed a firmly underwritten public offering of at least four million dollars of its common stock at a price per share of at least three times the price per share of the shares sold under the limited offering exemption; or

(c) There shall exist an established trading market in the issuer's common stock for a period of at least ninety consecutive days in which the market price per share shall be greater than three times the price per share of the shares sold under the limited offering exemption; or

(d) The owners of the shares shall pay for the shares held in escrow, an amount equal to one hundred twenty percent of the price per share of shares sold under the limited offering exemption.

Those shares not released from escrow within the five-year escrow period shall be canceled and shall no longer be deemed outstanding shares of the issuer.

(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. 83-15-025 (Order SDO-95-83), § 460-46A-085, filed 7/15/83; 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 and an additional copy 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, subject to review or compilation by an accountant, a copy of the disclosure document and all attachments shall be forwarded to the accountant 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. 83-15-025 (Order SDO-95-83), § 460-46A-090, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-090, filed 10/5/82.]

WAC 460-46A-091 Advertisements. Advertisements and announcements may be used to solicit investors upon

effectiveness of the exemption. Advertisements and announcements not meeting the requirements of WAC 460-28A-025 must be filed with the administrator at least five business days prior to use. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 83-15-025 (Order SDO-95-83), § 460-46A-091, filed 7/15/83.]

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 (except where good cause is shown and agreed to in writing by the administrator), and must be offered and sold at the same price. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 83-15-025 (Order SDO-95-83), § 460-46A-095, filed 7/15/83; 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 certify to the administrator that, although he or she has not undertaken to independently verify the accuracy or completeness of the information contained within the disclosure form required under WAC 460-46A-090, he or she 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 or she must further submit an opinion to the administrator 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. 83-15-025 (Order SDO-95-83), § 460-

46A-155, filed 7/15/83; 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.]

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 646 (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 460-65A WAC

REGULATIONS ON PROCEDURES RELATED TO THE ENTRY OF ORDERS

WAC

460-65A-010	Grounds for issuance of stop order pursuant to RCW 21.20.200.
460-65A-020	Grounds for issuance of cease and desist orders pursuant to RCW 21.20.390.
460-65A-030	Grounds for denial, suspension and revocation of exemption.
460-65A-040	Grounds for denial, condition or revocation exemption pursuant to RCW 21.20.325.
460-65A-100	Summary procedure.
460-65A-105	Summary order—Hearing.
460-65A-110	Summary hearing—Appearance before the director.
460-65A-115	Requests for hearing on summary order time limits.
460-65A-125	Nonsummary procedure.

WAC 460-65A-010 Grounds for issuance of stop order pursuant to RCW 21.20.200. The securities administrator may issue a stop order pursuant to RCW 21.20.200 if the securities division does not receive the required notification and post-effective amendment with respect to prior amendment referred to in RCW 21.20.190, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with RCW 21.20.190, if the administrator finds the entry of the order to be in the public interest and necessary for the protection of investors. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-010, filed 1/13/83.]

WAC 460-65A-020 Grounds for issuance of cease and desist orders pursuant to RCW 21.20.390. The securities administrator may issue pursuant to RCW 21.20.390 an order directing any person to cease and desist from continuing an act or practice if it appears that the act or practice by the person is in violation of any provision of the Washington Securities Act or any lawfully promulgated under the Securities Act and if the securities administrator finds the entry of the order to be in the public interest and necessary for the protection of investors. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-020, filed 1/13/83.]

WAC 460-65A-030 Grounds for denial, suspension and revocation of exemption. The securities administrator may by order, deny, revoke, suspend a nonpublic offering established pursuant to RCW 21.20.320(1) or limited offering exemption established pursuant to RCW 21.20.320(9) based upon a finding of one of the following conditions:

(1) The issuer or any affiliate has made a misstatement or omission, in connection with the offer or sale of a security, which is in the light of the circumstances under which it is made, false or misleading with respect to any material fact;

(2) The issuer or any affiliate has violated any provision of the Securities Act of Washington or any rule, order or condition lawfully imposed under that act;

(3) The issuer or any affiliate is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state securities act or is the subject of a cease and desist order or consent order under any federal or state securities act;

(4) That issuer's enterprise or method of business has included or would include activities which are or would be illegal where performed;

(5) The offering has worked or would work a fraud upon investors;

(6) The claimant has failed to pay the proper filing fee: *Provided*, That, the securities administrator may enter only denial under this subsection and shall vacate any such order when the deficiency has been corrected;

(7) The issuer or any affiliate is the subject of an active investigation of the securities division of the state of Washington for violation of the Securities Act of Washington or violation of any rule, order, or condition lawfully imposed under that act: *Provided*, That, an order entered under this provision shall not remain in effect for an unreasonable period of time;

(8) The issuer or any affiliate is subject to a United States post office fraud order;

(9) The issuer or any affiliate has been convicted of any securities law violation or any crime involving fraud, theft, or embezzlement; and

If the securities administrator finds the order to be in the public interest and necessary for the protection of investors. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-030, filed 1/13/83.]

WAC 460-65A-040 Grounds for denial, condition or revocation exemption pursuant to RCW 21.20.325. The securities administrator may issue an order denying, revoking or conditioning an exemption pursuant to RCW 21.20.325 if he or she finds there has been:

(1) A violation of RCW 21.20.010 in connection with the offering or sale and if the securities administrator finds entry of the order to be in the public interest and necessary for the protection of investors. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-040, filed 1/13/83.]

WAC 460-65A-100 Summary procedure. (1) A summary order is any order which takes effect immediately upon entry without opportunity for a prior hearing. Upon the entry of such an order, the securities administrator shall promptly notify the person subject to the order of the order's entry, the reasons therefore and that if requested in writing by the subject of the order within fifteen days after the receipt of the director's notification, the matter will be scheduled for hearing in accordance with WAC 460-65A-105 and 460-65A-110.

(2) Upon entry of a summary order, the following shall apply:

- (a) If entry of the summary order results in,
 - (i) Denial of an exemption under RCW 21.20.320(1), 21.20.320(9), or 21.20.325;
 - (ii) Denial of registration under RCW 21.20.110;
 - (iii) A stop order under RCW 21.20.110; or
 - (iv) A stop order denying effectiveness to registration under RCW 21.20.280;

The provisions of WAC 460-65A-105 shall apply.

- (b) If entry of the summary order results in,
 - (i) Suspension of registration under RCW 21.20.110;
 - (ii) A stop order under RCW 21.20.280 suspending or revoking registration of securities;
 - (iii) A cease and desist order issued under RCW 21.20.290;

(iv) Suspension, condition, or revocation of exemption pursuant to RCW 21.20.320 (1), (9), or 21.20.325.

The provisions of WAC 460-65A-110 shall apply. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-100, filed 1/13/83.]

WAC 460-65A-105 Summary order--Hearing. If entry of the summary order results in any of the consequences listed at WAC 460-65A-100 (2)(a), the hearing shall be held within a reasonable time and in accordance with chapter 34.04 RCW. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-105, filed 1/13/83.]

Reviser's note: The caption of the above section was provided by the code reviser's office.

WAC 460-65A-110 Summary hearing--Appearance before the director. If entry of the summary order results in any of the consequences listed at WAC 460-65A-100 (2)(b), the subject of the order shall have an opportunity to appear before the director or the securities administrator. Such a hearing shall be held reasonably promptly. If the director or securities administrator finds that good cause is shown, he or she shall vacate the summary order. If he or she finds that good cause is not shown, the summary order shall remain in effect and the director shall give notice of opportunity for hearing which shall be held within a reasonable time. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-110, filed 1/13/83.]

Reviser's note: The caption of the above section was provided by the code reviser's office.

(1983 Ed.)

WAC 460-65A-115 Requests for hearing on summary order time limits. If the subject of a summary order does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-115, filed 1/13/83.]

WAC 460-65A-125 Nonsummary procedure. Upon entry of any nonsummary order under the Securities Act, the hearing shall be held within a reasonable time and in accordance with chapter 34.04 RCW. [Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-125, filed 1/13/83.]

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 (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 customer 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 franchisees;

(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 franchisor 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 franchisee.

(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, resales 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) -----

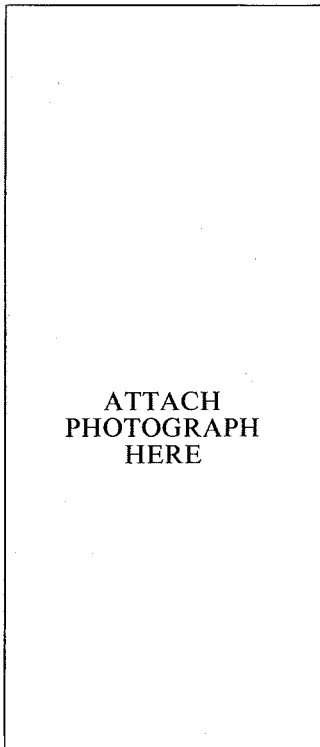
1.(a)

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.

schedule and attach.

[Order 11, § 460-82-100, filed 3/3/72.]



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.]

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

Chapter 460-90A WAC

CAMPING CLUBS—CONTRACTS—RESALE, ETC.

WAC

- 460-90A-010 Camping club contract registration application.
- 460-90A-020 Camping club contract registration exhibits.
- 460-90A-030 Signing of application.
- 460-90A-040 Financial statements.
- 460-90A-050 Registration not endorsement.
- 460-90A-060 Notice of termination of sales.
- 460-90A-070 Receipt of written disclosures.
- 460-90A-080 Depository.
- 460-90A-090 Operation of impound condition.
- 460-90A-100 Release of impounds.
- 460-90A-105 Fee for impound.
- 460-90A-110 Renewals.
- 460-90A-120 Salesperson registration.
- 460-90A-130 Request for withdrawal of camping club property.
- 460-90A-140 Advertisements.
- 460-90A-150 Resale by salesperson for commission of camping club contracts exempt from registration.

WAC 460-90A-010 Camping club contract registration application. Application for the registration to offer or sell camping club contracts shall be submitted with a facing page in the form prescribed by the administrator of securities and contain the information specified therein. The application for registration must be accompanied by the filing fee made payable by check to the treasurer of the state of Washington. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-010, filed 3/2/83. Formerly WAC 460-90-100.]

WAC 460-90A-020 Camping club contract registration exhibits. An application for the registration to offer or sell camping club contracts 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):

EXHIBIT No. 1

Name and address of the camping club operator and any other material affiliate of the camping club operator.

EXHIBIT No. 2

Provide a copy of the articles of incorporation, partnership agreement, or joint venture agreement, and the camping club association bylaws as contemplated or currently in effect.

EXHIBIT No. 3

Provide a list of all officers and directors or persons occupying a similar status of the camping club operator including their names, addresses, and occupations during the last five years, and provide a list of material affiliates including the names and addresses of officers and directors.

EXHIBIT No. 4

Has the camping club operator or any officer, director or person occupying a similar status or other affiliate of the camping club operator been within the last five years:

(a) Convicted of any misdemeanor or felony involving theft, fraud, or dishonesty: / ---/ Yes / ---/ No

(b) Enjoined from or had any civil penalty assessed for or been found to have engaged in any violation of any act designed to protect consumers: / ---/ Yes / ---/ No

With respect to each affirmative answer, state the court or issuer of the order, date of conviction or judgment, any penalty imposed or damages assessed.

EXHIBIT No. 5

Attach the financial statements of the camping club operator as audited by an independent certified public accountant as set forth in WAC 460-90A-040.

If a camping club association is in effect attach the financial statements of the camping club association as audited by an independent certified public accountant as set forth in WAC 460-90A-040.

EXHIBIT No. 6

Attach a copy of the written disclosures to be provided prospective purchasers of camping club contracts. The written disclosures shall accurately and clearly communicate the following required information:

(i) The name and address of the camping club operator and any material affiliate;

(ii) A brief description of the camping club operator's experience in the camping club business;

(iii) A brief description of the nature of the purchaser's title to, interest in, or right or license to use the camping club property or facilities and, if the purchaser will obtain title to specified real property, the legal description of the property;

(iv) The location and a brief description of the significant facilities and recreation services then available for

use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any significant facilities or recreation services that are or will be available to nonpurchasers and the price to nonpurchasers therefor;

(v) A brief description of the camping club's ownership of or other right to use the camping club properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the camping club operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(vi) A brief statement or summary of what required material land use permits have not been obtained for each camping club property or facility represented to purchasers as planned;

(vii) A summary or copy of the articles, bylaws, rules, restrictions, or covenants regulating the purchaser's use of each property, the facilities located on each property, and any recreation services provided, including a statement of whether and how the articles, bylaws, rules, restrictions, or covenants may be changed;

(viii) A brief description of all payments of a purchaser under a camping club contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(ix) A description of any restraints on the transfer of camping club contracts;

(x) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(xi) A brief description of the camping club operator's right to change or withdraw from use all or a portion of the camping club properties or facilities and the extent to which the operator is obligated to replace camping club facilities or properties withdrawn;

(xii) A brief description of any grounds for forfeiture of a purchaser's camping club contract; and

(xiii) A copy of the camping club contract form.

If the written disclosures do not follow the format above, the applicant shall submit as a part of Exhibit No. 6 a cross reference sheet indicating where each of the disclosures are found.

EXHIBIT No. 7

(a) A statement of the total number of camping club contracts in effect on the date of application, including those that are sold outside the state of Washington;

(b) A statement of the total number of camping club contracts in effect on the date of application in the state of Washington.

(c) A statement of the total number of camping club contracts intended to be sold outside the state of Washington.

(d) A statement of the total number of camping club contracts intended to be sold in the state of Washington.

(e) A statement of commitment that the total number in (d) will not be exceeded unless disclosed by post-effective amendment to the registration.

(f) If camping club contracts are offered or sold with different privileges or durations, a statement setting forth each type of camping club contract and the approximate number of each type to be sold.

EXHIBIT No. 8

Include copies of forms of all advertisements currently intended to be used in connection with the offer or sale of camping club contracts within the state of Washington.

EXHIBIT No. 9

A statement setting forth each type of camping club contract offered and the purchase price of each type and if the price varies, the reason for the variance.

EXHIBIT No. 10

If purchasers will obtain title to real property, a statement that the camping club operator 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 the 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 effectiveness of registration. [Statutory Authority: RCW 19.105.320(1), 83-06-076 (Order SDO-40-83), § 460-90A-020, filed 3/2/83. Formerly WAC 460-90-110.]

WAC 460-90A-030 Signing of application. An application for registration of camping club contracts shall be signed by the camping club operator or an officer or general partner of the camping club operator. 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. [Statutory Authority: RCW 19.105.320(1), 83-06-076 (Order SDO-40-83), § 460-90A-030, filed 3/2/83. Formerly WAC 460-90-120.]

WAC 460-90A-040 Financial statements. (1) The camping club operator shall file the following financial statements as set forth in this WAC 460-90A-040(2). If there is a camping club association in effect, audited financial statements for the association as set forth in this WAC 460-90A-040(2) shall also be filed. Financial statements required to be filed in connection with an application for registration or renewal of camping club contracts shall be prepared in accordance with generally accepted accounting principles. Such financial statements shall be audited by an independent certified public accountant.

(2) The audited financial statements required to be filed by a camping club operator or camping club association shall include a balance sheet as of a date within 120 days prior to the date of the application, and profit and loss statements and statements of changes in financial position for each of the three fiscal years preceding the date of the balance sheet (or from inception, if the camping club operator has conducted business for less than three years) 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 camping club operator'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 camping club operator's next preceding fiscal year.

(3) In extraordinary cases, the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the camping club operator or camping club association to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the camping club operator 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; or 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.

(4) The director may waive the requirement for audited financial statements if the camping club was established before 1980 and the requirement of audited financial statements would work on undue hardship on the camping club operator or association.

(5) In connection with the financial statements, the camping club operator shall file with the director a statement of each property owned, or leased. If payment is in default on any property, the camping club operator shall set forth the details and reasons therefor. This statement shall be supplemented during the period of any registration upon the purchase, sale, lease, or any material encumbrance of any property or any material default related thereto. [Statutory Authority: RCW 19.105.320(1), 83-06-076 (Order SDO-40-83), § 460-90A-040, filed 3/2/83. Formerly WAC 460-90-140.]

WAC 460-90A-050 Registration not endorsement. The camping club contract or the written disclosures shall contain a statement that 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 qualifications of, or recommended or given approval to any camping club operator for such camping club. [Statutory Authority: RCW 19.105.320(1), 83-06-076 (Order SDO-40-83), § 460-90A-050, filed 3/2/83. Formerly WAC 460-90-190.]

WAC 460-90A-060 Notice of termination of sales. The camping club operator shall file with the director a statement setting forth that he or she has terminated offers and sales of camping club contracts in the state of

Washington. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-060, filed 3/2/83. Formerly WAC 460-90-200.]

WAC 460-90A-070 Receipt of written disclosures.

The camping club operator or salesperson shall obtain from each purchaser of a camping club contract a signed statement that he or she has received the written disclosures. The camping club operator or salesperson shall retain each statement for a period of three years from the date of sale. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-070, filed 3/2/83.]

WAC 460-90A-080 Depository. Funds subject to an impound condition shall be placed in a separate trust account with a bank or depository institution approved by the director. A written consent of the depository to act in such capacity shall be filed with the director. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-080, filed 3/2/83. Formerly WAC 460-90-430.]

WAC 460-90A-090 Operation of impound condition. When an impound condition is imposed in connection with the registration of camping club contracts, 100% of the proceeds and all other funds paid by any purchaser after the impound condition is imposed shall, within 48 hours or the next banking day, whichever is later, of receipt of such funds be placed with a depository until the director takes further action pursuant to WAC 460-90A-100. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-090, filed 3/2/83. Formerly WAC 460-90-450.]

WAC 460-90A-100 Release of impounds. The director or administrator will authorize the depository to release to the camping club operator such amounts of the impounded funds applicable to a specified purpose such as selling costs, the purchase of realty or the construction of the improvement upon a showing that the camping club operator can satisfy his obligations under the camping club contract to furnish purchasers the services tendered or that for other reasons the impound is no longer required for the protection of the purchasers. An application for an order of the director or administrator authorizing the release of the impound to the camping club operator shall be verified and shall contain the following:

(1) A statement of the camping club operator that all required proceeds from the sale of camping club contracts have been placed with the depository in accordance with the terms and conditions of the impound agreement.

(2) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of funds placed with the depository.

(3) The names of each camping club contract purchaser and the amount held in the impound for the account of each purchaser.

(4) Such other information as the director may request in a particular case. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-100, filed 3/2/83. Formerly WAC 460-90-480.]

WAC 460-90A-105 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 RCW 19.105.340 and 19.105.350. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-105, filed 3/2/83. Formerly WAC 460-90-490.]

WAC 460-90A-110 Renewals. (1) Pursuant to RCW 19.105.330, application for annual renewal shall be made no later than 15 full business days prior to the expiration date of the camping club contract registration, unless the camping club operator is otherwise notified.

(2) Renewals should be made on the application form set forth in WAC 460-90A-010 and 460-90A-020 and shall be accompanied by the following:

(a) A copy of an updated written disclosure which should reflect any and all changes appropriate to make full disclosure to prospective purchasers. The written disclosures shall be appropriately marked and underscored to reflect all changes, additions and deletions.

(b) A copy of the camping club contract appropriately marked and underscored to reflect all changes, conditions and deletions.

(c) Financial statements prepared in accordance with WAC 460-90A-040.

(d) An update of any and all exhibits required by the application for registration last filed with the director pursuant to WAC 460-90A-020. If no changes have occurred in any particular exhibit, include a signed statement that no change has occurred in that particular exhibit.

(e) Payment of a fee pursuant to RCW 19.105.410. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-110, filed 3/2/83. Formerly WAC 460-90-510.]

WAC 460-90A-120 Salesperson registration. (1) Each applicant for registration as a camping club contract salesperson shall register on a form prescribed by the administrator of securities and pay a filing fee.

(2) Each applicant or registrant shall, upon any material change in the information contained in the applicant's or registrant's application, promptly file an amendment to such application setting forth the information which has changed.

(3) Each camping club operator shall notify the administrator of securities on a prescribed form of the employment or termination of any camping club contract salesperson in the state within ten days of employment or termination.

(4) Registration as a camping club salesperson shall be renewed annually by the filing of a form prescribed by the director and payment of a fee pursuant to RCW 19.105.410. [Statutory Authority: RCW 19.105.440(3).

83-06-076 (Order SDO-40-83), § 460-90A-120, filed 3/2/83.]

WAC 460-90A-130 Request for withdrawal of camping club property. A camping club operator may request an order from the director for authority to withdraw any substantial camping or recreation portion of any camping club property devoted to camping or recreational activities pursuant to RCW 19.105.380 (9)(e) by filing with the director a request 90 days before the intended withdrawal date or such lesser time as the director may allow identifying the portion of the property to be withdrawn and stating the reasons for such withdrawal accompanied by copies of any materials or data supporting such reasons or the necessity for such withdrawal. The director may issue an order approving the request to withdraw properties if the director finds that withdrawal is not inconsistent with the protection of purchasers or owners of camping club contracts. [Statutory Authority: RCW 19.105.530. 83-06-076 (Order SDO-40-83), § 460-90A-130, filed 3/2/83.]

WAC 460-90A-140 Advertisements. (1) No camping club operator or salesperson shall use advertisements or sales promotion literature that are deceptive, false or misleading.

(2) Advertisements or sales promotion literature that offer any item (for the purposes of this WAC 460-90A-140 "item" is defined as any gift, prize or item of value.) as an inducement to the recipient to buy a camping club membership, visit a camping club property, complete a tour of a camping club property, receive a sales presentation, or contact salespersons shall be subject to the following provisions:

(a) The name of the camping club operator offering such item shall be clearly disclosed;

(b) No item may be labeled "free" or a "gift" if the recipient is required to purchase a camping club contract or to give or promise to give in exchange for the item any sum of money or its equivalent;

(c) The advertisement or sales promotion literature shall identify each item and its retail fair market value. To determine the retail fair market value, the following methods may be used: (i) Manufacturer's suggested retail price, if the camping club operator has a reasonable basis for belief that the manufacturer's suggested retail price approximates the retail value of the item; (ii) the approximate retail sales price of the item in the trade area in which the offer is made; or (iii) manufacturer's suggested retail price or approximate retail sales price in the trade area of similar items of comparable quality if the item is not available in the trade area in which the offer is made;

(d) If the item is one or more of a larger group, and if offered or given on a random basis, the advertisement or sales promotion literature must disclose the actual odds of receiving each item based upon the initial odds and must be revised to reflect actual current odds at the beginning of each month of use of the free promotion if the odds change; if not offered or given on a random basis,

the method of selection used must be disclosed. No promotion shall be used which is in violation of Washington state or federal laws;

(e) If receipt of the advertised item is contingent upon certain restrictions or qualifications which the recipient must meet, then a clear and complete disclosure of those restrictions must be made in the offer. Restrictions that must be disclosed include, but are not limited to the following:

(i) The deadline by which the recipient must buy a camping club membership, visit a camping club property, complete a tour of a camping club property, receive a sales presentation, or contact a salesperson in order to receive an item, if any such deadline exists;

(ii) The days and hours during which visits may be made, tours may be taken, or sales presentations received and the approximate length in hours of such visits, tours or sales presentations if any visit, tour, or sales presentation is necessary in order for the recipient to receive the item; and

(iii) Any requirement such as age, marital status, financial qualifications, or that both husband and wife must be present.

(f) Any person who responds to an advertisement or sales promotion in the manner specified, who performs all stated requirements and who meets the qualifications disclosed shall be entitled to receive promptly the item offered. If the camping club operator cannot provide the item because of supply or quality problems not reasonably foreseen or controllable by the operator, the operator shall provide, at the operator's option, a raincheck for the item offered or its cash equivalent, or shall provide a substitute item of equivalent or greater retail value or a raincheck for such substitute item. In case a raincheck is provided, the camping club operator shall, within a reasonable time, deliver the item or its cash equivalent to the recipient's address without additional cost or requirement to the recipient. No camping club operator or salesperson shall make any offer of an item when the operator or salesperson knows or has reason to know that the item is not readily available;

(g) Any restriction or requirement that time, money or effort must be expended by the recipient of an item in order for the recipient to use the item must be disclosed in the advertisement or sales promotion literature. Examples of such restrictions or requirements include any items that require assembly by the recipient, travel or other entertainment gifts or prizes for which there are limitations on the dates or times when the recipient may use the item, or which require nonrefundable reservation deposits or additional travel costs in order for the recipient to use the travel or other entertainment gift or prize.

(3) Nothing in subsection (2) of this WAC 460-90A-140 shall affect the remedies of the administrator or any person responding to advertisements or sales promotions if such advertisements or promotions are deceptive, false or misleading or otherwise in violation of chapter 19.105 RCW. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-140, filed 3/2/83. Formerly WAC 460-90-500.]

WAC 460-90A-150 Resale by salesperson for commission of camping club contracts exempt from registration. (1) Every camping club salesperson who offers or sells more than three camping club contracts in any consecutive twelve-month period for a sales commission or similar payment pursuant to RCW 19.105.320 (2)(a) shall provide to the prospective purchaser the following:

(a) Written disclosures regarding the camping club, camping club operator and camping club contract involved, including:

(i) The name and address of the camping club operator;

(ii) A brief description of the camping club operator's experience in the camping club business;

(iii) A brief description of the nature of the purchaser's title to, interest in, or right or license to use the camping club property or facilities under the camping club contract being transferred and, if the purchaser will obtain title to specified real property, the legal description of the property;

(iv) The location and a brief description of the significant facilities and recreation services then available for use by purchasers, together with a brief description of any significant facilities or recreation services that are or will be available to nonpurchasers and the price to nonpurchasers therefor;

(v) A brief description of the camping club operator's ownership of or other right to use the camping club properties or facilities available for use by purchasers.

(vi) A copy of the original camping club contract to be sold or transferred;

(vii) A brief description of all payments to be made or assumed by the purchaser under the camping club contract, including transfer fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(viii) A summary or copy of the articles, bylaws, rules, restrictions, or covenants regulating the purchaser's use of each property, the facilities located on each property, and any recreational services provided, including a statement of whether and how the articles, bylaws, rules, restrictions, or covenants may be changed;

(ix) A description of any restraints on the transferability of the camping club contract;

(x) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(xi) A brief description of the camping club operator's right to change or withdraw from use all or a portion of the camping club properties or facilities and the extent to which the operator is obligated to replace camping club facilities or properties withdrawn;

(xii) A brief description of any grounds for forfeiture of a purchaser's camping club contract.

(b) For offers or sales by a salesperson other than a camping club operator or salesperson employed by a camping club operator, a written explanation of the special risks associated with purchasing a camping club contract from someone other than the camping club operator, including, if applicable:

(i) The risk of changes in the articles, bylaws, rules, restrictions or covenants;

(ii) The risk that the camping club operator will not cooperate in the transfer of the camping club contract;

(iii) The risk that the seller may not transfer clear title to the camping club contract;

(iv) The risk that the seller's rights in the camping club contract are in default or have been forfeited;

(v) The risk associated with purchasing a camping club contract without viewing the camping club properties and facilities;

(vi) The risk that fees, charges or assessments required of the purchaser have increased;

(vii) The risk that camping club properties or facilities may have been withdrawn since the original purchase; and

(viii) Any other material risk known to the seller or salesperson that may be involved in the sale or transfer of the camping club contract.

(c) The following statement as a condition of the transfer of the camping club contract:

"Purchaser's right to cancel: You may cancel this contract of transfer without any cancellation fee or other penalty by sending notice of cancellation by certified mail, return receipt requested to _____ (insert the name and address of the camping club salesperson). The notices must be postmarked by midnight of the third business day following the day on which the contracts of transfer is signed. In computing the three business days, the day on which the contract of transfer is signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included."

(2) A camping club salesperson who receives notice of cancellation from a purchaser under WAC 460-90A-150(1)(c) shall within 72 hours of receipt of said notice notify the camping club operator of the cancellation.

(3) Every camping club salesperson who offers or sells more than three camping club contracts in any consecutive twelve-month period pursuant to RCW 19.105.320 (2)(a) shall file notice of each such sale with the director ten days prior to any offer (or sale) on a form prescribed by the director which shall include the information required in this WAC 460-90A-150(1).

(4) Every camping club operator or salesperson who offers or sells more than three camping club contracts in any consecutive twelve-month period pursuant to RCW 19.105.320 (2)(a) shall be subject to all the provisions of WAC 460-90A-140. Every such camping club operator or salesperson shall file with the director all advertisements at least five business days prior to the first use thereof in the state of Washington. [Statutory Authority: RCW 19.105.440(3). 83-06-076 (Order SDO-40-83), § 460-90A-150, filed 3/2/83.]