

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-490, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-490, filed 7/21/82.]

WAC 458-61-555 Option to purchase. The real estate excise tax does not apply to an option to purchase real property when such option does not accompany a lease. See WAC 458-61-510.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-12-016 (Order PT 87-4), § 458-61-555, filed 5/27/87; 86-16-080 (Order PT 86-3), § 458-61-555, filed 8/6/86.]

WAC 458-61-570 Partnership--Nonfamily. (1) The real estate excise tax does not apply to the sale of general partnership or limited partnership shares where title to real property is not conveyed.

(2) The real estate excise tax applies to the transfer of real property from an individual, partnership, corporation, association, or any other legal entity:

(a) To a general partnership or limited partnership upon the formation of that partnership; or

(b) To an on-going general partnership or limited partnership in return for partnership shares.

(3) The real estate excise tax applies to the transfer of real property from a general partnership or from a limited partnership to any grantee regardless of whether such grantee is an individual, partnership, corporation, association, or other legal entity upon the dissolution of a partnership or withdrawal of partnership member(s).

(4) The real estate excise tax applies to the transfer of real property during the conversion of either a general partnership or limited partnership into a general partnership, into a limited partnership, into a corporation, or into a joint or common tenancy, to the extent that such a conversion involves the transfer of title to real property.

(5) A joint venture is considered the same as a general partnership for purposes of the real estate excise tax.

[Statutory Authority: RCW 82.45.120 and 82.45.150. 87-03-036 (Order PT 87-1), § 458-61-570, filed 1/16/87; 82-15-070 (Order PT 82-5), § 458-61-570, filed 7/21/82.]

Title 460 WAC SECURITIES DIVISION (DEPARTMENT OF LICENSING)

Chapters

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Chapter 460-16A WAC GENERAL RULES

WAC

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460-16A-130	Repealed.
460-16A-135	Repealed.
460-16A-140	Repealed.
460-16A-145	Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-16A-100	Number of outstanding options. [Order 304, § 460-16A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-107	Amount of cheap stock. [Order 304, § 460-16A-107, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-130	Escrow. [Order 304, § 460-16A-130, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-135	Operation of escrow. [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.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-140	Consent to transfer escrowed shares. [Order 304, § 460-16A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.
460-16A-145	Restrictions on dividends/distribution for promotional shares. [Order 304, § 460-16A-145, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

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 or threatened.

[Statutory Authority: RCW 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-050, filed 1/11/88; Order 304, § 460-16A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-100 Repealed. See Disposition Table at beginning of this chapter.

WAC 460-16A-101 Application to promotional shares. The director has determined it to be in the public interest and consistent with the goals of investor protection in public offerings of corporate equity securities to provide rules to ensure that the potential rewards to public investors and to promoters bear a reasonable relationship to the respective risks assumed. The standards contained in WAC 460-16A-101 through 460-16A-106 apply to applications for registration by coordination or qualification of equity securities to be issued by corporations. Nothing contained in these rules shall prevent the securities administrator from considering variations in the application of any, or all, of the standards when such variations are justified in light of all the facts and circumstances surrounding a particular public offering.

[Statutory Authority: RCW 21.20.250 and 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-101, filed 1/11/88.]

WAC 460-16A-102 Definitions applicable to promotional shares. As used in WAC 460-16A-101 through 460-16A-106, the terms listed below shall have the following meanings:

(1) An "affiliate" means 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 herein.

(2) The term "control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) The term "earnings per share" means after-tax earnings per share as computed according to generally accepted accounting principles before extraordinary items.

(4) "Equity security" means any common stock or similar security; or any instrument convertible, with or without consideration, into such a security, or carrying a warrant, option or right to subscribe to or purchase such a security; or any such warrant, option or right.

(5) "Person" means any individual, corporation, partnership, trust or other legal entity, or any unincorporated association or organization and includes the following: (a) Any relative, spouse, or relative of the spouse of the specified person; (b) any trust or estate in which the specified person or any of the persons specified in (a) of this subsection collectively own five percent or more of the total beneficial interest or of which any of such persons serve as trustee, executor, or in any similar capacity; and (c) any corporation or other organization (other than the issuer corporation) in which the specified person or any of the persons specified in (a) of this subsection are the beneficial owners collectively of five percent or more of any class of equity securities or five percent or more of the equity interest.

(6) The term "promoter" means: (a) 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 a corporation; (b) any person who, in connection with the founding or organizing of the business or enterprise of a corporation,

directly or indirectly, receives in consideration of services or property or both services and property, five percent or more of any class of equity security of the corporation or five percent or more of the proceeds from the sale of any class of equity security of the corporation: *Provided, however,* That a person who receives such securities or proceeds solely as underwriting commissions shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; (c) any person who is an officer, director, or who beneficially owns, directly or indirectly, more than five percent of any class of equity security of corporation, excluding any unaffiliated institutional investor that purchased its shares more than one year prior to the filing date of the proposed offering; (d) any person who is an affiliate of a person specified under (a), (b), or (c) of this subsection.

(7) The term "promotional or development stage corporation" means a corporation which has no public market for its shares and has no significant earnings.

(8) "Promotional shares" are equity securities which were issued within the last three years, or are to be issued, to promoters for a consideration of less than eighty-five percent of the proposed public offering price. Such securities which were, or are to be, issued for services rendered, patents, copyrights or other intangibles are presumed to be promotional shares unless the value of such intangibles has been established to the satisfaction of the administrator. (See Note #1)

Example: Calculation of number of promotional shares

	Shares	Total Price per Share
Shares held by promoters	100	\$ 1.00
Public offering price per share		10.00
<u>Total paid by promoter</u>		<u>\$100</u>
Public offering price per share x .85 =		\$10 x .85 = 11.77
		Fully Paid Shares
Shares held by promoters		100
Fully paid shares		<u>12*</u>
Number of promotional shares		88
(Subject to escrow)		

*Rounded

Note #1: In determining the consideration paid or the value of property under subsection (8) of this section, the administrator may disallow as consideration any property, including patents, copyrights, or goodwill, unless and to the extent that the value is established to the administrator's satisfaction. Consideration for shares of stock may include the market value of such assets if the market value can be determined by recognized standards of valuation acceptable to the administrator, and may also include out-of-pocket development or marketing expenses (excluding promoters' salaries) paid by promoters to the extent such expenses are not reimbursed by the corporation.

(9) "Public market" is meant to exclude thin markets which do not result in reliable prices. If doubt is raised as to the reliability of the market for an applicant's shares, the administrator may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers,

public float, the pricing formula, and other relevant factors.

(10) "Significant earnings" shall be deemed to exist if the corporation's earnings record over the last five years (or the shorter period of its existence) demonstrates that it would have met either of the earnings tests set forth in WAC 460-16A-105(1) based upon its shares outstanding immediately before the proposed public offering capitalized at the proposed public offering price. However, such earnings tests shall not be deemed exclusive for the determination of significant earnings.

(11) An "unaffiliated institutional investor" means any unaffiliated bank; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940; small business investment company licensed by the United States Small Business Administration under section 301 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; insurance company; private business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940 or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which owns less than twenty percent of the securities to be outstanding at the completion of the proposed public offering.

[Statutory Authority: RCW 21.20.250 and 21.20.450, 88-03-015 (Order SDO-164A-87), § 460-16A-102, filed 1/11/88.]

WAC 460-16A-103 Amount of promotional shares.

The maximum number of promotional shares shall not exceed seventy-five percent of the outstanding shares of the corporation after the completion of the offering.

[Statutory Authority: RCW 21.20.250 and 21.20.450, 88-03-015 (Order SDO-164A-87), § 460-16A-103, filed 1/11/88.]

WAC 460-16A-104 Escrow of promotional shares.

The administrator shall require as a condition of registration by coordination or qualification that all promotional shares in excess of twenty-five percent of the shares to be outstanding upon completion of the offering be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors. If such shares were issued by a promotional or development stage corporation and it is no longer in such a stage, then the escrow provisions of this section shall not apply. Notwithstanding the above, if a corporation issues any equity securities at less than eighty-five percent of the fair market value on the date of issuance, such shares may be deemed to be promotional shares and subject to the escrow provisions.

[Statutory Authority: RCW 21.20.250 and 21.20.450, 88-03-015 (Order SDO-164A-87), § 460-16A-104, filed 1/11/88.]

WAC 460-16A-105 Release provisions. (1) Promotional shares which are to be escrowed shall remain in escrow until the administrator approves of their release. Each promoter's shares shall be released from escrow

upon the achievement by the corporation of any of the following tests:

(a) After two consecutive fiscal years from the date of effectiveness, during which the corporation has minimum annual earnings per share equal to five percent of the public offering price. (See Note #2)

(b) After five fiscal years from the date of effectiveness, the average earnings per share are equal to five percent or more of the public offering price. (See Note #2)

Note #2. A request to the administrator for termination of an escrow based on satisfaction of any of the tests set forth in subsection (1)(a) or (b) of this section shall be accompanied by an earnings per share calculation audited and reported on by an independent certified public accountant.

(2) In the case of oil and gas exploration companies, the administrator may allow a test for release from escrow based upon the achievement of new proved developed reserves in lieu of the tests set forth in subsection (1) of this section.

(3) Shares may be released from escrow by the administrator if the public offering is terminated and no securities were sold pursuant thereto.

[Statutory Authority: RCW 21.20.250 and 21.20.450, 88-03-015 (Order SDO-164A-87), § 460-16A-105, filed 1/11/88; Order 304, § 460-16A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-106 Terms of escrow. (1) The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings without the consent of the administrator, but in all cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate; otherwise, the escrowed shares may not be pledged to secure a debt. The securities in escrow may be transferred by gift to family members, provided the shares remain subject to the terms of the escrow agreement.

(2) The shares required to be held in escrow as a condition to registration by coordination or qualification of a public offering shall not have any right, title, interest, or participation in the assets of the corporation in the event of dissolution, liquidation, merger, consolidation, reorganization, sale of assets, exchange or any other transaction or proceeding which contemplates or results in the distribution of the assets of the corporation, until the holders of all shares not escrowed have received, or had irrevocably set aside for them, an amount equal to the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the holders of the escrowed shares shall be entitled to receive an amount per share equal to the amount per share received by or set aside for the holders of the nonescrowed shares plus any dividends and interest set aside for the escrowed shares (to the extent any such cash dividends plus interest are not necessary to meet the corporation's obligation of payment to holders of

shares not escrowed), and thereafter all shares shall participate on a pro rata basis. However, a merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.

(3) Shares held in escrow shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets available for distribution as provided under subsection (2) of this section. The escrow agent shall place any cash dividends in an interest-bearing account. The cash dividends and any interest earned thereon will be disbursed when the shares are released from the escrow.

All certificates representing stock dividends and shares resulting from stock splits of escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.

(4) A summary of the terms of the escrow shall be included in the prospectus or offering circular and, during the term of the escrow agreement and until the release of all shares from escrow, in subsequent prospectuses or circulars, annual reports to shareholders, proxy statements, or other disclosure materials used by shareholders or investors in making decisions with respect to the corporation.

(5) The escrow agent must be satisfactory to the administrator and may not be affiliated with any promoter of the corporation. The company shall not bear any of the escrow agent's fees or expenses associated with the escrow.

[Statutory Authority: RCW 21.20.250 and 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-106, filed 1/11/88; Order 304, § 460-16A-106, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-107 Repealed. See Disposition Table at beginning of this chapter.

WAC 460-16A-108 Inapplicability of restrictions on amounts of promotional shares. The restrictions and requirements on the amounts of promotional shares contained in WAC 460-16A-101 through 460-16A-106 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. 88-03-015 (Order SDO-164A-87), § 460-16A-108, filed 1/11/88; 82-20-067 (Order SDO-115-82), § 460-16A-108, filed 10/5/82.]

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WAC 460-16A-109 Hi-tech exemption from promotional shares rules. (1) "Hi-tech companies" do not have to comply with the provisions of WAC 460-16A-101 through 460-16A-106, and 460-46A-050.

(2) For the purposes of this section "hi-tech company" means a company that is primarily engaged in the development or production, for commercial marketing, of a new product or products that involve new technology. The principal product or products must be developed at least to the stage of having a working prototype or example and shall include computer software and products of genetic engineering.

[Statutory Authority: RCW 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-109, filed 1/11/88. Statutory Authority: RCW 21.20.280(8) and 21.20.450. 84-07-043 (Order SDO-39-84), § 460-16A-109, filed 3/21/84.]

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.

[Statutory Authority: RCW 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-110, filed 1/11/88; Order 304, § 460-16A-110, 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 is a material change which would affect the offering and in no event shall it be revised less often than every twelve months.

[Statutory Authority: RCW 21.20.450. 88-03-015 (Order SDO-164A-87), § 460-16A-126, filed 1/11/88; Order 304, § 460-16A-126, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-130 Repealed. See Disposition Table at beginning of this chapter.

WAC 460-16A-135 Repealed. See Disposition Table at beginning of this chapter.

WAC 460-16A-140 Repealed. See Disposition Table at beginning of this chapter.

WAC 460-16A-145 Repealed. See Disposition Table at beginning of this chapter.

Chapter 460-17A WAC

UNIFORM LIMITED OFFERING REGISTRATION

WAC

460-17A-010	ULOR-C registration.
460-17A-020	Application.
460-17A-030	Availability.
460-17A-040	Disqualification from use of ULOR-C registration.
460-17A-050	Agreement by registrant on stock splits and stock dividends.
460-17A-060	Documents to be filed with administrator by ULOR-C registrant.
460-17A-070	Application of chapter 460-16A WAC to registrations under this chapter.

WAC 460-17A-010 ULOR-C registration. These rules are intended to encourage investment in small businesses. The rules in this chapter offer an optional method of registration for corporations issuing securities exempt from registration with the Securities and Exchange Commission under Rule 504 of Regulation D or under Section 3(a)(11) of the Securities Act of 1933. The administrator recognizes that small issuers raising small amounts of money face special problems not faced by issuers raising larger amounts, and that standards appropriate to registrations of larger offerings may become unduly burdensome when applied to registrations of small offerings. The optional registration method offered by these rules is intended to reduce the costs and burdens of raising capital for small business without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible for this method of registration shall use the registration form ULOR-C as the disclosure document for the offering. This method of registration shall be known as ULOR-C registration.

[Statutory Authority: RCW 21.20.210, 21.20.240 and 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-010, filed 8/8/88.]

WAC 460-17A-020 Application. (1) The rules in this chapter shall apply to ULOR-C registrations. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain rules may be modified or waived by the administrator.

(2) Where 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.

[Statutory Authority: RCW 21.20.210, 21.20.240 and 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-020, filed 8/8/88.]

WAC 460-17A-030 Availability. (1) 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. In addition, each of the following requirements must be met:

(a) The issuer must be a corporation organized under the laws of one of the states or possessions of the United States.

(b) The issuer must engage in a business other than petroleum exploration or production or mining or other extractive industries.

(c) The offering is not a "blind pool" or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(d) The offering price for common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock, and the conversion price if the securities are convertible into common stock) must be equal to or greater than \$5.00 per share.

(e) The aggregate offering price of the securities offered (within or outside this state) shall not exceed \$1,000,000 less the aggregate offering price of all securities sold within the twelve months before the start of

and during the offering of the securities under Securities and Exchange Commission Rule 504 in reliance on any exemption under section 3(b) of the Securities Act of 1933, in reliance on the exemption under section 3(a)(11) of that act, or in violation of section 5(a) of that act.

(2) ULOR-C registration is not available to investment companies subject to the Investment Company Act of 1940, nor is it available to issuers subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934.

(3) ULOR-C is available for registration of debt offerings only if the issuer can demonstrate reasonable ability to service its debt.

[Statutory Authority: RCW 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-030, filed 8/8/88.]

WAC 460-17A-040 Disqualification from use of ULOR-C registration. ULOR-C registration shall not be available for securities of any issuer if that issuer or any of its officers, directors, ten percent shareholders, promoters or any selling agents of the securities to be offered, or any officer, director, or partner of such selling agent:

(1) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the ULOR-C registration application;

(2) Has been convicted within five years prior to the filing of the ULOR-C registration application of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the ULOR-C registration application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the ULOR-C registration application;

(4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase, or sale of securities;

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission entered within five years prior to the filing

of the ULOR-C registration application; provided, however, the prohibition of this subsection and subsections (1) through (3) of this section shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form BD filed in this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this section may act in any capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the state securities administrator or other state or federal agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

[Statutory Authority: RCW 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-040, filed 8/8/88.]

WAC 460-17A-050 Agreement by registrant on stock splits and stock dividends. By filing for ULOR-C registration in this state, the registrant agrees with the administrator that the registrant will not split its common stock, or declare a stock dividend, for two years after the effectiveness of the registration without the prior written approval of the administrator.

[Statutory Authority: RCW 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-050, filed 8/8/88.]

WAC 460-17A-060 Documents to be filed with administrator by ULOR-C registrant. In addition to filing a properly completed form ULOR-C, applicants for ULOR-C registration shall file the following exhibits with the administrator:

- (1) Form of selling agency agreement;
- (2) The issuer's articles of incorporation or other charter documents and all amendments thereto;
- (3) The issuer's bylaws, as amended to date;
- (4) Copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued;
- (5) Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;
- (6) Specimen of security to be offered (including any legend restricting resale);
- (7) Consent to service of process accompanied by appropriate corporate resolution;
- (8) Copy of all advertising or other materials directed to or to be furnished investors in the offering;
- (9) Form of escrow agreement for escrow of proceeds;
- (10) Consent to inclusion in disclosure document of accountant's report;
- (11) Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences;
- (12) Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel;
- (13) Form of any subscription agreement for the purchase of securities in this offering;

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(14) Opinion of attorney licensed to practice in a state or territory of the United States that the securities 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 nonassessable and binding on the issuer in accordance with their terms;

(15) Schedule of residence street addresses of officers, directors, and principal stockholders.

[Statutory Authority: RCW 21.20.210, 21.20.240 and 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-060, filed 8/8/88.]

WAC 460-17A-070 Application of chapter 460-16A WAC to registrations under this chapter. The provisions of chapter 460-16A WAC shall not apply to registrations under this chapter except:

(1) The promotional shares rules contained in WAC 460-16A-101 through 460-16A-109 shall apply except that:

(a) Promotional shares need be escrowed pursuant to WAC 460-16A-104 only to the extent that such shares exceed sixty percent of the shares to be outstanding upon the completion of the offering; and

(b) WAC 460-16A-103 shall not apply;

(2) The impound provisions of WAC 460-16A-150 through 460-16A-175 shall apply;

(3) WAC 460-16A-035 shall apply;

(4) WAC 460-16A-075 shall apply except that for offerings with an aggregate offering price of under \$500,000 selling expenses which do not exceed twenty percent of the offering price will be considered reasonable so long as total compensation paid to any underwriter does not exceed fifteen percent;

(5) The administrator reserves the right to apply chapter 460-16A WAC (or any provision therein) to offerings under this chapter if the administrator determines that such application, even in the small business offering context, is necessary for the protection of investors.

[Statutory Authority: RCW 21.20.210, 21.20.240, 21.20.250 and 21.20.450. 88-17-012 (Order SDO-048-88), § 460-17A-070, filed 8/8/88.]

Chapter 460-20A WAC BROKER-DEALERS AND SALESMEN

WAC

- 460-20A-220 Salesperson registration and examination.
460-20A-225 Repealed.
460-20A-230 Broker-dealer registration and examination.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

- 460-20A-225 Exemptions from salesmen examinations. [Order 304, § 460-20A-225, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.] Repealed by 88-17-011 (Order SDO-047-88), filed 8/8/88. Statutory Authority: RCW 21.20.450.

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

seventy percent or better and complete the NASD Form U-4.

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

(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.

(e) For a limited salesperson's license to effect or to attempt to effect sales of real estate program offerings, the individual shall pass the uniform real estate securities examination and the uniform securities agent state law exam.

(f) For a limited salesperson's license to effect or attempt to effect sales on behalf of the issuer of a single offering of the issuer where no commissions or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of the issuer's securities, the individual shall pass the uniform securities 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 subsection (1)(a), (b), (c), (d), or (e) of this section 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 where no commission or similar remuneration will be paid or given directly or indirectly in connection with the offer or sale of such securities, not more than two officers of the issuer or corporate general partner or two individual general partners, provided, however, that the period of such exemption from testing requirements shall not exceed ninety days. To remain licensed for any continuation of the offering of securities beyond ninety days, the applicant must comply with the requirements of subsection (1) above.

(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 a copy of 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 subsection (1) of this section shall be effective until December 31 of the year of issuance at which time it shall be renewed or if not renewed shall be deemed delinquent except that the expiration date of the licenses of salespersons representing issuers may be adjusted to coincide with the expiration date of the securities registration of the issuer. In the latter case, the license shall be renewed, or if not renewed, shall be deemed delinquent at the expiration of the issuer's securities registration. For any renewal application post-marked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of ten dollars in addition to the renewal fee. No renewal applications will be accepted after that time.

(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 continuously thereafter, shall be subject to the regulation in effect at the time of the original application.

[Statutory Authority: RCW 21.20.070, 21.20.080, 21.20.340 and 21.20.450. 88-17-011 (Order SDO-047-88), § 460-20A-220, filed 8/8/88. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-20A-220, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-20A-220, filed 8/1/85; 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 Repealed. See Disposition Table at beginning of this chapter.

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 SEC Form B/D and complete the state of Washington registration check sheet.

(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 subsection (1)(a) of this section for brokerage firms which do not hold funds or securities for, or owe money or securities to customers and do not carry accounts of or for customers.

(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 the broker-dealer must notify the securities division of a substitute officer or general partner who has passed the same category of examination specified in subsection (1)(a), (b), (c), or (d) of this section within two months in order to maintain the broker-dealers license.

(4) The licenses in subsection (1)(a), (b), (c), or (d) of this section shall be effective until December 31 of the year of passage at which time it shall be renewed or be delinquent. For any renewal application postmarked after the expiration date but received by the director on or before March 1, the licensee shall pay a delinquency fee of twenty-five dollars in addition to the renewal fee. No renewal applications will be accepted thereafter.

(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 continuously thereafter shall be subject to regulations in effect at the time of the original application.

[Statutory Authority: RCW 21.20.070, 21.20.080, 21.20.340 and 21.20.450. 88-17-011 (Order SDO-047-88), § 460-20A-230, filed 8/8/88. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-20A-230, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-20A-230, filed 8/1/85; 82-02-033 (Order SDO-149-81), § 460-20A-230, filed 12/31/81; Order 342, § 460-20A-230, filed 9/29/75; Order 304, § 460-20A-230, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

Chapter 460-24A WAC INVESTMENT ADVISERS

WAC

460-24A-055 Effective date of license.

WAC 460-24A-055 Effective date of license. All investment adviser and investment adviser salesperson licenses shall be effective until December 31 of the year of issuance at which time the license shall be renewed, or if not renewed, shall be deemed delinquent. For any renewal application postmarked after the expiration date but received by the director on or before March 1, the licensee shall pay a delinquency fee in addition to the renewal fee. No renewal applications will be accepted after that time. The delinquency fee for investment advisers shall be twenty-five dollars. The delinquency fee for investment adviser salespersons shall be ten dollars.

[Statutory Authority: RCW 21.20.080, 21.20.340 and 21.20.450. 88-17-011 (Order SDO-047-88), § 460-24A-055, filed 8/8/88.]

Chapter 460-42A WAC EXEMPT SECURITIES

WAC

460-42A-080 Blue chip exemption.

WAC 460-42A-080 Blue chip exemption. (1) Any security that meets all of the following conditions is exempted under RCW 21.20.310(8):

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds five percent of the issuer's (and its consolidated subsidiaries) total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days;

(d) The issuer has had annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes) as follows: (i) At least one million dollars in four of its last five fiscal years including its last fiscal year, and (ii) if the offering is of interest bearing securities, at least one and one-half times its

annual interest expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds, for its last fiscal year. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.

(e) If the offering is of stock or shares (other than preferred stock or shares), and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares (other than preferred stock or shares), with respect to (i) the number of votes per share, and (ii) the right to vote on the same general corporate decisions;

(f) If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least twelve hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners;

(g) Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York Stock Exchange, Inc. or the American Stock Exchange, Inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of (c) of this subsection need be met for only five years and the annual net earnings requirement of (d)(i) of his subsection shall be two hundred fifty thousand dollars;

(h) And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock and surplus) at the end of each of its last five fiscal years, the net income requirement of (d)(ii) of this subsection, but before deduction for interest expense, shall be one and one-fourth times its annual interest expense. "Finance company" means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, banking or factoring. "Liquid assets" means cash receivables payable on demand or not more than twelve years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

(2) 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. 88-01-061 (Order SDO-115B-87), § 460-42A-080, filed 12/17/87; 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.]

Chapter 460-44A WAC EXEMPT TRANSACTIONS

WAC

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 sale.
460-44A-505	Uniform offering exemption for limited offers and sales of securities not exceeding \$5,000,000.
460-44A-506	Exemption for nonpublic offers and sales without regard to dollar amount of offering.

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. WAC 460-44A-505 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 505. WAC 460-44A-506 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 506. 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, 460-44A-502, 460-44A-503, and 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, 460-44A-502, 460-44A-503, and 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.

(6) For offerings commenced but not completed prior to the amendment of WAC 460-44A-501 through 460-44A-506, issuers may opt to follow the rules in effect at the date of commencement.

[Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-500, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-500, filed 7/3/86. 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, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; 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, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(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, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, 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 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;

(f) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(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 to be 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-505 and 460-44A-506 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 (ii) 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.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

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 or 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 (16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-501, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-501, filed 7/3/86. 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-505 or 460-44A-506:

(1) "Integration." 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-505 or 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 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 \$2,000,000. The same kind of information as would be required in Part II of Form 1-A, 17 CFR Sec. 239.90, except that the issuer's balance sheet, which shall be dated within one hundred twenty days of the start of the offering, must be audited.

(B) Offerings up to \$7,500,000. 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.

(C) Offerings over \$7,500,000. 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.

(D) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (b)(i)(B) or (C) of this subsection as appropriate.

(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) as appropriate.

(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-505 or 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-505 or 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 or exchange offers, in addition to information required by Form S-4, 17 CFR

Sec. 239.25, 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 transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(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 section 4(2) of the Securities Act of 1933 and 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 securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended 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 1933 and 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 1933 and 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 complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1988).

[Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-502, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-502, filed 7/3/86. 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 sale. (1) The issuer shall file with the administrator of securities of the department of licensing a notice and pay a filing fee as follows:

(a)(i) The issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 505 (and box ULOE) or 506, as applicable, and pay a filing fee of three hundred dollars no later than ten business days (or such lesser period as the administrator may allow) prior to the receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-505 or 460-44A-506;

(ii) The issuer shall also file with or on the initial notice a representation that the issuer has reviewed all the conditions of WAC 460-44A-505 or 460-44A-506 and such conditions shall be met; and

(iii) Unless previously filed, the issuer shall include with the initial notice an executed uniform consent to service of process on Form U-2.

(b) The issuer shall file with the administrator such other notices on Form D as are required to be filed with the Securities and Exchange Commission.

(c) The issuer shall file a report of sales in the state of Washington on a form prescribed by the administrator no later than thirty days after the last sale of securities in the offering.

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

(2) By filing for the exemption of WAC 460-44A-505 or 460-44A-506, the issuer undertakes to furnish to the administrator, upon request, 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. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-505 or 460-44A-506.

[Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-503, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17). 86-15-003 (Order SDO-80-86), § 460-44A-503, filed 7/3/86. 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-505 Uniform offering exemption for limited offers and sales of securities not exceeding \$5,000,000. (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503 and 230.505 as made effective in Release Nos. 33-6389, 33-6437, and 33-6758 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(16).

(2) Conditions to be met.

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

Note: In order to comply with this section the issuer must comply with the provisions of Rule 505 (17 CFR Sec. 230.505) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(ii) It is a defense to a violation of (b)(i) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who offered or sold the security was not appropriately registered in this state.

(c) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(d) No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 230.252 sections (c), (d), (e), or (f):

(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to the filing of the notice required under this exemption.

(ii) Has been convicted within ten years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(iii) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years

prior to the filing of the notice required under this section or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

(iv) Is subject to an order or judgment of the Washington state administrator of securities or any other state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any filing with this or any state entered within five years prior to the filing of the notice required under this exemption.

(vi) The prohibitions of (d)(i), (ii), (iii), and (v) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under (d) of this subsection may act in a capacity other than that for which the person is licensed or registered.

(vii) Any disqualification caused by (d) of this subsection is automatically waived if the Washington state administrator of securities or the state securities administrator or other agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption of this section be denied.

(e) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(3) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the issuer may claim the availability of any other applicable exemption.

(4) The Washington state administrator of securities may, by rule or order, waive the conditions of this section.

(5) The exemption authorized by this section shall be known and may be cited as the "Washington uniform limited offering exemption."

[Statutory Authority: RCW 21.20.320(16) and 21.20.450. 88-15-024 (Order SDO-71-88), § 460-44A-505, filed 7/12/88. Statutory Authority: RCW 21.20.320(17) and 21.20.340(11). 86-15-003 (Order SDO-80-86), § 460-44A-505, filed 7/3/86.]

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 in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.503 and 230.506 as made effective in Release Nos. 33-6389, 33-6437, and 33-6758 that satisfy the conditions in subsection (2) of this section 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 section, offers and sales must satisfy all the terms and conditions of WAC 460-44A-501 through 460-44A-503.

Note: In order to comply with this section the issuer must comply with the provisions of Rule 506 (17 CFR Sec. 230.506) of the Federal Securities and Exchange Commission.

(b) Specific conditions.

(i) No selling commission unless registered as a broker-dealer or salesperson.

(A) No commission, fee, or other remuneration shall be paid or given directly or indirectly, to any person for soliciting any prospective purchaser that is not an accredited investor in the state of Washington unless such person is registered in this state as a broker-dealer or salesperson.

(B) It is a defense to a violation of (b)(i)(A) of this subsection if the issuer sustains the burden of proof to establish that he did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

(ii) Limitation on selling expenses.

(A) Selling expenses in any offering under this section shall not exceed fifteen percent of the aggregate offering price. For the purposes of this section, "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 section 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 section 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 section, the issuer may claim the availability of any other applicable exemption.

(4) The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

[Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450, 88-15-024 (Order SDO-71-88), § 460-44A-506, filed 7/12/88. Statutory Authority: RCW 21.20.320 (1) and (17) and 21.20.340(11), 86-15-003 (Order SDO-80-86), § 460-44A-506, filed 7/3/86. Statutory Authority: RCW 21.20.320(1) and 21.20.450, 85-01-062 (Order SDO-196-84), § 460-44A-506, filed 12/17/84; 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-040 Maximum number of purchasers under exemption.

WAC 460-46A-040 Maximum number of purchasers under exemption. The maximum number of purchasers under the limited offering exemption in any consecutive twelve months shall be forty. 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. This section shall be given retroactive effect to August 15, 1983.

[Statutory Authority: RCW 21.20.320(9) and 21.20.450, 87-15-084 (Order SDO-80-87), § 460-46A-040, filed 7/20/87; 82-20-068 (Order SDO-116-82), § 460-46A-040, filed 10/5/82.]

Chapter 460-64A WAC CAPITAL REQUIREMENTS--DEFINITIONS

WAC

460-64A-010 Definitions.

460-64A-020 Capital requirements.

WAC 460-64A-010 Definitions. As set forth in RCW 21.20.710, 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 or other liquid assets as allowed with the express written permission of the securities administrator.

[Statutory Authority: RCW 21.20.710 and 21.20.450, 87-03-052 (Order SDO-05-87), § 460-64A-010, filed 1/21/87; 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.

[Statutory Authority: RCW 21.20.710 and 21.20.450, 87-03-052 (Order SDO-05-87), § 460-64A-020, filed 1/21/87; Order 304, § 460-64A-020, filed 2/28/75, effective 4/1/75.]

Chapter 460-70 WAC
COMMODITY BROKER-DEALERS

WAC	
460-70-005	Net capital requirements for commodity broker-dealers.
460-70-010	Commodity broker-dealer notice of net capital deficiency.
460-70-015	Bond requirements for commodity broker-dealers and commodity sales representatives.
460-70-020	Application for registration and post-effective requirements for a commodity broker-dealer and commodity sales representatives.
460-70-025	Financial statements for commodity broker-dealers.
460-70-030	Segregation of accounts by commodity broker-dealers.
460-70-035	Confirmations.
460-70-040	Records required of commodity broker-dealers.
460-70-045	Records to be preserved by commodity broker-dealers.
460-70-050	Denial, revocation, and suspension of registration.
460-70-060	Promotional materials to be filed, materials permitted without filing and prohibited materials.

WAC 460-70-005 Net capital requirements for commodity broker-dealers. (1) The director may require a commodity broker-dealer to have the net capital necessary to comply with all of the following conditions:

(a) The aggregate indebtedness to all other persons of a commodity broker-dealer who has been registered under WAC 460-70-020 shall not exceed one thousand percent of his/her net capital; and

(b) He/she shall have and maintain net capital of not less than twenty thousand dollars.

(2) The administrator by order, which may apply individually or to a class, may establish a lower net capital requirement or a higher maximum ratio of aggregate indebtedness to net capital either unconditionally or upon special terms or conditions, for a commodity broker-dealer who satisfied the administrator that because of the special nature of his/her business and his/her financial condition, and the safeguards that have been established for the protection of customers' funds, investors would not be adversely affected.

(3) A commodity broker-dealer subject to this section not in compliance with the aggregate indebtedness or net capital requirements shall cease soliciting new business and shall immediately notify the administrator in writing of this deficiency.

(4) For the purposes of this rule and to insure uniform interpretation, the terms, "aggregate indebtedness" and "net capital" shall have the respective meanings as defined in rule 15c3-1 under the Securities Exchange Act of 1934. A copy of any pertinent subordination agreement shall be filed with the administrator within ten days after such agreement has been entered into and shall meet the requirements of a "satisfactory subordination agreement" as that term is defined in rule 15c3-1.

(5) In lieu of the requirements under this section and WAC 460-70-010, the director may allow the commodity broker-dealer to post a surety bond as described in WAC 460-70-015.

[Statutory Authority: RCW 21.20.400 and 21.30.300. 87-02-044 (Order SDO-137-86), § 460-70-005, filed 1/6/87.]

WAC 460-70-010 Commodity broker-dealer notice of net capital deficiency. The director may require a commodity broker-dealer registered under WAC 460-70-020 to make a computation of its net capital and ratio of its aggregate indebtedness to its net capital not less than monthly and to comply with the following requirements:

(1) No withdrawal of any part of its net worth, including subordinated indebtedness, whether by redemption, retirement, repurchase, repayment or otherwise, shall be permitted or effected that will cause its net capital to be less than one hundred twenty percent of the amount prescribed in WAC 460-70-005 or its aggregate indebtedness to exceed one thousand five hundred percent of its net capital, without notice to the administrator as follows:

(a) Every commodity broker-dealer to which this rule is applicable, whose net capital is less than one hundred twenty percent of the amount prescribed in WAC 460-70-005 or whose aggregate indebtedness exceeds one thousand five hundred percent of its net capital, shall promptly notify the administrator by telegram, graphic scan, or in writing of the deficiency and its extent; and

(b) Every commodity broker-dealer to which this rule is applicable shall file with the administrator a report in writing on its net capital and ratio of its aggregate indebtedness to its net capital as of the end of each month in which its net capital is less than one hundred twenty percent of the amount prescribed in WAC 460-70-005 or its aggregate indebtedness exceeds one thousand two hundred percent of its net capital, promptly after it has knowledge of such fact and in no event later than fifteen days after the end of each such month.

(2) The administrator, in coordination with the securities administrators of other states, in addition to any other reports he/she may require, may require all registered commodity broker-dealers to which subsection (1) of this section is applicable to file reports on their net capital and aggregate indebtedness as of the end of any month, without prior notice, once during each year.

[Statutory Authority: RCW 21.20.400 and 21.30.300. 87-02-044 (Order SDO-137-86), § 460-70-010, filed 1/6/87.]

WAC 460-70-015 Bond requirements for commodity broker-dealers and commodity sales representatives.

(1) In lieu of net capital requirements under WAC 460-70-005, the director may allow a commodity broker-dealer registered under WAC 460-70-020 to post a surety bond on Form C-4 in the amount of twenty thousand dollars, except that no such bond is required of any commodity broker-dealer whose net capital as indicated by audited financial statement exceeds one million dollars.

(2) Employees and officers of every commodity broker-dealer registered under WAC 460-70-020 shall be covered by a fidelity bond in the following minimum amounts: Less than six individuals covered—fifty thousand dollars; more than five and less than eleven individuals covered—seventy-five thousand dollars; more than ten persons—one hundred twenty-five thousand dollars. The coverage provided shall be under a Brokers

Blanket Bond Standard Form 14 or its equivalent. Individual broad coverage commercial bonds may be carried when the total number of individuals covered is less than six. Any fidelity bond coverage meeting the requirements of the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the PBW Stock Exchange, Inc. or the Chicago Board Options Exchange, Inc. shall be deemed in compliance. Authenticated copies of fidelity bonds shall be filed with the administrator.

(3) Every insurer shall agree to notify the administrator, in writing, at least thirty days prior to any cancellation.

(4) All bonds, other than those secured by cash or securities, shall be executed by a corporate surety approved and authorized to do business in Washington by the commissioner of insurance. If any bond is executed by an attorney in fact, a true and authenticated copy of his/her authority shall be attached to the bond.

[Statutory Authority: RCW 21.20.400 and 21.30.300. 87-02-044 (Order SDO-137-86), § 460-70-015, filed 1/6/87.]

WAC 460-70-020 Application for registration and post-effective requirements for a commodity broker-dealer and commodity sales representatives. (1) Except as otherwise provided in WAC 460-70-065, the application for registration as a commodity broker-dealer shall contain the following:

(a) As to initial registration:

(i) Form CBD properly executed;

(ii) Filing fee of two hundred dollars for the principal office and one hundred dollars for each branch office in this state;

(iii) Consent to service of process;

(iv) Copies of articles of incorporation;

(v) Current financial statements in accordance with WAC 460-70-025;

(vi) Surety bond if required;

(vii) Fidelity bond if required; and

(viii) Appropriate personal information schedule of Form CBD for each officer, director, and partner; or

(b) As to renewal registration:

(i) Information specified on the execution page of Form CBD;

(ii) Any amendments to Form CBD not previously filed;

(iii) Filing fee of one hundred dollars for the principal office and fifty dollars for each branch office in this state; and

(iv) Current financial statement in accordance with WAC 460-70-025.

(2) The application for registration as a commodity sales representative shall contain the following:

(a) As to initial registration:

(i) Form U-4 properly executed;

(ii) Filing fee of fifty dollars;

(iii) A photograph taken within one year; and

(iv) Surety bond if required.

(b) As to renewal registration:

(i) The information specified in the renewal application specified by the director; and

(ii) Filing fee of thirty-five dollars.

(3) Each licensed commodity broker-dealer or commodity sales representative shall, upon any material change in the information contained in its application (other than financial information contained therein), promptly file an amendment to such application setting forth the changed information no later than thirty days after the change occurs. Such information includes but is not limited to the following:

(a) Change in firm name, ownership, management or control or change in any partners, officers or persons in similar positions, or business address or the creation or termination of a branch office in Washington;

(b) Change in type of entity, general plan or character of business, method of operation or type of commodities in which dealing or trading is being effected;

(c) Insolvency, dissolution or liquidation or a material adverse change or impairment of working capital, or noncompliance with the minimum capital or bond requirements specified previously;

(d) Termination of business or discontinuance of activities as a commodity broker-dealer;

(e) The filing of a criminal charge or civil or administrative action, in which a fraudulent, dishonest or unethical act is alleged or a violation of a securities or commodities law is involved; or

(f) Entry of an order or proceeding by any court or administrative agency denying, suspending or revoking a registration or expelling the firm or individual from membership in any stock exchange, NASD or NFA or threatening to do so, or enjoining it from engaging in or continuing any conduct or practice in the securities or commodities business.

(4) Every registration of a commodity broker-dealer or commodity sales representative expires on the first December 31st following registration, unless renewed or unless sooner revoked, cancelled, or withdrawn except the 1986 registrations which will be effective until December 31, 1987, unless sooner revoked, cancelled, or withdrawn.

(5) Applications for renewal of registration filed directly with the administrator shall be filed on the appropriate form marked "renewal" with required information and exhibits, no earlier than sixty days and no later than thirty days before the expiration date of the registration concerned.

(6) An applicant for renewal registration may incorporate by reference in the application documents previously filed to the extent the documents are currently accurate.

(7) Upon expiration of a registration, any subsequent application for registration shall be considered and treated as an application for initial registration.

(8) When a commodity sales representative's association with the commodity broker-dealer who appoints him/her as commodity sales representative is discontinued or terminated, the commodity broker-dealer must file within ten days of such discontinuance or termination, a notice of that fact, stating the date of and reasons

for the discontinuance or termination (Form U-5 or by letter.) Notwithstanding the foregoing, if the termination is for cause, the commodity broker-dealer shall furnish the administrator a detailed statement of the reasons. Failure to file the notice of termination by the commodity broker-dealer principal required by this rule within the specified ten day period will afford grounds for the suspension of the license of the commodity broker-dealer to transact business in Washington.

(9) Every commodity broker-dealer registered under this section who desires to withdraw his/her registration shall file an application (Form CBDW). The request of a commodity broker-dealer shall include a statement of financial condition as of a date within thirty days of such statement in such detail as will disclose the nature and amount of assets and liabilities, net worth, unsatisfied judgements and liens and a statement of where and in whose custody the books and records will be kept, and, in the case of the commodity broker-dealer, a schedule of commodities in which it has an interest and the market value of the commodities.

(10) In the event of a merger, consolidation, or reorganization of an existing registered commodity broker-dealer the following documents must be filed:

(a) The commodity broker-dealer who will dissolve upon consummation of the merger or who will become a part of an existing commodity broker-dealer upon reorganization or consolidation must file at least ten days prior to a merger, consolidation, or reorganization:

(i) A termination of its commodity broker-dealer registration on Form CBDW;

(ii) A termination of all commodity sales representative registrations; and

(iii) A complete explanation of the proposed merger, consolidation or reorganization accompanied by the agreement effecting the merger, consolidation or reorganization; and

(b) The commodity broker-dealer who will be the surviving corporation upon consummation of the merger or who will be the named commodity broker-dealer after the reorganization or consolidation must file the following documents at least ten days prior to the merger, consolidation or reorganization:

(i) A complete explanation of the proposed merger;

(ii) Form U-4 applications plus supporting documents of all registered commodity sales representatives of the dissolving commodity broker-dealer to be transferred to the surviving, consolidated or reorganized commodity broker-dealer; and

(iii) If the name of the surviving, consolidated or reorganized commodity broker-dealer will change, the surviving or newly named commodity broker-dealer shall file an amended Form CBD, as appropriate, and all other properly amended documents required by subsections (1), (2) and (8) of this section.

(11) Unless good cause is shown, the administrator will cancel an application which has been pending for a period of six months or more upon notice by the securities division.

(12) A commodity broker-dealer or commodity sales representative shall not be required to comply with subsections (1)(a) (v), (vi), and (vii), (1)(b)(iv), (2)(a)(iv), (9), and (10) of this section, WAC 460-70-005, 460-70-010, 460-70-015 and 460-70-030 if the following conditions are met by that commodity broker-dealer or commodity sales representative:

(a) All transactions require the purchaser to pay one hundred percent of the purchase price in cash or cash equivalent within ten days of the contract of sale.

(b) Seventy-five percent of the total dollar value of the commodity broker-dealer's gross sales do not constitute commodity contracts or commodity options as defined in chapter 21.30 RCW.

(c) The annual gross profit for the last fiscal year as a commodity broker-dealer did not exceed five hundred thousand dollars or for the last two fiscal years did not exceed one million dollars.

[Statutory Authority: RCW 21.20.400 and 21.30.230. 87-02-044 (Order SDO-137-86), § 460-70-020, filed 1/6/87.]

WAC 460-70-025 Financial statements for commodity broker-dealers. (1) A financial statement shall consist of a balance sheet, a profit and loss statement and a statement of change in financial condition, certified unless otherwise prescribed in this rule or permitted by the administrator.

(2) Except as provided herein every applicant for initial registration under WAC 460-70-020 as a commodity broker-dealer shall file a financial statement as follows:

(a) As to initial registration as a commodity broker-dealer, the applicant shall file a certified financial statement as of a date within ninety days prior to the filing; provided if the applicant has been engaged in business one year or more, he/she may file a certified financial statement as of the end of his/her last fiscal period together with a balance sheet, which need not be certified, as of a date within ninety days prior to the filing; and

(b) If the annual financial statement is more than six months old, he/she shall also file a semi-annual financial statement, which need not be certified. The semi-annual financial statement may consist wholly of a completed FOCUS report for that period.

(3) Every commodity broker-dealer registered under WAC 460-70-020 shall file a certified financial statement within ninety days after the end of its fiscal period, unless an extension of time is granted upon written request.

(4) A net capital computation, as of the date of the balance sheet, shall accompany the financial statements.

(5) In lieu of all other requirements of this section, commodity broker-dealers registered pursuant to WAC 460-70-020(12) must keep and maintain a noncertified financial statement in its principal office in this state. Such financial statement must be updated annually.

(6) Commodity broker-dealers required to file a financial statement with an initial registration application under WAC 460-70-020 shall file a semi-annual financial statement, which need not be certified, within sixty days after the end of the six-month period following the

end of the fiscal year. A completed FOCUS report may be substituted for semi-annual net capital computations and financial statements.

(7) Every applicant required to file a financial statement with a renewal registration application as a commodity broker-dealer under WAC 460-70-020 shall file a financial report consisting of a balance sheet and net capital computation, or a completed FOCUS report, as of a date within sixty days of the date of filing.

[Statutory Authority: RCW 21.20.400 and 21.30.310. 87-02-044 (Order SDO-137-86), § 460-70-025, filed 1/6/87.]

WAC 460-70-030 Segregation of accounts by commodity broker-dealers. (1) Every commodity broker-dealer shall at all times keep its customers' funds and commodities in trust and segregated from its own funds and commodities provided, however, that compliance with SEC or CFTC rules and regulations governing the use, commingling and hypothecation of customers' commodities and free credit balances shall be deemed compliance with this rule.

(2) Every commodity broker-dealer who engages in more than one enterprise or activity shall maintain separate books of accounts and records relating to its commodities business and its other businesses and the assets relating to its commodities business shall not be commingled with those of such other businesses. Every commodity broker-dealer shall maintain a clearly defined division among such businesses with respect to income and expenses.

[Statutory Authority: RCW 21.20.400. 87-02-044 (Order SDO-137-86), § 460-70-030, filed 1/6/87.]

WAC 460-70-035 Confirmations. Confirmations by commodity broker-dealers of all purchases and sales of commodities and notices of all other debits and credits for securities, cash and other items for the account of customers, officers, agents, partners, and employees shall be given or sent to such persons at or before completion of each transaction and shall disclose at least the following:

- (1) The account for which entered;
- (2) Instructions, terms, and conditions, including price, quantity, and description of the transaction whether executed or unexecuted;
- (3) Date of execution of transaction (time of trade shall be furnished upon request);
- (4) Name or identification number of commodity sales representative handling transaction; and
- (5) If the transaction was solicited or unsolicited.

[Statutory Authority: RCW 21.20.400 and 21.30.320. 87-02-044 (Order SDO-137-86), § 460-70-035, filed 1/6/87.]

WAC 460-70-040 Records required of commodity broker-dealers. (1) Every commodity broker-dealer shall make and keep current the following books and records relating to his/her business as a commodity broker-dealer (provided, however, that compliance with the requirements of the CFTC or SEC with respect to maintenance of books and records shall be deemed to be compliance with this rule):

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of commodities, all receipts and deliveries of commodities and all receipts and disbursements of cash and all other debits and credits;

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

(c) Ledger accounts itemized separately as to cash and margin account of every customer and of such commodity broker-dealer, its partners, agents and employees, all purchases, sales receipts and deliveries of commodities for such account and all other debits and credits to such account;

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

(i) Commodities in transfer;

(ii) Appreciation or depreciation on investment;

(iii) Commodities borrowed and commodities loaned; and

(iv) Moneys borrowed and moneys loaned (together with a record of the collateral and substitutions in such collateral);

(e) Copies of confirmations of all purchases and sales of commodities, copies of all memoranda forwarded to purchasers executing unsolicited orders and copies of all other debits and credits for securities, commodities, cash and other items for the account of customers and partners of the commodity broker-dealer; and

(f) A record in respect of each cash and margin account with such commodity 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 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 account.

(2) Commodity broker-dealers registered pursuant to WAC 460-70-020(12) must keep and maintain a non-certified financial statement in its principal office. Such financial statement must be updated annually.

[Statutory Authority: RCW 21.20.400 and 21.30.320. 87-02-044 (Order SDO-137-86), § 460-70-040, filed 1/6/87.]

WAC 460-70-045 Records to be preserved by commodity broker-dealers. (1) Every commodity broker-dealer shall preserve for a period of not less than five years, the first two years in an easily accessible place, all records required to be made pursuant to these rules.

(2) Every commodity broker-dealer shall preserve for a period of not less than three years and, for the first two years, in an easily accessible place, the following:

(a) All check books, bank statements, cancelled checks, voided checks, and cash reconciliations;

(b) All bills, receivable or payable (or copies) paid or unpaid relating to the business of the commodity broker-dealer;

(c) Originals of all communications received and copies of all communications sent by the commodity broker-dealer (including inter-office memoranda and communications) relating to his/her commodity broker-dealer business;

(d) All net capital computations, trial balances, financial statements, branch office reconciliations, and internal audit working papers, relating to the business of the commodity broker-dealer;

(e) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect to any account and copies of resolutions empowering an agent to act on behalf of a corporation; and

(f) All written agreements (or copies) entered into by such commodity broker-dealer relating to his/her business as a commodity broker-dealer, including agreements with respect to any account.

(3) Every such commodity broker-dealer shall preserve for a period of not less than six 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.

(4) Every commodity 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 articles of incorporation or charter, minute books and stock certificate books.

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

(6) Compliance with the requirements of the CFTC or SEC with respect to preservation of records shall be deemed to be compliance with this rule.

[Statutory Authority: RCW 21.20.400 and 21.30.320, 87-02-044 (Order SDO-137-86), § 460-70-045, filed 1/6/87.]

WAC 460-70-050 Denial, revocation, and suspension of registration. Grounds for the denial, revocation and suspension of registration shall include the following "unethical or dishonest conduct or practice in the investment commodities or securities business":

(1) Unreasonable and unjustifiable delay or failure to execute orders, liquidate customers' accounts or in making delivery of securities or commodities purchased or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Effecting transactions in the account of a customer without authority to do so; or exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(3) Engaging in or aiding in "boiler room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign or unsolicited calls to persons not known by, nor having an account with, the commodity sales representative or commodity broker-dealer represented by the commodity sales representative, where the prospective purchaser is encouraged to make a hasty decision to buy, irrespective of his/her investment needs and objectives;

(4) Making false, misleading, deceptive, exaggerated or flamboyant representations or predictions in the solicitation or sale of commodity or security, as, for example:

(a) That the commodity or security will be resold or repurchased;

(b) That it will be listed or traded on an exchange or established market;

(c) That it will result in an assured, immediate or extensive increase in value, future market price or return on investment;

(d) With respect to the issuer's financial condition, anticipated earnings, potential growth or success;

(e) That there is a guarantee against risk or loss; or

(f) Representing that a commodity or security is being offered to a customer "at the market" or a price related to the market price unless the applicant or registrant knows or has reasonable grounds to believe that:

(i) A market for such commodity or security exists other than that made, created or controlled by the applicant or registrant, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with the applicant or registrant; and

(ii) The commodity or security is traded in an established commodities or securities market and the fact that the applicant or registrant is in a control position with respect to the market for that commodity or security is fully disclosed to the investor;

(5) Failing to disclose a dual agency capacity or effecting transactions upon terms and conditions other than those stated per confirmations, or failing to disclose that the applicant or registrant is controlled by, controlling, affiliated with or under common control with the issuer of any security or commodity before entering into any contract with or for a customer for the purchase or sale of that security or commodity, or if such disclosure is not made in writing, failing to give or send a written disclosure at or before the completion of the transaction;

(6) Establishing fictitious accounts in order to execute transactions which would otherwise be prohibited;

(7) Entering into agreements for selling concessions, discounts, commissions, or allowances as consideration for services in connection with the distribution or sale of a commodity or security in Washington to any unregistered commodity broker-dealer or commodity sales representative, or dividing or otherwise splitting the commodity sales representative's commissions, profits or other compensation from the purchase or sale of commodities or securities with any person not also registered as a commodity sales representative for the same commodity broker-dealer, or for a commodity broker-dealer under direct or common control unless such person is not required to be registered under the provisions of chapter 21.20 or 21.30 RCW;

(8) Operating a commodities or securities business while being unable to meet current liabilities, or violating any rule or order relating to minimum capital, bond, record keeping, and reporting requirements, or provisions concerning use, commingling, or hypothecation of commodities or securities;

(9) Failure or refusal to furnish a customer, upon reasonable request, information to which he/she is entitled, or to respond to a formal written demand or complaint.

(10) Hypothecating a customer's commodities or securities without having a lien on the commodities or securities unless the commodity broker-dealer secures from the customer a properly executed written consent or except as permitted by rules of the CFTC or SEC;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of commodities or securities, appraisals, safekeeping or custody of commodities or securities and other services related to its commodities or securities business or charging any fee for services performed unless such fee is fully disclosed;

(12) Offering to buy from or sell to any person any commodity or security at a stated price unless the applicant or registrant is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Effecting any transaction in or inducing the purchase or sale of any commodity or security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, including but not limited to:

(a) Effecting any transaction in a commodity or security which involves no change in the beneficial ownership, except at the request of the customer; and

(b) Effecting, alone or with one or more other persons, a transaction or series of transactions in any commodity or security creating actual or apparent active trading in such commodity or security or raising or depressing the price of such commodity or security for the purpose of inducing the purchase or sale of such commodity or security by others;

(14) Publishing or circulating or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report any transaction as a purchase or sale of any commodity or security unless the applicant or registrant believes that such transaction was a bona fide purchase or sale of such commodity or security; or which purports to quote the bid or asked price for any commodity or security, unless the applicant or registrant believes that such quotation represents a bona fide bid for, or offer of, such commodity or security; or using any advertising or sales material in such a fashion as to be deceptive or misleading, such as the distribution of any nonfactual data, material or presentation based on conjecture, founded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise, designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(15) Borrowing of money, commodities or securities from a customer by a commodity sales representative, or for a commodity sales representative to act as a custodian for money, commodities or securities or an executed stock power of a customer;

(16) Sharing, by a commodity sales representative, directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the commodity broker-dealer a commodity sales representative represents; and

(17) Effecting commodities or securities transactions not recorded on the regular books or records of the commodity broker-dealer the commodity sales representative represents, unless the transactions are authorized in writing by the commodity broker-dealer prior to the execution of the transaction.

[Statutory Authority: RCW 21.20.400 and 21.30.350, 87-02-044 (Order SDO-137-86), § 460-70-050, filed 1/6/87.]

WAC 460-70-060 Promotional materials to be filed, materials permitted without filing and prohibited materials. (1) Any advertisement, display, pamphlet, brochure, letter, article or communication published in any newspaper, magazine or periodical, or script of any recording, radio or television announcement, broadcast or commercial to be used or circulated in connection with the sale and promotion of a public offering of commodities contracts or options will be subject to the following requirements and restrictions:

(a) All sales and advertising literature and promotional material, other than that exempted by this rule, shall be governed by the following:

(i) The applicant shall file with the administrator one copy of each item of literature or material as follows:

(A) If the promotional materials pertain specifically to commodity contracts or commodity options, they must be filed five business days prior to use;

(B) If the promotional materials do not pertain specifically to commodity contracts or commodity options, they must be filed no later than five business days after use;

(ii) 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;

(iii) No formal approval of the literature or material shall be issued by the administrator;

(iv) 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 Act and this rule; and

(b) The following devices or sales presentation, and their use, will be deemed deceptive practices that cheat or defraud investors:

(i) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the commodity's past performance and that of another commodity or investment media;

(ii) 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;

(iii) Statements or representations which predict future profit, success, appreciation, performance, or otherwise relate to the merit or potential of the commodities unless such statements or representations clearly indicate that they represent solely the opinion of the publisher;

(iv) 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;

(v) 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;

(vi) 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; and

(vii) Any package or bonus deal, prize, gift, gimmick, or similar inducement, combined with or dependent upon the sale of some other product, contract, or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the commodity being offered.

(2) The so-called "tombstone" advertising, containing no more than the following information, is permitted without the necessity for filing or prior authorization by the administrator, unless specifically prohibited:

- (a) Name and address of commodity broker-dealer;
- (b) Identity, type or grade of commodity;
- (c) Per unit offering price and amount of offering; and
- (d) Brief, general description of commodity.

(3) Any person who prepares, distributed or causes to be issued or published any sales literature which is knowingly inaccurate, false, misleading or tending to mislead in any material respect or otherwise in violation of the provisions of these rules may be held responsible and accountable in any administrative or civil proceeding arising under this chapter.

[Statutory Authority: RCW 21.20.400. 87-02-044 (Order SDO-137-86), § 460-70-060, filed 1/6/87.]

Chapter 460-80 WAC FRANCHISE REGISTRATION

WAC
460-80-315 Content and form of offering circular.

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:

[1988 WAC Supp—page 2844]

COVER PAGE. The outside front cover of the offering circular shall contain the following information:

The title in boldface type: **FRANCHISE OFFERING CIRCULAR FOR PROSPECTIVE FRANCHISEES REQUIRED BY THE STATE OF WASHINGTON.**

The name, type of business organization, principal business address and telephone number of the franchisor.

If different than above, the name, principal business address and telephone number of the subfranchisor or franchise broker offering in this state the herein described franchise.

A sample of the primary business trademark, logo-type, trade name or commercial label or symbol used by the franchisor for marketing its products or services and under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)

A brief description of the franchise to be offered.

A summary of items (5) and (7) of the offering circular, to-wit: Franchisee's initial franchise fee or other payment and franchisee's initial investment, respectively.

Effective date: (Leave blank until notified of effectiveness by securities division.)

The following statement in boldface type:

THIS OFFERING CIRCULAR IS PROVIDED FOR YOUR OWN PROTECTION AND CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THIS OFFERING CIRCULAR AND ALL CONTRACTS AND AGREEMENTS SHOULD BE READ CAREFULLY IN THEIR ENTIRETY FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

A FEDERAL TRADE COMMISSION RULE MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE WITHOUT FIRST PROVIDING THIS OFFERING CIRCULAR TO THE PROSPECTIVE FRANCHISEE AT THE EARLIER OF (1) THE FIRST PERSONAL MEETING, OR (2) TEN BUSINESS DAYS BEFORE THE SIGNING OF ANY FRANCHISE OR RELATED AGREEMENT, OR (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT. THE PROSPECTIVE FRANCHISEE MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS PRIOR TO THE SIGNING OF THE FRANCHISE AGREEMENT.

IF THIS OFFERING CIRCULAR IS NOT DELIVERED ON TIME, OR IF IT CONTAINS A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND WASHINGTON STATE DEPARTMENT OF LICENSING, SECURITIES DIVISION, P.O. BOX 648, OLYMPIA, WASHINGTON 98504.

The name and address of the franchisor's registered agent in this state authorized to receive service of process.

The name and address of the subfranchisor's or franchise broker's registered agent in this state authorized to receive service of process.

TABLE OF CONTENTS: Include a table of contents based on the requirements of this offering circular.

BODY OF OFFERING CIRCULAR: The offering circular shall contain the following information clearly and concisely stated in narrative form:

(1) The franchisor and any predecessors: Set forth in summary form: (The disclosure regarding predecessors need only cover the 15 year period immediately preceding the close of franchisor's most recent fiscal year.)

(a) The name of the franchisor and any predecessors thereto.

(b) The name under which the franchisor is currently doing or intends to do business.

(c) The franchisor's principal business address and the business address or addresses of any predecessors thereto.

(d) The business form of the franchisor whether corporate, partnership or otherwise.

(e) A description of the franchisor's business and the franchises to be offered in this state.

(f) The prior business experience of the franchisor and any predecessors thereto including:

(i) The length of time the franchisor has conducted a business of the type to be operated by the franchisee;

(ii) The length of time each predecessor conducted a business of the type to be operated by the franchisee;

(iii) The length of time the franchisor has offered franchises for such business;

(iv) The length of time each predecessor offered franchises for such business;

(v) Whether the franchisor has offered franchises in other lines of business, including:

(A) A description of such other lines of business;

(B) The number of franchises sold in each other line of business;

(C) The length of time the franchisor has offered each such franchise; and

(vi) Whether each predecessor offered franchises in other lines of business, including:

(A) A description of such other lines of business;

(B) The number of franchises sold in each other line of business; and

(C) The length of time each predecessor offered each such franchise.

(2) Identity and business experience of persons affiliated with the franchisor; franchise brokers: List by name and position held the directors, trustees and/or general partners, as the case may be, the principal officers (including the chief executive and chief operating officer, financial, franchise marketing, training and service officers) and other executives or subfranchisors who will have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by this offering circular and all franchise brokers. With regard to each person listed, state his principal occupations and employers during the past five years.

(3) Litigation: State whether the franchisor, any person or franchise broker identified in (2) above:

(a) Has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person, the court or other forum, nature, and current

status of any such pending action. Franchisor may include a summary opinion of counsel as to any such action, but only if a consent to use of such summary opinion is included as part of this offering circular.

(b) Has during the 10 year period immediately preceding the date of the offering circular been convicted of a felony or plead nolo contendere to a felony charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding if such felony, civil action, complaint or other legal proceeding involved violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person convicted, the court and date of conviction or person against whom judgment was entered, penalty or damages assessed in connection therewith and/or terms of settlement.

(c) Is subject to any currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency. If so, set forth the name of the person so subject, the public agency and court, a summary of the allegations or facts found by the agency or court and the date, nature, terms and conditions of the order or decree.

(4) Bankruptcy: State whether the franchisor or any predecessor, officer or general partner of the franchisor has during the 15 year period immediately preceding the date of the offering circular been adjudged bankrupt or reorganized due to insolvency or was a principal officer of any company or a general partner in any partnership that was adjudged bankrupt or reorganized due to insolvency during or within one year after the period that such officer or general partner of the franchisor held such position in such company or partnership, or whether any such bankruptcy or reorganization proceeding has been commenced. If so, set forth the name of the person or company adjudged bankrupt or reorganized or named in any such proceeding and the date thereof and any material facts or circumstances.

(5) Franchisee's initial franchise fee or other initial payment: Describe in detail the following:

(a) The initial franchise fee or other initial payment for the franchise, if any, charged upon the signing of the franchise agreement, and whether payable in lump sum or installments. Set forth the manner in which the franchisor will use or apply such franchise fee or initial payment. State whether such fee or payment is refundable, and if so, under what conditions.

(b) If an identical initial franchise fee or other initial payment is not charged in connection with each franchise agreement, state the method or formula by which such fee or payment is determined.

(6) Other fees: Describe in detail other recurring or isolated fees or payments, including but not limited to royalties, service fees, training fees, lease payments and advertising fees and charges that the franchisee is required to pay to the franchisor or persons affiliated with

the franchisor or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party. Include, if applicable, the formula used to compute such other fees and payments. State whether any such fee or payment is refundable, and if so, under what conditions.

(7) Franchisee's initial investment: Describe in detail the following expenditures (which may be estimated or described by a low-high range, if not known exactly), stating for each to whom the payments are to be made, when such payments are to be determined, whether any payment is refundable, and if so, under what conditions and, if any part of the franchisee's initial investment in the franchise will or may be financed, an estimate of the loan repayments, including interest:

(i) Real property, whether or not financed by contract, installment, purchase or lease. If neither estimate nor describable by a low-high range, describe the variable requirements, such as property, location and building size which make the real property expenditure neither estimable nor describable by a low-high range.

(ii) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements and decorating costs, whether or not financed by contract, installment purchases, lease or otherwise.

(iii) Inventory required to commence operations.

(iv) Security deposits, other prepaid expenses and working capital required to commence operation.

(v) Any other payments which the franchisee will be required to make in order to commence operations.

Note: The following statement shall be inserted in the offering circular at this point:

THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE.

(8) Obligations of franchisee to purchase or lease from designated sources: State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease from the franchisor or his designees, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

(a) The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased from the franchisor or its designees.

(b) Whether, and if so, the precise basis by which, the franchisor, its parent or persons affiliated with the franchisor will or may derive income based on or as a result of any such required purchases or leases.

(c) To the extent known or estimable by the franchisor, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make or enter into (1) in the establishment and (2) in the operation of the franchise business.

(9) Obligations of franchisee to purchase or lease in accordance with specifications or from approved suppliers: State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise

agreement or other device or practice, to purchase or lease in accordance with specifications issued by the franchisor, or from suppliers approved by the franchisor, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

(a) The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased in accordance with specifications or from suppliers approved by the franchisor.

(b) The manner in which the franchisor issues and modifies specifications or grants and revokes approval to suppliers.

(c) Whether, and for what categories of goods and services, the franchisor or persons affiliated with the franchisor are approved suppliers or the only approved suppliers.

(d) Whether, and if so, the precise basis by which, the franchisor, its parent or persons affiliated with the franchisor may derive income from it or from other approved suppliers, if this is the case.

(10) Financing arrangements: State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor, its agent or affiliated company, including:

(a) A description of any waiver of defenses or similar provisions in any note, contract or other instrument to be executed by the franchisee or subfranchisor.

(b) A statement of any past or present practice or of any intent of the franchisor to sell, assign, or discount to a third party, in whole or in part, any note, contract or other instrument executed by the franchisee or subfranchisor.

(c) A description of any payments received by the franchisor from any person for the placement of financing with such person.

(11) Obligations of the franchisor; other supervision, assistance or services: Where applicable, describe the following:

(a) The obligations to be met by the franchisor prior to the opening of the franchise business, citing by section and page the provisions of the franchise or related agreement requiring performance.

(b) Other supervision, assistance or services to be provided by the franchisor prior to the opening of the franchise business although franchisor is not bound by the franchise or any related agreement to provide the same. As part of this disclosure franchisor must disclose that he is not so bound.

(c) The obligations to be met by the franchisor during the operation of the franchise business, including, without limitation, the assistance to the franchisee in the operation of his business. Cite by section and page the provisions of the franchise or related agreement requiring performance.

(d) Other supervision, assistance or services to be provided by the franchisor during the operation of the franchise business although franchisor is not bound by the franchise or any related agreement to provide the same.

As part of this disclosure franchisor must disclose that it is not so bound.

(e) The methods used by the franchisor to select the location for the franchisee's business.

(f) The typical length of time between the signing of the franchise agreement or the first payment of any consideration for the franchise and the opening of the franchisee's business.

(g) The training program of the franchisor, including:

(i) The location, duration and content of the training program;

(ii) When the training program is to be conducted;

(iii) The experience that the instructors have had with the franchisor;

(iv) Any charges to be made to the franchisee and the extent to which the franchisee will be responsible for travel and living expenses of the person(s) who enroll in the training program;

(v) If the training program is not mandatory, the percentage of new franchisees that enrolled in the training program during the 12 months immediately preceding the date of the offering circular; and

(vi) Whether any additional training programs and/or refresher courses are available to the franchisee and whether the franchisee will be required to attend the same.

(12) Exclusive area or territory: Describe any exclusive area or territory granted the franchisee and with respect to such area or territory state whether:

(a) The franchisor has established or may establish another franchisee who will also be permitted to use the franchisor's trade name or trademark.

(b) The franchisor has established or may establish a company-owned outlet using the franchisor's trade name or trademark.

(c) The franchisor or its parent or affiliate has established or may establish other franchises or company-owned outlets selling or leasing similar products or services under a different trade name or trademark.

(d) Continuation of the franchisee's area or territorial exclusivity is dependent upon achievement of a certain sales volume, market penetration or other contingency and under what circumstances the franchisee's area or territory may be altered.

(13) Trademarks, service marks, trade names, logotypes, and commercial symbols: Describe any trademarks, service marks, trade names, logotypes or other commercial symbols to be licensed to the franchisee including the following:

(a) Whether the trademark, service mark, trade name, logotype or other commercial symbol is registered with the United States Patent Office and, if so, for each such registration state the registration date and number and whether or not the registration is on the principal or supplemental register.

(b) Whether the trademark, service mark, trade name, logotype and other commercial symbol are registered in this state or the state in which the franchise business is to be located and the dates of such registrations.

(c) A description of any presently effective determinations of the patent office, the trademark administrator of this state or any court, any pending interference, opposition or cancellation proceeding and any pending material litigation involving such trademarks, service marks, trade names, logotypes or other commercial symbols and which is relevant to their use in this state or the state in which the franchise business is to be located.

(d) A description of any agreements currently in effect which significantly limit the rights of the franchisor to use or license the use of such trademarks, service marks, trade names, logotypes or other commercial symbols in any manner material to the franchise.

(e) Whether the franchisor is obligated by the franchise agreement or otherwise to protect any or all rights which the franchisee has to use such trademarks, service marks, trade names, logotypes or other commercial symbols and to protect the franchisee against claims of infringement or unfair competition with respect to the same.

(f) Whether there are any infringing uses actually known to the franchisor which could materially affect the franchisee's use of such trademarks, service marks, trade names, logotypes or other commercial symbols in this state or state in which the franchise business is to be located.

(14) Patents and copyrights: If the franchisor owns any rights in or to any patents or copyrights which are material to the franchise, describe such patents and copyrights, their relationship to the franchise and the terms and conditions under which the franchisee may use them, including their duration, whether the franchisor can and intends to renew any copyrights, and, to the extent relevant, the information required by Section 15 above with respect to such patents and copyrights.

(15) Obligation of the franchisee to participate in the actual operation of the franchise business: State fully the obligation of the franchisee or the subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to participate personally in the direct operation of the franchise business or whether the franchisor recommends participation in the same.

(16) Restrictions on goods and services offered by franchisee: State any restriction or condition imposed by the franchisor, whether by terms of the franchise agreement or by other device or practice of the franchisor, whereby the franchisee is restricted as to the goods or services they may offer for sale, or limited in the customers to whom they may sell such goods or services.

(17) Renewal, termination, repurchase, modification and assignment of the franchise agreement and related information: With respect to the franchise and any related agreements state the following:

(a) The term and whether such term is affected by any agreement (including leases or subleases) other than the one from which such term arises.

(b) The conditions under which the franchisee may renew or extend.

(c) The conditions under which the franchisee may refuse to renew or extend.

(d) The conditions under which the franchisee may terminate.

(e) The conditions under which the franchisor may terminate.

(f) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor and the obligations of the franchisor (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)(a) An earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and must have a reasonable basis at the time it is made. If no earnings claim is made, Item 19 of the offering circular shall contain the following negative disclosure:

Franchisor does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits

of (name of franchise). Actual results vary from unit to unit and franchisor cannot estimate the results of any particular franchise.

(b) An earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation.

Note #1 Definition: "Earnings claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level or range of actual or potential sales, costs, income or profit from franchised or nonfranchised units may be easily ascertained.

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) is an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

Note #2 Supplemental earnings claim. If a franchisor has made an earnings claim in accordance with this subsection, the franchisor may deliver to a prospective franchisee a supplemental earnings claim directed to a particular location or circumstance, apart from the offering circular. The supplemental earnings claim must be in writing, explain the departure from the earnings claim in the offering circular, be prepared in accordance with this subsection, and be left with the prospective franchisee.

Note #3 Scope of requirement. An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this subsection. If an earnings claim is not made, then negative disclosure prescribed by this subsection must be used.

Note #4 Claims regarding future performance. A statement or prediction of future performance that is prepared as a forecast or projection in accordance with the *Statement on Standards for Accountants' Services on Prospective Financial Information* (or its successor) issued by the *American Institute of Certified Public Accountants, Inc.*, is presumed to have a reasonable basis.

Note #5 Burden of proof. The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.

Note #6 Factual basis: The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend, including, for example, economic or market conditions, and which are basic to a franchisee's operation and encompass matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor, or franchisees of that person; provided that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

Note #7 Basic disclosures. The earnings claim must state:

(i) Material assumptions, other than matters of common knowledge, underlying the claim;

(ii) A concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;

(iii) A conspicuous admonition that a new franchisee's individual financial results are likely to differ from the results stated in the earnings claim; and

(iv) A statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.

(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) The name and last known address and telephone number of every franchisee in this state under a franchise agreement with the franchisor or its subfranchisor whose franchise has, within the twelve-month period immediately preceding the effective date of this offering circular, been terminated, canceled, not renewed, or who has, during the same time period, otherwise voluntarily or involuntarily ceased to do business pursuant to the franchise agreement.

(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 19.100.250, 88-01-060 (Order SDO 112B-87), § 460-80-315, filed 12/17/87. 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.]

Chapter 460-82 WAC BROKER/SELLING AGENT

WAC
460-82-100 Repealed.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-82-100 Application. [Order 11, § 460-82-100, filed 3/3/72.] Repealed by 88-01-062 (Order SDO-116B-87), filed 12/17/87. Statutory Authority: RCW 19.100.140 and 19.100.250.

WAC 460-82-100 Repealed. See Disposition Table at beginning of this chapter.

Chapter 460-90A WAC CAMPING CLUBS--CONTRACTS--RESALE, ETC.

WAC
460-90A-145 Fees and charges.

WAC 460-90A-145 Fees and charges. The following fees shall be paid under the provisions of chapter 19.105 RCW:

(1) **REGISTRATION FEES:** Applicants filing an original registration shall pay a basic fee of fifteen hundred dollars.

(2) **CONTRACT FEES:** In addition to the registration fees, registrants shall pay fees for each grouping of contracts in the registration as provided in the following schedule:

1 - 500	\$ 350.00
501 - 1000	450.00
1001 - 1500	550.00
1501 - 2000	650.00
2001 - 2500	750.00
2501 - 3000	850.00
3001 - 3500	950.00
3501 - 4000	1050.00
4001 - 4500	1150.00
4501 - 5000	1250.00
5001 - 5500	1350.00
5501 - 6000	1450.00
6001 - 6500	1550.00
6501 - 7000	1650.00
7001 - 7500	1750.00
7501 - 8000	1850.00
8001 - 8500	1950.00
8501 - 9000	2050.00

9001 - 9500	2150.00
9501 - 10000	2250.00
10001 -	2350.00

(3) **RENEWAL FEES:** Each application for an annual renewal shall be accompanied by a fee of five hundred fifty dollars, plus the prescribed contract fees in section (2) of this rule for each grouping of contracts authorized in the permit to market.

(4) **FEES FOR AMENDING REGISTRATION AND PUBLIC OFFERING STATEMENTS:** (a) For each amendment of registration or the public offering statement, pursuant to RCW 19.105.420, not requiring an examination of documentation for adding campgrounds or additional contracts to the registration, a fee of fifty dollars shall be paid. (b) Amendment for the establishment of an additional campground into the registration, for which an examination of documentation is required, there shall be paid, exclusive of any other fees owed under this rule, a fee of two hundred fifty dollars. A penalty fee of one hundred dollars shall be assessed and paid for failure to file an amendment within 30 days of the occurrence of a material change as defined in WAC 460-90A-017 or 460-90A-018.

(5) **FEES FOR IMPOUNDS, ESCROWS, TRUSTS AND DEPOSITORIES:** For each impound, escrow, trust, or other arrangement requiring agency monitoring for purposes of satisfying the provisions of RCW 19.105.340, 19.105.350, section 7, chapter 159, Laws of 1988 and section 12, chapter 159, Laws of 1988, the initial fee for establishing the impound, escrow, trust or other arrangement shall be two hundred fifty dollars and the fee for each required periodic report shall be twenty dollars.

(6) **FEES AND ADVERTISEMENT FILINGS:** (a) For each individual advertisement filed with the department, there shall be a fee of thirty dollars paid at the time of the initial submission of the advertisement to the department. Should a registrant fail to submit a required filing of an advertisement or advertisements in a timely manner, the thirty dollar fee for each advertisement shall be collected from the registrant, even if the advertisement or advertisements at issue are no longer in use or being disseminated. (b) Registrants or applicant submitting an advertisement or advertisements involving no examination of campground instruments and which are for the purpose of marketing surveys or feasibility studies shall pay a fee of seventy-five dollars.

(7) **INSPECTION FEES:** Applicants and registrants shall pay the costs of inspections conducted pursuant to section 18, chapter 159, Laws of 1988. The inspection fee shall be paid within 30 days of request subsequent to the inspection. The inspection fee shall be determined by the actual cost to the department for conducting the inspection. The inspection fees must be paid prior to the processing of a registration, a renewal of registration or amendment seeking addition of a campground to a program.

(8) **SALESPERSON FEES:** Applicants for registration as camp resort salesperson shall pay an initial application and renewal fee of sixty dollars and a fee of sixty dollars for each transfer of the salespersons registration. Failure to renew a salesperson registration within 30 days after

expiration shall result in termination of the registration and a new application for registration must be made.

(9) **FEEES FOR EXEMPTIONS AND EXEMPTION APPLICATIONS:** For a review of an application for exemption under RCW 19.105.320(3), the applicant shall submit a fee of one hundred fifty dollars. If the exemption request is denied, the registrant shall be given credit for the one hundred fifty dollars fee submitted toward the registration fee under section (1) of this rule.

(10) All fees are nonrefundable after application has been received.

(11) All fees shall be paid to the order of the Washington state treasurer.

[Statutory Authority: RCW 19.105.411. 89-01-082 (Order PM 807), § 460-90A-145, filed 12/20/88.]

Title 463 WAC

ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: Thermal Power Plant Evaluation Council)

Chapters

- 463-36** Procedure—Amending or terminating a site certification agreement.
- 463-42** Procedure—Guidelines—Applications for site certification.
- 463-54** Certification compliance determination and enforcement.

Chapter 463-36 WAC

PROCEDURE—AMENDING OR TERMINATING A SITE CERTIFICATION AGREEMENT

WAC

463-36-010	Council policy.
463-36-020	Termination.
463-36-030	Request for amendment.
463-36-040	Amendment review.
463-36-050	Environmental impact—Alternatives.
463-36-060	Council determinations.
463-36-070	Approval by resolution.
463-36-080	Approval by governor.
463-36-090	Council powers.

WAC 463-36-010 Council policy. The council may take such action as may be necessary to protect the public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-010, filed 11/19/87.]

WAC 463-36-020 Termination. Termination of a site certification agreement (SCA), except pursuant to its own terms, is an amendment of the agreement.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-020, filed 11/19/87.]

WAC 463-36-030 Request for amendment. A request for amendment of an agreement shall be made in writing by a certificate holder to the council. The council will consider the request at the next feasible council

meeting. The council will then refer the question to committee for recommendation, determine a schedule for action, or take action upon the request. The council may, if appropriate and required for full understanding and review of the proposal, secure the assistance of a consultant or take other action at the expense of the certificate holder. The council shall hold one or more public hearing sessions upon the request for amendment at times and places determined by the council.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-030, filed 11/19/87.]

WAC 463-36-040 Amendment review. In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules; and
- (3) The public health, safety, and welfare.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-040, filed 11/19/87.]

WAC 463-36-050 Environmental impact—Alternatives. In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal. Reasonable alternative means by which the purpose of the proposal might be achieved shall be considered as shall the availability of funding to implement the proposal.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-050, filed 11/19/87.]

WAC 463-36-060 Council determinations. The council in acting upon a requested amendment may accept the amendment; reject the amendment; or reject the amendment, and state conditions or terms under which the amendment will be reconsidered.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-060, filed 11/19/87.]

WAC 463-36-070 Approval by resolution. An amendment which changes a technical provision or requirement within the terms of the SCA, and constitutes no substantial alteration of any provisions of the SCA, and is determined to have no detrimental effect upon the environment, shall be effective upon adoption of a council resolution.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-070, filed 11/19/87.]

WAC 463-36-080 Approval by governor. An amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor of Washington state.

[Statutory Authority: RCW 80.50.040(1). 87-24-006 (Order 87-2), § 463-36-080, filed 11/19/87.]

WAC 463-36-090 Council powers. The council has power to initiate proceedings leading to the SCA